

ACT 103

H.B. NO. 2299

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 the University of Hawaii campuses frequently use county parks and other facilities for university purposes and functions, such as physical education classes, athletic events, and graduation events. The legislature also finds that the current procedure for the University of Hawaii to obtain approval from the governor to indemnify a county for using a county facility for university purposes is unnecessarily burdensome. Functions at county parks and other facilities for university purposes occur annually and repeatedly throughout the academic semester.

The purpose of this Act is to facilitate the process by which the University of Hawaii obtains approval for the State to indemnify, defend, and hold harmless a county agency, its officers, agents, and employees for functions on county property for university purposes.

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.

(c) Notwithstanding subsection (a), the board of regents of the University of Hawaii, or its designee, may 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 university purpose or a university function;
- (2) The president of the University of Hawaii, or the president's designee, following a favorable review by the university general counsel or the counsel's designee, approves the indemnity provision in writing; and
- (3) The chief financial officer of the University of Hawaii, pursuant to section 304A-108, has obtained an insurance policy or policies in an amount sufficient to cover the liability of the university that reasonably may be anticipated to arise under the indemnity provision, or has determined that it is not in the best interest of the university to obtain insurance.

(d) Nothing in this section shall be construed to expand the scope of liability of the State or University of Hawaii beyond that set forth in chapters 661 and 662.

[(e)] (e) Nothing in this section shall be construed to waive the immunity of the State or University of Hawaii from suit in federal courts guaranteed by the Eleventh Amendment to the United States Constitution. An indemnity provision not in strict compliance with this section shall not give rise to a claim against the State or University of Hawaii under chapter 661 or otherwise waive the State's or university's sovereign immunity."

SECTION 3. Section 304A-108, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The university may purchase insurance to cover any claims anticipated under this section[-] or section 46-71.5."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2018.

(Approved June 29, 2018.)