

COUNCIL OF THE COUNTY OF MAUI
PUBLIC WORKS AND
FACILITIES COMMITTEE

March 16, 2007

Committee
Report No.

07-32

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Public Works and Facilities Committee, having met on February 14, 2007, and February 28, 2007, makes reference to County Communication No. 07-61, from the Director of Public Works and Environmental Management, transmitting a proposed resolution entitled "INDEMNIFYING THE STATE OF HAWAII PURSUANT TO A CONTRACT FOR GOODS AND SERVICE FOR THE DEPOSIT BEVERAGE CONTAINER PROGRAM".

The purpose of the proposed resolution is to indemnify the State of Hawaii in order to allow the Department of Public Works and Environmental Management to execute a contract with the State Department of Health for the implementation of the Deposit Beverage Container Program.

By correspondence dated February 8, 2007, the Co-Chairs of your Committee requested that the State Director of Health attend your Committee's February 14, 2007 meeting.

At its meeting of February 14, 2007, your Committee met with the Director of Public Works and Environmental Management, the Corporation Counsel, and two Deputy Corporation Counsel.

There was no public testimony.

Your Committee deferred consideration of the matter without discussion.

By correspondence dated February 22, 2007, the Co-Chairs of your Committee requested that the State Director of Health attend your Committee's February 28, 2007 meeting.

At its meeting of February 28, 2007, your Committee met with the Deputy Director of Public Works and Environmental Management; the Solid Waste Division Chief, Department of Public Works and Environmental Management; the Corporation

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Counsel; a Deputy Corporation Counsel; Laurence Lau, Deputy Director of Environmental Health, State Department of Health; and Jennifer Tosaki, Recycling Coordinator, Office of Solid Waste Management, State Department of Health.

There was no public testimony.

The Deputy Director stated that the proposed resolution allows the County to execute a contract for goods and services with the State for the implementation of the Deposit Beverage Container Program, otherwise known as the Bottle Bill. He stated that the State has rejected the County's standard indemnification provision, and has requested that the County consider the indemnification provisions set forth in the General Conditions of the contract for goods and services. The State is requesting the County's decision by March 1, 2007.

Your Committee discussed the issue of indemnification and the importance of receiving equal treatment by the State in similar matters.

The Deputy Director of Environmental Health stated that the State does not enjoy blanket immunity, and has merely asked for the same contractual requirements already accepted by Kauai County and Hawaii County. He further stated that the State has operated on the assumption that the proposed agreement with the County is mutually beneficial.

Your Committee discussed the wisdom of participating in the State's program versus a County-funded program.

The Corporation Counsel stated that the County tries to limit its liability, and the indemnification provisions proposed by the State subject the County to greater liability. He also provided background information regarding the County not receiving equal treatment by the State on the issue of indemnification.

Your Committee discussed the impacts on recycling efforts on Lanai and in Hana if the County failed to enter into a contract with the State. Your Committee expressed its willingness to support County funding of employees currently funded through the State's program, should the contract with the State not be signed.

Your Committee voted to recommend filing of the communication.

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Your Public Works and Facilities Committee RECOMMENDS that County Communication No. 07-61 be FILED.

Adoption of this report is respectfully requested.

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DANNY A. MATEO Member

MICHAEL P. VICTORINO Co-Chair

JOSEPH PONTANILLA Member

G. RIKI HOKAMA Member