

ACT 145

S.B. NO. 2116

A Bill for an Act Relating to Indemnification of County Agencies.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that public schools frequently use county parks and other facilities for school purposes and functions, such as

physical education classes, athletic events, and graduation events. The legislature also finds that the current procedure for the department of education to obtain approval from the governor to agree to indemnify a county when a public school uses a county facility for a school purpose is unnecessarily burdensome, especially for school purposes and functions that occur repeatedly throughout the school year.

The purpose of this Act is to facilitate the process by which the department of education obtains approval for the State to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees for public school purposes and functions on county facilities.

SECTION 2. Section 46-71.5, Hawaii Revised Statutes, is amended to read as follows:

“~~§~~46-71.5 Indemnification of county agencies. (a) To receive county aid, assistance, support, benefits, services, and interests in or rights to use county property, a state agency may agree in writing to an indemnity provision by which the State agrees to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

- (1) The governor approves the State’s proposed indemnification; and
- (2) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.

(b) Notwithstanding subsection (a), the governor may delegate to the superintendent of education or the deputy superintendent if so designated by the superintendent of education the authority to agree to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees when:

- (1) The use of the county property will be for a public school purpose or a public school function;
- (2) The governor approves, in writing, the indemnity provision to be used by the superintendent of education or the deputy superintendent if so designated by the superintendent of education which provision, upon approval, may serve as approval under this paragraph for all public school purposes or functions on county properties for the remainder of that same school year; and
- (3) The comptroller, pursuant to section 41D-8.5, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the State that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the State to obtain insurance.

~~(b)~~ (c) An indemnity provision not in strict compliance with this section shall not give rise to a claim against the State under chapter 661 or otherwise waive the State’s sovereign immunity.”

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect upon its approval.

(Approved May 27, 2010.)