CONVENE: 9:05 a.m.

PRESENT: Councilmember Michael J. Molina, Chair
Councilmember Dain P. Kane, Vice-Chair
Councilmember Michelle Anderson, Member (arr. at 9:20 a.m./excused from 9:25 to 9:30 a.m.)
Councilmember Robert Carroll, Member
Councilmember G. Riki Hokama, Member
Councilmember Jo Anne Johnson, Member (arr. at 9:10 a.m.)
Councilmember Danny A. Mateo, Member
Councilmember Joseph Pontanilla, Member
Councilmember Charmaine Tavares, Member

STAFF: Richelle Kawasaki, Legislative Attorney
Clarita L. Balala, Committee Secretary
Pauline. Martins, Substitute Committee Secretary
Morris Haole, Executive Assistant to Councilmember Carroll

ADMIN.: David DeLeon, Senior Executive Assistant, Office of the Mayor (Item Nos. 28 & 53)
Milton Arakawa, Director, Department of Public Works and Environmental Management (Item No. 4(12))
Milton Matsuoka, Captain, Department of Police (Item No. 4(11))
Moana Lutey, Deputy Corporation Counsel, Department of the Corporation Counsel
(Item Nos. 4(11), 4(12) & 28)
Laureen Martin, Deputy Corporation Counsel, Department of the Corporation Counsel
(Item Nos. 4(11) & 28)
Richard Rost, Deputy Corporation Counsel, Department of the Corporation Counsel
(Item Nos. 4(11) & 28)
Brian Moto, Corporation Counsel, Department of the Corporation Counsel (Item Nos. 28 & 53)

OTHERS: Stephen Goldsmith, Esq.
Lance Collins, Esq.
James Krueger, Esq.
Plus (6) other people
CHAIR MOLINA: . . . (gavel). . . The Committee of the Whole meeting for August 1, 2006 is now in session. For the record we have in attendance the Vice-Chairperson of the Committee Dain Kane, Councilmembers Bob Carroll, Danny Mateo, Riki Hokama, Joe Pontanilla, Charmaine Tavares. Excused are Members Michelle Anderson and Jo Anne Johnson. From Staff we have Richelle Kawasaki Lu and we have Clarita Balala; and from the Corporation Counsel’s office we have Moana Lutey and Laureen Martin. Sorry about that momentary delay, pardon me. Still a little bit early for your Chair.

Good morning, Members. We have four items on our agenda, but before we address any of these items the Chair will open up the floor for public testimony. We do have three signed slips from testifiers out in the gallery, and we will begin first with Jim Krueger, who will be followed by Stephen Goldsmith.

And Chair will go over a few ground rules before testimony begins. You will have three minutes to testify with a minute to conclude and the Chair would ask that everyone in the Chambers please turn off any cell phones or pagers, so we do not have any disruptions to our proceedings this morning. Mr. Krueger, if you will.

. . . BEGIN PUBLIC TESTIMONY . . .

MR. KRUEGER: Thank you very much, sir.

CHAIR MOLINA: Thank you.

MR. KRUEGER: I submitted--

CHAIR MOLINA: Sorry. Sir, sir could you go ahead and state your name for the record and then proceed with your testimony.

MR. KRUEGER: Jim Krueger. I’ve submitted testimony. First, let me say that I never knew about the issue until we were involved in a lawsuit that is presently pending. But let me say also that what you may or may not do has no effect on the presently pending lawsuit. The reason I’m here is because I learned a lot about the lawsuit about the issue. Statutes of limitation, your County Charter comports with the State statutes relative to personal injury claims, that is for the State wrongful death claim, for personal injuries, and for general tort claims, two years.

There is a statute that applies to the Counties, which used to be only allowed only for one County, City and County of Honolulu. And then the Legislative people changed that to make it applicable to all the Counties. Uniquely, Maui County has been the only County in the State that had a Notice of Claims statute that a period in which you could file a claim was two years. Everybody else was six months. So they swept you into the umbrella of being like the rest of the people and made it six months. So you
have a conflict with your Charter and a statute applicable to the Counties.

The law is that where there is one subject matter but two statutes that apply to the same thing the more specific law will apply, and the law that applies to Maui County specifically is what you enacted. I think you’ve been told by your County Counsel already that you do have the power to provide a period longer than HRS 46-72 and you have done that. You can’t shorten the period that HRS 46-72 provided for, six months.

We’re going to suggest to you that the Legislature, which looked at a bill to modify HRS 46-72 this past year, no “no” votes in the House, no “no” votes in the Senate, but the Governor vetoed it. That bill was to bring 4672 in compliance with the rest of the statutes in the State mainly to elongate it from six months to two years. The Governor vetoed that bill for reasons that are unclear but legally erroneous.

It’s my understanding that, that bill will come back into the Legislature this year, and the likelihood is that it probably will be passed through and the Governor will have been better educated by the Attorney General so that, that 4672 is likely to be two years.

So I am gonna suggest that there is no rush for this County to change what presently is its two-year Notice of Claim, which does comport with the State Tort Claims Act. It seems an anomaly to me that you would want...it makes no sense that you would want to have a shorter period of time in which to make a claim against the County than the State does. And I can’t see what the State interest would be in having the Counties have a lesser period of time in which a claim could be made against them than do you.

There is a decision from the Supreme Court called Kahale, which people do not understand. In that case there was a claim against the City and County, which you may remember has a six-month Notice of Claim period and not two years. Unfortunately in that case, the plaintiffs relied on the wrong statute of limitation that being against the State. The Supreme Court said, well, County, City and County, you’re not the State, so you don’t--

MS. KAWASAKI: Three minutes.

MR. KRUEGER: Okay.

CHAIR MOLINA: Mr. Krueger, if you, if you could give a concluding statement.

MR. KRUEGER: Okay.

CHAIR MOLINA: ... (inaudible). . .

MR. KRUEGER: Thank you. The City and County said we should have the same State statute to file a claim, and the Supreme Court said, uh-uh, you’re not the State, you don’t get two years, so since your Notice of Claim period is six months the plaintiffs in that case were dead. That case would not be decided had
it been Maui County which had two years. I will tell you it’s sort of a trap, because almost everybody that tries cases knows that it’s a two-year period of statute of limitations to make a claim for death or for personal injury. For the Notice of Claims statute to be less than that is really--

MS. KAWASAKI: Four minutes.

MR. KRUEGER: --a trap for--

CHAIR MOLINA: Sorry, Mr. Krueger, I’ll have to cut short your testimony at this point.

MR. KRUEGER: Alright.

CHAIR MOLINA: Thank you. Committee--

MR. KRUEGER: I have nothing, I have nothing else to add. I think my testimony speaks for itself. All I’m going to suggest to you perhaps is you may wish to wait until the Legislature has or has not acted. Thank you for hearing me.

CHAIR MOLINA: Okay.

MR. KRUEGER: Thank you very much.

CHAIR MOLINA: Hang on, Mr. Krueger. I’ll ask the Committee if they have any questions for you.

MR. KRUEGER: Okay.

CHAIR MOLINA: Committee Members, any questions for the testifier? Seeing none. Thank you very much, Mr. Krueger.

MR. KRUEGER: I appreciate it, Mr. Chairman. Thank you.

CHAIR MOLINA: Thank you. Next to testify we have Stephen Goldsmith to be followed by Lance Collins. And before Mr. Goldsmith proceeds with his testimony, the Chair would like to recognize Member Johnson to our proceedings this morning. Mr. Goldsmith.

MR. GOLDSMITH: Good morning, Honorable Chair, Honorable Members of the Council. My name is Stephen Goldsmith. Some of you know me, some of you don’t. I have been a practicing lawyer on Maui County since 1977. I actually worked for Mr. Krueger in 1976 for about three years thereafter.

I have represented residents of this County for that entire period of time, many of whom have been injured; some of whom who have been injured through the fault of the County; very few of whom ever thought that they had to file a Notice of Claim. It was not until 2004 when the Kahale case was decided, based on the City and County’s six-month period of claim, that this issue came to fore. Because our
Supreme Court—in its infinite wisdom on its own, I might add, since neither party to that case requested the relief that we are now seeing in front of us—decided that the Salavea case, which preceeded Kahale, was erroneously decided.

If you want to have a pleasant read, read the dissent in the Kahale case to get a flavor of the, of the divisiveness in the Supreme Court at the moment. That’s not our concern today. Our concern today is that our Charter, which was voted upon by the citizens of this County, allows for a two-year period within which to file a Notice of Claim. As I’ve shown in my written testimony it has been my experience that I’m lucky to get a police report within six months on a case that is beyond what is referred to as a “fender bender”. I don’t fault the Department. They are overtaxed, overburdened, but it is a reality.

It is also a reality that in one case—some of you may remember Jonathan Waxman, a former attorney here, who died in a horrific accident—it took us over two years to obtain that traffic report. Now, sure I can go out and investigate these things on my own, but very often witnesses are requested, either rightfully or wrongfully, by the investigators or by the Prosecutor’s office, not to talk to people, and certainly the Prosecutors don’t want us mucking up their witnesses. So we have a practical matter as...we have a problem as a practical matter.

Another practical problem that we have is it’s not a joyous day when someone has the right to sue the County of Maui. It is an erroneous thought if you think that if someone trips on the sidewalk they’re going, oh great, now I can file one suit. No! That’s not the reality. It’s certainly not the reality in over 90 percent of the cases or even more in my own experience as a lawyer. What nana wants to do is to go and work her two jobs at the hotel so she can make her mortgage payment. What tutu wants to do is to be able to deal with her grandchildren.

And it’s only when through following a doctor’s orders and whatever prescribed regiment of rehabilitation that may have been given to them that they go, oh, you know, my life has changed. Guess what? That might be beyond six months--

MS. KAWASAKI: Three minutes.

MR. GOLDSMITH: --and it’s only then that the thought occurs, I’d better go see one lawyer, or maybe the County had something to do with this. Not fair! The people have already spoken They have already voted for a two-year Notice of Claims period. It’s a bit disingenuous to say we want to make this law applicable to the existing law. We have the right in this County to extend our aloha, our protection to our citizens beyond the six months, and I would ask you to table this measure. Thank you.

CHAIR MOLINA: Thank you, Mr. Goldsmith. Committee Members, questions for the testifier? Seeing none. Thank you. Next to testify is Lance Collins and Mr. Collins is the last person to have signed up for testimony. If there’s anyone else in the gallery that would like to sign up to testify for any of our agenda items today, please do so and come up to the front. Mr. Collins.
MR. COLLINS: Good morning, Chair. I’m, I’m speaking on two separate matters, so I’ll speak on Item No. 53 first. My name is Lance Collins. I’m an attorney in private practice in Wailuku and I’m a resident of Kahului. I come today to speak against Item 53, amending the Charter with relation to boards and commissions and disclosure requirements of applicants to boards and commissions.

Speaking with the Administration recently, I understand their position is that the County is now a nonpartisan government system, and so it is sort of old-fashioned or outdated to require board and commission applicants to disclose their party affiliation. That as a practical matter there is never more than a few applicants that either declare Democrat or Republican or Independent, and more so, most people don’t even fill it out at all and it requires the Administration staff to go back and have the applicant fill that section in. And so for a number of practical matters and a policy belief that the County is supposed to be a nonpartisan government this should be eliminated from the Charter.

I speak against moving this forward because I don’t believe that this and having nonpartisan elections involve the same policy consideration. I believe that the people of this County made our elections nonpartisan not because they cared one way or the other whether or not it was a nonpartisan election, in fact I think it was far from it. I think the, the purpose of that was twofold: one, primaries became open in the mid-‘90s, and it was followed very shortly thereafter by a Charter Amendment which made it nonpartisan. And at least in my mind, the decision that was made by the electorate was to allow who they believed were the two most qualified or two most popular persons, regardless of party affiliation, to advance to the General Election so that it wasn’t, a number of qualified candidates in one party and the top winner gets to meet the most qualified or most popular candidate in another party, instead just have the two most popular persons be elected.

Now in terms of boards and commissions, the reason of having that, that, that provision in the Charter is not about having the most qualified or most popular person being able to compete against the next most popular or next most qualified person in a board or commission. The purpose of that is to ensure that never more than a bare majority of a board or commission is of one party. And although we don’t really have a system where each County party has a patronage committee and that, that sort of has disappeared. I, I think that it’s very bad policy to remove disclosure requirements from the Charter instead of adding them. And I just, and I don’t think that, I don’t think that County will run smoother or more people will want to be board or commission members simply ‘cause they don’t have to identify their party.

If people want to volunteer they, they, the County should know a little bit about them, and County Council races and Mayor races, everybody knows whose party everyone is in, it’s no secret. But if you have 200 people applying for a board or commission it’s not so clear. And why shouldn’t the public know that? And so for those reasons I believe that this matter should not be advanced and not be put on the ballot in November. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Collins. Committee Members, questions for the testifier? Seeing none. Thank you, Mr. Collins.
MR. COLLINS: Thank you. For Item No. 28 relating to Charter 13-6, I spoke two weeks ago to you folks and said that I was of the belief that HRS 46-72 preempts the Charter. I’m still of that belief and I know that there’s a difference of opinion in the legal community. And so for that reason among others it probably would be..., it would behoove the Council to get an opinion from the Attorney General’s office clarifying whether or not 46-72 preempts the Charter or not. They sort of are the primary legal body that sort of gets a first crack at interpreting State law and to find out whether or not it preempts. Because if it preempts, it really does do a disservice to people to have, have a Charter Amendment that’s inconsistent with State law and is misleading. However, if it doesn’t preempt then, you know, then the Council needs to make a decision whether or not it wants to have the County liable or open to liability for a period of two years or six months.

But however just from what I’m hearing it doesn’t seem like there’s sufficient information one way or another to pass this or not to pass this. And it really would be incumbent on this body to ask the Attorney General whether or not State law preempts the Charter. I, I of course am of the opinion that it is and I think that there’s case law with respect to that. And if this, if that is the case and this Council does believe that two years is a fair and reasonable time that present a claim, then they should lobby both the Legislature and the Governor to ensure that the State law that preempts the Charter affords the two-year period.

However, if it’s just a matter of preemption and there’s sort of just misleading provisions in the Charter, then that’s obviously something that needs to be worked out. But, I do believe that an opinion by the Attorney General would be appropriate in this matter since there is confusion regarding preemption. Thank you.

CHAIR MOLINA: Okay. Thank you, Mr. Collins. Committee Members, questions for the testifier related to Committee of the Whole Item 28? Member Kane.

VICE-CHAIR KANE: Thank you, Chair. Good morning, Mr. Collins.

MR. COLLINS: Good morning.

VICE-CHAIR KANE: Are you clear that what you’re suggesting as far as getting an opinion from the Attorney General for all practical purpose is basically saying that we shouldn’t move forward with this because of time? Because today is basically the last day that we can move forward with putting anything on the ballot by having it approved today out of Committee and then going through a passage at the full Council before the deadline requirement. So are you, do you understand that?

MR. COLLINS: Yeah. Yeah. I, I totally understand. And I, I think that it’s better to take time and make the right decision than to not take the time and not make the right decision. I . . . definitely in the issue of preemption if it’s not clear, if you have some lawyers saying that there is no preemption and two statutes whichever is more specific controls, and another lawyer saying that one, one set of statutes preempts the other you, that’s definitely a good time to get the Attorney General involved to essentially give their opinion--
VICE-CHAIR KANE: Thank you.

MR. COLLINS: --and make the decision that way.

VICE-CHAIR KANE: Thank you very much. Thank you, Chair.

CHAIR MOLINA: Thank you, Member Kane. Committee Members, any other questions for the testifier? Member Anderson. And the Chair recognizes Member Anderson to our proceedings this morning.

COUNCILMEMBER ANDERSON: Thank you, Chair. Mr. Collins, thanks for being here this morning. It's my understanding that the Kahala case--

MR. COLLINS: Kahale case.

COUNCILMEMBER ANDERSON: --Kahale case is sort of what started the ball rolling on this. Do you have an understanding of that case and is it likely that the case would be appealed to the Supreme Court?

MR. COLLINS: Well, it's a bad case. It was, it was decided by the Supreme Court and--

COUNCILMEMBER ANDERSON: Oh. It was.

MR. COLLINS: Yeah. It was and it overruled previous law and that's what sort of made this an issue in the first place. I still think that, I still think that an opinion by the Attorney General whether or not, you know, he believes that the State statute trumps the Charter. I mean, I'm of the opinion that it does, unless State statute says the Charter may vary, a State statute, the State statute always preempts the Charter. However, there's not agreement in the legal community here on Maui whether or not that's true, and for that reason it may be appropriate to get the Attorney General's position on it.

COUNCILMEMBER ANDERSON: Okay. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Committee Members, any other questions for the testifier? Seeing none. Thank you, Mr. Collins.

MR. COLLINS: Thank you very much.

CHAIR MOLINA: The Chair will offer the public one last opportunity to testify on any of our four agenda items. Seeing no one approaching from the gallery the Chair will close public testimony on our agenda items for today. Any objections?

COUNCIL MEMBERS VOICED NO OBJECTIONS

...END OF PUBLIC TESTIMONY...
CHAIR MOLINA: Okay. Thank you, Members.

COW-4(11)  INDEMNIFICATION AUTHORIZATION (MICHAEL GAINES AND DANA ADAMS V. COUNTY OF MAUl, ET AL., CIVIL NO. 04-1-0290(3) (C.C. NO. 05-23)

CHAIR MOLINA: Members, we’ll proceed first with Committee of the Whole Item 4(11), correspondence dated July 17, 2006, from the Corporation Counsel’s office, transmitted a proposed resolution to indemnify County employees in the Michael Gaines and Dana Adams versus County of Maui case and transmitting a copy of the second amended complaint. This complaint alleges battery, assault, intentional infliction of serious emotional distress, false arrest, false imprisonment, and negligent supervision.

Two, a correspondence dated July 24, 2006, from the Corporation Counsel’s office, transmitting a revised proposed resolution entitled, “Indemnifying Donald Simpson, Joshua Haglan, and Ryan Pursley in Michael Gaines and Dana Adams vs. the County of Maui”. The purpose of the revised proposed resolution is to indemnify Donald Simpson, Joshua Haglan, and Ryan Pursley, County employees, in this particular case.

And to give us an overview of this matter we have Corporation Counsel Lutey, and also in attendance for our proceedings this morning, we have Captain Matsuoka from the Maui Police Department. Ms. Lutey, if you will.

MS. LUTEY: Thank you, Chair. Basically, this fact stems from a break in and theft of credit cards from visitors on February 24, 2004, at about six o’clock in the morning. On that same day, a male and female went to the Safeway in Lahaina and charged more than $900 worth of goods to that stolen credit card. The cashier who rang up the sale was suspicious and informed his manager of the sale, and as a result the manager then followed the pair out into the parking lot; wrote down a description of the vehicle as well as the license plate number; called the police and gave them that information.

Detective Donald Simpson was the lead investigator in that case and he issued an all-points bulletin Countywide for that vehicle. On April 29, 2004, Detective Simpson was in Lahaina heading towards Wailuku when he spotted the vehicle involved in the burglary and theft. Because he was not in a vehicle equipped with lights and sirens he called for assistance to stop that vehicle. Officers Haglan and Pursley responded to stop the vehicle, and because the vehicle that they were stopping had been involved in felonies they conducted a high risk, felony traffic stop technique to have the occupants of that vehicle exit.

After the vehicle was emptied of the occupants and they were secured, Detective Simpson arrived at the scene, and when he saw the occupants of the vehicle, immediately realized that they were not the people that he was looking for because there were tattoos that were identifying the male who had been involved in the theft and burglary. And at that point, he ordered the female released, and the male when they ran a bench warrant check on him found that in fact a bench warrant was active for his, for him. They
arrested him at that time. It was later discovered that that warrant had been recalled but that the Police Department had not been notified of that by the courts.

So we are seeking indemnification for the officers involved in this particular case. It is in active litigation, so if there are questions that need to go into executive session, I will let you know that, but otherwise I think we can handle this on the floor.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey. Committee Members, any questions in open session for Corporation Counsel or the Police Department? We’ll start with Member Hokama, followed by Member Kane.

COUNCILMEMBER HOKAMA: Chairman, thank you. I heard your comments this morning, Corporation Counsel. So the car that was actually stopped during the particular technique the officers used, the felony technique, that car can be verified as the car that left the store earlier?

MS. LUTEY: Yes.

COUNCILMEMBER HOKAMA: So it’s the same car but with different passengers?

MS. LUTEY: Exactly.

COUNCILMEMBER HOKAMA: Okay. I’m done.

CHAIR MOLINA: Okay. Thank you, Mr. Hokama. Member Kane.

VICE-CHAIR KANE: Thank you, Chair. In the third “whereas” of the resolution “whereas the investigation was conducted”, Corp. Counsel believe there is a good faith basis for indemnification and has made a recommendation to this body for that. You’ve already verified to us that the Officers Simpson, Haglan, and Pursley, excuse me, Detective Simpson and then Haglan and Pursley, Officers, were acting in their official duties at the time this occurred, is that correct? That’s--

MS. LUTEY: Yes.

VICE-CHAIR KANE: --verified?

MS. LUTEY: Yes.

VICE-CHAIR KANE: Okay. Thank you very much.

CHAIR MOLINA: Okay. Thank you, Member Kane. Committee Members, any other questions for our Corporation Counsel or the Police Department regarding this matter? The Chair has one question for Corporation Counsel. At this point, do you recommend executive session for this matter?
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MS. LUTEY: I don’t believe so. Not at this time.

CHAIR MOLINA: Okay. Thank you. With that being said, Member Kane.

VICE-CHAIR KANE: Mr. Chair, if, if there are no further questions, then that I will move for the adoption of the resolution requesting indemnification for Simpson, Haglan, and Pursley in this civil case.

CHAIR MOLINA: Okay.

COUNCILMEMBER TAVARES: Second.

CHAIR MOLINA: Motion has been made by Member Kane, seconded by Member Tavares. Member Kane, as the maker of the motion, you have the floor.

VICE-CHAIR KANE: No further discussion, Chair.

CHAIR MOLINA: Any other discussion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

VOTE: AYES: Councilmembers Carroll, Hokama, Johnson, Mateo, Pontanilla and Tavares, Vice-Chair Kane, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: Councilmember Anderson.

MOTION CARRIED.

ACTION: ADOPT REVISED RESOLUTION.

CHAIR MOLINA: Okay. The Chair will mark the vote eight to zero with one excusal, Member Anderson. Thank you, Members.
COW-4(12) INDEMNIFICATION AUTHORIZATION (STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY; DENNY C. WRIGHT AND DEBORAH K. WRIGHT V. COUNTY OF MAUI, ET AL., CIVIL NO. 05-1-0927) (C.C. No. 05-23)

CHAIR MOLINA: We'll now move on to our next item, which is Committee of the Whole Item 4(12). The Committee is in receipt of the following, a correspondence dated July 20, 2006, from the Corporation Counsel's office, transmitting a proposed resolution to indemnify a County employee in State Farm Mutual Automobile Insurance Company, et al. versus County of Maui, and also a copy, a transmittal of a copy of the complaint. This complaint alleges negligent damage of a vehicle.

Two, a correspondence dated July 24, 2006, again, from the Corporation Counsel's office, transmitting a revised proposed resolution entitled "Indemnifying Edward Ogata in State Farm Mutual Automobile Insurance Company, et al. v. County of Maui." The purpose of the revised proposed resolution is to indemnify Edward Ogata, a County employee, in this case. And we have from the Corporation Counsel's office to give us an overview is Mr. Richard Rost. Mr. Rost, if you will.

MR. ROST: Thank you, Mr. Chair. This lawsuit involves an incident that occurred on Central Avenue in Wailuku. It's alleged that a County truck driven by Mr. Edward Ogata, who is a County employee with the Department of Public Works and Environmental Management, was driving along Central Avenue hauling a brush-cutting device, I believe. And it's alleged that, that brush-cutting device hit the phone lines, which pulled some sort of device, a junction box or something to that, of that type off the telephone pole, which then struck a parked vehicle.

And, so the County and Mr. Ogata are being sued by State Farm, which is the insurance company for the owners of the vehicle, for the amount of payment State Farm made for repairs to that vehicle. It's, from Corporation Counsel looking into this matter, Mr. Ogata was on duty at the time and performing his duties as instructed. So it appears that he should be entitled to indemnification in this matter.

CHAIR MOLINA: Okay. Thank you, Mr. Rost. Members, any questions in open session for Corporation Counsel, as well as the Public Works Director who is present with us, Mr. Milton Arakawa? We'll start with Member Pontanilla, followed by Member Mateo.

COUNCILMEMBER PONTANILLA: Thank you, Chair. In regards to the telephone line that the, Mr. Ogata had got snagged on with the piece of equipment, do we know how high the wire was?

MR. ROST: That, that's probably something we should go into executive session to discuss.

COUNCILMEMBER PONTANILLA: Okay. Thank you.

CHAIR MOLINA: Thank you, Member Pontanilla. Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, I think I will, I will pass, and if we do go into executive session, then I will ask my question.
CHAIR MOLINA: Okay. Thank you, Mr. Mateo. Committee Members, any questions in open session related to this matter? Member Kane.

VICE-CHAIR KANE: Yes. Thank you. Just to follow up on that, it’s not a matter of public record as far as the location of the telephone wire or cable, which was stretched across Central Avenue?

MR. ROST: I don’t believe it is. No.

VICE-CHAIR KANE: Does this lawsuit also include the phone company?

MR. ROST: Yes. Hawaiian Telecom has been named as an additional defendant.

VICE-CHAIR KANE: Is there any information that we should know about that involves our discussions with Hawaiian Telecom with respect to this issue? Any discussion going on?

MR. ROST: Not, not at this time. No. The lawsuit was only filed, was only served recently on the County.

VICE-CHAIR KANE: Okay. Mr. Chair, I realize that this is simply an indemnification since Mr. Ogata is being looked at in his, in his individual capacity, so I’ll reserve my remarks and I don’t need to go into executive session, with all respect to any other Member who does, I will support, I’ll defer to that. But because it’s an indemnification and because he was working and was doing his, doing his job as instructed, I think, I think I’m comfortable with moving forward at your request.

CHAIR MOLINA: Thank you, Member Kane. Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. I note that the damages amounts to $5,500 and some odd cents. Why are we fighting this for that amount? Why we wouldn’t we just pass the cost on to our insurance carrier?

MR. ROST: Well, I mean for this we are self-insured up to this, up to this point. So, so, it would be the County who would have to bear the expense of, of whatever amount we pay. And since the lawsuit was just recently filed we haven’t really had an opportunity to go into any settlement discussions with the plaintiffs.

COUNCILMEMBER ANDERSON: I see. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Anderson. Members any other questions in open session related to this matter? The Chair did note one Member absent. . .(end of tape, start 1B @ 9:37 a.m.). . . We may ask a question that Corporation Counsel would feel more comfortable answering in executive session. With that said the Chair will entertain a motion to go into executive session pursuant to Section 92-5(a)(4) of the Hawaii Revised Statutes to consult with legal counsel on questions
and issues pertaining to the powers, duties, privileges, immunities, and liabilities of the County, the Council, and the Committee.

COUNCILMEMBER PONTANILLA: So moved.

CHAIR MOLINA: Okay. It’s been moved by Member--

VICE-CHAIR KANE: Second.

CHAIR MOLINA: --Pontanilla, seconded by Member Kane. Any discussion? Seeing... Member Kane.

VICE-CHAIR KANE: Because of the way you framed your, your remarks to Corporation Counsel because you’re stating that we should go into Executive Session to discuss that particular point among others, do you know the information and that you can tell us in executive session regarding the wire?

MR. ROST: I believe I know the answer. But I can’t... that’s not something I’m sure about.

VICE-CHAIR KANE: Okay. And I understand that. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Kane. Any other discussion? Member Johnson.

COUNCILMEMBER JOHNSON: Yes. Because we’re not really discussing the settlement and we’re only discussing the indemnification, I personally do not see the need to go into executive session. This gentleman was acting within the scope of his duties and that’s the issue. The question that was asked is not related necessarily to the scope of his duties. It’s related to the actual settlement and the merits of the case so I don’t feel it’s appropriate to go into executive session. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Johnson. Member Mateo.

COUNCILMEMBER MATEO: Chairman, Chairman, thank you very much for, for the Chair’s consideration for executive session. I believe that it was I who indicated that I would have questions should we go into executive session. Because we’re just looking at indemnification at this particular point, maybe if I could ask Corp. Counsel as we engage in the continued discussion, this item, should we pursue, will be coming back to this body if there is a settlement?

MR. ROST: It may, although, considering that all they’re asking for is $5,500 and that could be, that entire amount could be provided with just the Mayor’s approval, so it’s not clear that it, that it will definitely come back to this body.

COUNCILMEMBER MATEO: Okay. So, Chairman, I think because we’re just at this particular stage, I would thank the Chair for your consideration. I can live with this. I can deal with my questions with Corp. Counsel myself and I would not impose any additional efforts on this body. Thank you, Chairman.
CHAIR MOLINA: Okay. Thank you, Member Mateo. Member Pontanilla.

COUNCILMEMBER PONTANILLA: Yeah. Just, I'd just like to add a comment. I don't know if, you know, we need to go into executive session in regards to the comment that just, you know, I wanna make right now. In regards to the, the equipment that we was moving, you know, how, how high was the equipment? Because there are ordinance in our County today that anything that is moved 13 feet or higher would require a moving permit. So if the equipment was less than 13 feet then, you know, we would know that the wire was less than 13 feet.

CHAIR MOLINA: Mr. Rost.

MR. ROST: Well, at this point, no discovery has really been conducted, so we're not certain about that.

CHAIR MOLINA: Okay.

COUNCILMEMBER PONTANILLA: Maybe the Public Works Director can give us some information.

CHAIR MOLINA: Mr. Arakawa, would you like to respond to Mr. Pontanilla's question?

MR. ARAKAWA: Mr. Chairman, I don't know the answer to that question.

CHAIR MOLINA: Okay. Member Pontanilla.

COUNCILMEMBER PONTANILLA: If we could have some feedback prior to the Council meeting in regards to moving this thing, if we move this thing out of this Committee.

CHAIR MOLINA: Okay. Members, at this time we do have a motion on the floor to go into executive session. Member Pontanilla, as the maker of the motion, would you consider withdrawing the motion for executive session?

COUNCILMEMBER PONTANILLA: Yeah. I'll withdraw the motion in regards to this particular matter.

CHAIR MOLINA: Okay. And we'll have a withdrawal of the second by Member Kane as well.

VICE-CHAIR KANE: Not necessary.

CHAIR MOLINA: Not necessary. Okay. Alright. So for the record the motion to go into executive session has been withdrawn. At this point the, if there are no other...Member Hokama.

COUNCILMEMBER HOKAMA: Then I'll ask my questions now, Chairman.

CHAIR MOLINA: Proceed.
COUNCILMEMBER HOKAMA: How long has this, our employee been in this position where he operates, I would assume, a PUC-required vehicle?

CHAIR MOLINA: Mr. Arakawa.

MR. ARAKAWA: I don’t know the answer to this question. He is an equipment operator with our Department.

COUNCILMEMBER HOKAMA: When was the last time the Department checked on or, or updated his file regarding qualifications to operate?

MR. ARAKAWA: I would have to get back to you. I don’t know what his personal driving record would be offhand.

COUNCILMEMBER HOKAMA: Is he the regular employee regarding that equipment?

MR. ARAKAWA: I can’t answer that question.

COUNCILMEMBER HOKAMA: Was the damaged parked vehicle parked properly and legally parked on Central Avenue?

MR. ROST: I don’t know that at this time.

COUNCILMEMBER HOKAMA: There’s a lot of “I don’t knows” right now, Chairman, and we’re asked to make decisions. Thank you.

CHAIR MOLINA: Thank you, Member Hokama. Member Kane.

VICE-CHAIR KANE: Thank you, Chair. Again I understand, Chair, that we have a resolution for the indemnification because this gentleman is being sued in his individual capacity, and that what’s being proposed to us is based on good faith effort as much as possible. The information regarding the scope, he’s working, he’s doing his duties, that’s what’s before us today. And we’ve already been told that the discovery component has not yet been engaged.

And I’m comfortable with moving forward with the indemnification, understanding the context of that. And I know, I guess the one question that I would ask the, the, the Director of Public Works, is the 1991 International truck that is described in the complaint, what type of license is required for that? Does it need a CDL license--and again it’s a follow-up--or is it just a regular vehicle?

MR. ARAKAWA: I believe you need a CDL license to operate that. He, he was operating that truck with a trailer.
VICE-CHAIR KANE: Okay. Thank you, Chair. I yield.

CHAIR MOLINA: Thank you, Member Kane. Any other questions for Corporation Counsel or the Public Works Department related to this matter? Member Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair. Whenever we do have an accident, do we have an accident report that is generated that provide us with information in regards to how the accident happened, you know, the circumstances of the particular accident?

CHAIR MOLINA: Corporation Counsel.

MR. ROST: There is usually a County accident incident report filled out. I have not actually seen the form for this particular accident though.

COUNCILMEMBER PONTANILLA: Maybe Public Works Director would give us some information if a accident report was generated in regards to this particular issue.

CHAIR MOLINA: Mr. Arakawa.

MR. ARAKAWA: Councilmember Pontanilla, I don’t have it with me. But I can certainly dig that up if, if you would like to take a look at it or the Council would like to take a look at it.

COUNCILMEMBER PONTANILLA: Yeah. And I think it would provide us more clarity in regards to actually what happened out there. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Pontanilla. Member Mateo.

COUNCILMEMBER MATEO: Chairman, thank you. And Mr. Arakawa, to continue on, on Mr. Pontanilla’s question, that accident report I believe he’s referring to an internal, so your Department report. What about a police report because there was damage that was alleged? Was there also a police report filed as well?

MR. ROST: I believe there was a police report. Yes.

COUNCILMEMBER MATEO: Okay. And at this point you, you haven’t gotten or seen none of that?

MR. ROST: I think I have seen the police report.

COUNCILMEMBER MATEO: Thank you. Thank you, Chair.

CHAIR MOLINA: Thank you, Member Mateo. Committee Members, any other questions for Corporation Counsel or Public Works before the Chair makes a recommendation? Okay. Seeing none. Member Hokama, I know you did have a lot of questions that were not being responded to, so if you’d
like I could ask staff to follow up with the Department to get a response to your questions should this move out of Committee today prior to--assuming it does pass out of Committee--prior to first reading on the Council. Would you like that request?

COUNCILMEMBER HOKAMA: I'm fine, Chairman. Thank you.

CHAIR MOLINA: Okay. Thank you. With that being said the Chair will entertain a motion to support the revised proposed resolution.

VICE-CHAIR KANE: So moved.

COUNCILMEMBER JOHNSON: Second.

COUNCILMEMBER TAVARES: Second.

CHAIR MOLINA: Okay. It's been moved by Member Kane, seconded by Member... who shall I give it to? Member Tavares or is it Member Anderson? Okay. We'll go with Member Anderson on this one. With all due respects--

VICE-CHAIR KANE: Johnson.

CHAIR MOLINA: --Ms. Tavares.

VICE-CHAIR KANE: Johnson.

CHAIR MOLINA: Member Johnson. Excuse me. Okay. Motion made by Member Kane, seconded by Member Johnson. Any discussion, Members? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

VOTE: AYES: Councilmembers Anderson, Carroll, Hokama, Johnson, Mateo, Pontanilla and Tavares, Vice-Chair Kane, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.
MOTION CARRIED.

ACTION: ADOPT REVISED RESOLUTION.

CHAIR MOLINA: Seeing none. The Chair will mark it unanimous. Thank you very much, Members.

COW-28 AMENDING CHARTER SECTION 13-6 (C.C. No. 05-215)

CHAIR MOLINA: We'll now go to Committee of the Whole Item 28, which is a proposed amendment to the County Charter. The Committee is in receipt of a County Communication No. 05-215, from the Council Chair, transmitting a correspondence dated June 1, 2005, from the Corporation Counsel’s office, recommending initiation of a Charter Amendment to repeal Section 13-6, Revised Charter of the County of Maui (1983), As Amended, relating to the filing of claims against the County of Maui.

Two, a correspondence dated November 17, 2005, from the Council Chair, transmitting a proposed resolution entitled, “Proposing an Amendment to the Revised Charter of the County of Maui (1983), As Amended, Repealing Section 13-6, Relating to Claims.” The purpose of the proposed resolution is to initiate the repeal of Section 13-6 of the Charter, again, relating to the filing of claims against the County of Maui.

And the third item is a correspondence received by the Committee, dated April 7, 2006, again, from the Corporation Counsel’s office, transmitting a revised proposed resolution entitled, “Proposing an Amendment to the Revised Charter of the County of Maui (1983), As Amended, Amending Section 13-6, Relating to Claims.” The purpose of the revised proposed resolution is to amend Section 13-6 of the Charter, relating to the filing of claims against the County of Maui, and to also incorporate the wording of the proposed ballot question.

And from the Corporation Counsel’s office to give us an overview of this matter. I see Mr. Moto, the Corporation Counsel has entered the Chambers. Who shall I acknowledge first for opening remarks on this? Okay. Corporation Counsel Lutey, you have the floor.

MS. LUTEY: Thank you. Corporation Counsel has sent down proposed language--

COUNCILMEMBER ANDERSON: Mr. Chair. Excuse me.

CHAIR MOLINA: Sorry. Go ahead.

COUNCILMEMBER ANDERSON: Can I ask for a recess? I don’t have my binder for this item.

MS. LUTEY: Okay.
CHAIR MOLINA: Okay. Recess subject to the call of the Chair. ... (gavel) ...

RECESS: 9:48 a.m.

RECONVENE: 9:51 a.m.

CHAIR MOLINA: ... (gavel) ... Committee of the Whole meeting for August 1, 2006 is now back in session. When we last left off, the Committee was awaiting an overview from Corporation Counsel Lutey with regards to Committee of the Whole Item 28, which is to amend Charter Section 13-6. Ms. Lutey, you have the floor.

MS. LUTEY: Thank you, Chairman. Our office has sent down proposed language that's recommending that on the ballot voters be given the opportunity to decide whether or not our Charter should be amended to reflect what the law currently holds. So the vote today before all of you is just whether or not to put this on the ballot to let the citizens of this County decide whether or not they want to amend this Charter.

I would point out that the Charter, as it currently stands, did reflect the law as it stood before the Kahale decision and that that decision was around for approximately 30 years. And I'm not sure, off the top of my head, when the Charter was last amended, but it was quite some time ago. This was not since, we have not amended it, this specific provision since the Kahale decision.

And I would point out that the Governor, Governor Lingle--and I know that Mr. Krueger had spoke about this--had vetoed a prior attempt to change the claim notice provision from six months to two years and I do have that before me. And basically what she points out--and I have a copy of this if you would like to see it--is that the Bill is objectionable because it is inconsistent with the intended purposes of Section 4672 of the Hawaii Revised Statutes, which was to create a claims procedure as a prerequisite to the filing of a lawsuit, not to establish a limitations period for filing a lawsuit.

In other words, you just need to let us know within six months that you may have a lawsuit against us, but you can still file the lawsuit itself within two years. And the purpose for that is to give us an opportunity to do a prompt investigation while facts and circumstances are still fresh, witnesses are still available, and conditions remain substantially the same.

I would point out--as I stop reading from the Governor's document--that we take care of thousands of feet of road and we have hundreds and hundreds of vehicles out there between the Police Department, Fire Department, and Public Works. And so things are constantly in change because of that.

Back to the Governor's document, an early review of claims would minimize unnecessary litigation because a determination can be made whether the claim is frivolous or should be settled before a lawsuit is filed. If the claim is denied, the claimant still has the option to file a lawsuit within the two years Statute of Limitations set forth in Section 657-7 of the Hawaii Revised Statutes. And that's, that's really the bottom line here, it's just, should people let us know within six months? The Kahale decision that
was decided by the Hawaii Supreme Court says, yes, and our Governor vetoed an attempt to change that. They can still file their lawsuit within two years. I am available for questions.

CHAIR MOLINA: Okay. Thank you, Ms. Lutey.

MS. LUTEY: Thank you.

CHAIR MOLINA: Member Kane.

VICE-CHAIR KANE: Thank you. Good morning, Ms. Lutey.

MS. LUTEY: Good morning.

VICE-CHAIR KANE: You’ve cited extensively from the Governor’s letter. Is, is, can we conclude that, that the Office of Corporation Counsel concurs with, with the Governor’s comments that’s cited in her letter?

CHAIR MOLINA: Ms. Lutey or anyone from Corporation Counsel. Mr. Moto.

MR. MOTO: Good morning, Mr. Chairman and Members. The...right...the Governor’s message is, is a matter of public record and reflects the policy decisions made by the Governor, and of course the State Legislature took its own action. The, as we’ve stated in previous meetings on this subject, we set forth the proposed Charter Amendment primarily to ensure that there’s clarity in the law, because there is none now given that our County Charter says one thing and the State law on claims and lawsuits says another in light of the Kahale decision.

And we’re really trying to make the law consistent and eliminate the contradictions that can arise when people look at the Charter and it says one thing, and they look at State law and it says another. This is why the Charter Amendment proposal does not necessarily specify, does not say, set a specific date. It says, rather, that claims shall be filed within the time as provided by law, whatever that might be. Under current law, under the Kahale decision it is six months.

CHAIR MOLINA: Okay. Thank you, Mr. Moto. Member Kane.

VICE-CHAIR KANE: Yeah. Thank you, and although I appreciate the response the question was, does the Office of Corporation Counsel concur with the Governor’s veto message, which is, I believe, Veto Message No. 553--

CHAIR MOLINA: Mr. Moto.

VICE-CHAIR KANE: --which is a matter of public record?

MS. LUTEY: I do. Yes.
VICE-CHAIR KANE: Okay. I’m not asking for the individual.

MS. LUTEY: Our office does.

VICE-CHAIR KANE: Okay. Thank you. I appreciate that. I needed that on record. We’ve received written testimony that cites other statutes of limitations from various sections of HRS. More specifically cited is 657-13 as well HRS 663-3 and 662-4. Does the Office of Corporation Counsel see any relevance to these particular statutes of limitations with respects to what we have before us today on the request?

MS. LUTEY: No.

VICE-CHAIR KANE: And the reasons being?

MS. LUTEY: We’re talking about the claim notification requirement. We’re not asking to change the statute of limitations for filing of a lawsuit.

VICE-CHAIR KANE: Okay. The other question I have is, in the Governor’s message she talks about the determination can be made regarding whether the claim is frivolous or should be settled before a lawsuit is filed. Because you’ve stated that you concur with the Governor’s message by placing a six month versus a two year, wouldn’t that force people to file things without having their due process of discovery to put forward a legitimate claim? No?

MS. LUTEY: No.

VICE-CHAIR KANE: Wouldn’t create more frivolous lawsuits coming forward just to reach some level of opportunity?

MS. LUTEY: No. Because the difference is, Councilmember Kane, is that they’re just required to provide us with notice. And if you look at the claim form it is very general in terms of what happened. Everyone knows the facts of what it is, but in terms of frivolous lawsuits they have two years to decide that. So they give us notice within six months, and if by doing their investigation, getting the documentation, speaking to the witnesses that they feel are necessary, they can then decide whether or not to pursue the lawsuit. It’s not as though they have to file suit within six months. They just need to let us know within six months.

VICE-CHAIR KANE: Which brings me back to that my question is just by letting you know wouldn’t an individual or an entity, who feels they may have been wronged, in this case a County, wouldn’t they need some level of discovery on their part to know whether or not they can come forward with the notification? In other words, why would I put something forward if I didn’t have enough information, because now I’m limited from two years to six months. Now you’re forcing me into a situation where I have to go find out whether it’s, you know, something that I’m going to pursue. Now six months is going to be on the horizon versus two years.
Doesn’t that create more of a scramble in a sense, which puts us, I guess, puts the County as a whole at the advantage, but it takes away any type of opportunity for somebody who may have been wrong to come forward? I’m just, it seems like we’re putting up a barrier instead of trying to help our citizenry if they’ve gotten wronged. So help me understand that ‘cause I’m not here to take a position until I understand the facts.

MS. LUTEY: Right. And actually I, I don’t agree with that, because most people...let’s say for example you trip and fall somewhere and you’re injured as a result of it. You believe it’s County property. If you believe your injuries are so substantial that this is going to be something that’s going to affect you for a prolonged period of time you’re going to file a claim with us. And a lot of times people will do that by themselves and then later seek an attorney. So it’s not as though in all situations where claims are filed they’re filed by attorneys.

And one other part of this that I think is related to what you’re asking is, you’re not always talking about citizens. In fact I would say more times than not we’re talking about non-citizens, tourists that come here and are injured. In most of these cases I would consider them outright frivolous that end up filing suits against the taxpayers of this County.

VICE-CHAIR KANE: Well, they’re Americans just like we are in the County. So I mean, you know, that, I guess, comes down to a matter of policy. Finally, Chair, the Hawaii...you folks submitted this originally back in 2005, June 7th is the cover letter from our Council Chair moving forward your request dated June 1 of 2005. But since then, House Bill No. 2208 as was cited in the testimony again--and I appreciate the information being brought forward by the testifier--that there was an attempt to change and the description reads specifically, “extend statute of limitation for actions against a County for damage or injury from six months to two years.”

And this went through...I have the, the status from the State Legislature, which is this past session that ended two months ago. On February 9, '06, the first vote in the House was passed with no “no” votes. Again in March, second passing, no one voting “no”. All the way through there’s “no” votes from House side, cross over to Senate, Senate side, through the Committees, back on to the full floor of the Senate. So both sides have moved to pass this.

So in light of this and then a veto, which may or may not be fully informed as far as the Governor’s message, wouldn’t it be counterproductive to move forward on a Charter Amendment if the State Legislature again takes this up, as they’ve demonstrated historically? If there’s things that are unanimous, they usually take it back and have another attempt at it. Wouldn’t it be counterproductive for us to move something forward? And I understand you folks introduced this prior to any of this happening. But now in light of this happening at the State Legislature with their attempt to provide two years, what’s your folks’ comments regarding whether or not we put this on, it gets passed as 85 percent of things do get passed if they go on the Charter, and then the State moves forward and passes something like this, then we’re back to being inconsistent again? Is that prudent for us to consider--

MS. LUTEY: Yes.
VICE-CHAIR KANE: --for moving forward? Why?

MS. LUTEY: Because the language that we are proposing is that, what the Charter will say is that the time period provided is law. We’re not saying six months, so we will always be consistent regardless of how the law changes unlike how we are now. We are currently inconsistent with law. So with the proposed change that we have set forth we will be consistent.

VICE-CHAIR KANE: Okay. Thank you. Thank you, Chair.

CHAIR MOLINA: Okay. Thank you, Member Kane. Member Johnson.

COUNCILMEMBER JOHNSON: Because we’re talking about Notice of Claim and then also possible litigation, am I to understand that, let’s say, someone has maybe a very small expense with never any intention of filing any kind of a lawsuit. They send in the Notice of Claim within six months but there’s not enough detail. After the six months, let’s say they provide the additional detail, maybe they’re waiting for receipts or something. In order for that to be considered would they then have to take court action, or would you still be able to settle this as an actual claim?

CHAIR MOLINA: Ms. Lutey.

MS. LUTEY: Thank you. Councilmember Johnson, the scenario that you’ve just proposed is very similar to what frequently happens. People will submit the general claim form that just lists sort of what happened—I tripped and fell. A lot of times it’s a one-liner like that, and on the amount that they’re requesting from us sometimes it’ll just say approximately “$X” amount of money.

As an investigation is done on that claim, which is why we have John Mullen on board, they will produce documentation that they have for that and sometimes it takes a period of time. I’ve come down here for a request for settlement of claims such as that that have taken a few years. So it can be settled before lawsuit is done, and a lot of times if we’re coming close on statute they’ll go ahead and file the lawsuit but not serve us seeing if we can settle it before it actually is served on us.

COUNCILMEMBER JOHNSON: Okay. But you’re saying “lawsuit”, I’m saying just they don’t intend to sue, they just want to be compensated for their claim. Must they, in order to be compensated for their claim, seek an attorney?

MS. LUTEY: No.

COUNCILMEMBER JOHNSON: Okay. That, that’s mainly what I’m concerned about because, you know, for me a lawsuit is very different than filing a claim. Some people never have any intention of contacting an attorney because it’s a relatively small amount, and that’s what we have claim settlement for.

MS. LUTEY: Right.
COUNCILMEMBER JOHNSON: So I just want to make sure there’s a very clear distinction that if it goes beyond six months, it doesn’t necessarily have to result in a lawsuit as long as the claim is a legitimate claim.

MS. LUTEY: And we’ve been given notice within that six months.

COUNCILMEMBER JOHNSON: Right.

MS. LUTEY: Yes. Yeah.

COUNCILMEMBER JOHNSON: Thank you.

MS. LUTEY: Sure.

CHAIR MOLINA: Thank you, Member Johnson. Member Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. It is my understanding and that’s how I’ll state it, my understanding that the Charter has greater standing or standing regarding the structure of the County’s government. And the Charter cannot be superseded by State law regarding the structure of the government. This is, in my opinion, not considered part of the structure of the County’s government; therefore, State statute would automatically override the language in Section 13-6. Would that be the Department’s understanding?

CHAIR MOLINA: Corporation Counsel.

MR. MOTO: Mr. Chairman, well, first of all, it’s actually 13-2, Paragraph 2. I’m sorry, 13, yeah, 13-6, I’m sorry, 13-6. Yes. The Councilmember’s observations are correct. The HGEA v. County of Maui case is the one that is often cited regarding County Charter provisions and State law. And the general principle in a nutshell is that, if it relates to the structure and organization of County government, that the Charter will prevail; however, if State law deals with a matter of Statewide concern, a general law of Statewide concern, then State law will prevail.

Matters such as the civil service, collective bargaining, employee retirement benefits, all of these things have been identified as matters of Statewide concern. And certainly the Supreme Court in its opinion in Kahale treats matters of statutes of limitations that are applicable to both the State and Counties to be matters of Statewide concern to be determined by the State Legislature regardless of what any County Charter may say otherwise.

COUNCILMEMBER HOKAMA: I’m done, Chairman. Thank you very much.

CHAIR MOLINA: Thank you, Mr. Hokama. Member Anderson.
COUNCILMEMBER ANDERSON: Thank you, Chair. You know, just, just based on what you said, Mr. Moto, the State Legislature has acted to change it to two years, and unfortunately, what we’re reacting to now is the Governor’s veto. And since there was an overwhelming vote to support the two-year limitation by the State Legislature I think it would be reasonable to suspect that they’ll try it again and be prepared for an override should the Governor veto it again. I see, with all due respect, a bit of a conflict of interest because the primary function or rather responsibility of our Corporation Counsel is to protect the County’s corporate entity from liability. …(end of tape, start 2A @ 10:08 a.m.) …and so this is to that advantage, by putting a six month limitation on, on filing claims.

But, my own feeling about the responsibility of this body is to the citizenry first as we are the people who’ve been selected to represent. So I feel there’s a conflict here and with all due respect, there was no mention from Corporation Counsel, while they, they outlined to us the Governor’s veto they made no mention to us of what the State Legislature had done that prompted her veto. So I, I feel conflicted myself over this. But, I just feel that, you know, if they have two years to file, file a lawsuit then why should we short, shorten the time to make a claim?

Many people, as been pointed out by all of the testimony, don’t recognize that they need to file a claim for whatever injury or damages they may have suffered until a good six months has passed. And you know, I don’t think most citizens are, you know, of a mind to litigate, they just want to take care of the problem and move on. But oftentimes that’s not the case, they’re presented with hardships that they hadn’t anticipated.

So I would just like to ask a question, Mr. Krueger in his testimony and I’m assuming you folks at Corporation Counsel have a copy of his testimony dated July 31st. And on the front, the first page, three-quarters of the way down he says, the County has the power to enact its own period in which a claim against it can be made. Would you concur with that?

CHAIR MOLINA: Corporation Counsel.

MR. MOTO: Mr. Chairman, the answer is no. The Supreme Court of Hawaii was very clear in stating and I will quote here, this is from the Kahale decision, “We hold that counties do not fall within the ambit of the State Tort Liability Act and that Hawaii Revised Statutes Section 46-72, which the Legislature is free to amend, is the statute of limitations applicable to actions against the counties.”

And Section 46-72 is that statute which says that before the County shall be liable for damages to any person for injuries that the person so injured shall within six months after the injuries are received to give the County notice, written notice.

CHAIR MOLINA: Member Anderson.

COUNCILMEMBER ANDERSON: And, are they citing 46-72 for their substantiation of that?

CHAIR MOLINA: Mr. Moto.
MR. MOTO: Well, yes. The, what I just read was that the, this is the opinion of the Supreme Court that says that Section 46-72, Hawaii Revised Statutes, is the statute of limitations applicable to actions against the Counties.

COUNCILMEMBER ANDERSON: And so, Mr. Moto, if the State Legislature were to come back and re..., reissue this bill and pass it again and anticipate the need to override by two-thirds vote a possible, another veto by the Governor, then you don’t see any problem with the language of this Charter Amendment because it just says, as provided by law?

MR. MOTO: Yes. The, the advantage of the language that’s proposed for the Charter Amendment is that whatever, if State law should change in future, if ever, then the Charter provision will simply track it.

COUNCILMEMBER ANDERSON: Okay. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Member Anderson. Member Mateo followed by Member Kane.

COUNCILMEMBER MATEO: Chairman, thank you very much. I think if we lived in a perfect world maybe six months might be appropriate, but I think the reality is it is not merely just the intent to sue. I think what’s also being required is in that intent to sue it must be inclusive with when, where, how the injuries occurred, the extent of the injuries, as well as the amount that will be claimed or being requested for. It’s not, so it’s not just, you know, the intent to sue.

County Government a lot of times cannot respond in six months, so I have a hard time with, with the six month expectation that we’re providing, you know, a fairness for, for our residents because diagnosis will take longer than six months. County Government could take longer than six months, that’s just the reality of what it is. So I just have a problem at this particular point in time. I think Member Kane’s comments were, were more than appropriate.

So for myself at this particular point in time, I, I think I can speak for myself and not really be able to support any, anything less than two years at this particular point and allow the State Legislature to have their discussion and, you know, like be more in line with the realities of what the Counties face. So thank you for, you know, your comments. I, I appreciate listening to them.

CHAIR MOLINA: Thank you, Mr. Mateo. Mr. Kane.

VICE-CHAIR KANE: Thank you, Chair. To be clear, the intent is to delete 13-6, so basically, to, to Corporation Counsel, it is to now make our Charter silent on claims in this section anyway, or claims, make it silent and whatever is done at the State Legislature, whatever continues or evolves is that what we’re going to be tracking? Because isn’t that the request? That’s the recommendation?

MS. KAWASAKI Mr. Chair.
CHAIR MOLINA: Mr. Moto.

MR. MOTO: Mr. Chairman, no.

VICE-CHAIR KANE: Help us--

MR. MOTO: That was the original proposal. No.

VICE-CHAIR KANE: Okay. So we’re looking at--

MR. MOTO: There’s a, there’s a--

VICE-CHAIR KANE: --a revised proposal?

MR. MOTO: --there’s, it’s in your binder. There’s the, the section.

VICE-CHAIR KANE: What’s the date of the revised, and I, and I apologize. March 2\textsuperscript{nd}, two, six?

COUNCILMEMBER JOHNSON: April 7\textsuperscript{th}.

COUNCILMEMBER HOKAMA: April 4\textsuperscript{th}.

VICE-CHAIR KANE: April 4\textsuperscript{th} or April 7\textsuperscript{th}.

CHAIR MOLINA: Mr. Kane, before you continue your line of questioning, Staff, you have a comment.

VICE-CHAIR KANE: Okay. I got it, thank you.

MS. KAWASAKI: No. Mr. Chair, I was just going to clarify that there is a revised proposed resolution.

VICE-CHAIR KANE: It’s April 7\textsuperscript{th}?

MS. KAWASAKI: Right. Both are noticed on the agenda because at times in past discussions there were references to deleting the provision, and then subsequently there was a request to change it to make reference to as provided for by law. I would just like to point out that if the Committee decides to move forward with the first resolution, which recommended deleting the provision completely, that resolution would have to be revised to include a ballot question because originally ballot questions were not being required.

VICE-CHAIR KANE: And as far as time-wise, we, we don’t have the time to do that--

MS. KAWASAKI: I don’t--
VICE-CHAIR KANE: --as far as the deadline?

MS. KAWASAKI: --believe that, that would be a problem in terms of notification. It would just be voting as, voting for a revised proposed resolution to delete that provision and then Corporation Counsel would thereby incorporate the ballot question. And that would appear in the revised proposed resolution that would be attached to the committee report and acted on by the Council.

VICE-CHAIR KANE: Thank you. Mr. Chair, if I may?

CHAIR MOLINA: Thank you. Proceed, Mr. Kane.

VICE-CHAIR KANE: So we bracket out two years after the date of injury was sustained, we underscore the time period as provided by law. So back to the original comments, instead of bracketing up the whole thing what you folks are adding would basically track whatever the State Legislature and the Governor, whatever evolves in the future. Is that, is that a correct statement?

MR. MOTO: Yes.

VICE-CHAIR KANE: And any effort, any effort of this body to have something that is more stricter and I, and I'm going to reference back so we understand. I can't make it, we can't as a body make it easier. What is that, what... so let's say six months as it currently is now, six months. We can't make it three months but we could make it longer. Is that correct?

MR. MOTO: Mr. Chairman, no. The answer is no. We, our opinion is that the Kahale decision rendered by the Supreme Court of Hawaii is the law. And in litigation, by the way, involving Mr. Krueger in a pending lawsuit we have taken the position in court that the Kahale decision has overruled the Salavea decision and previous decisions and that the six month requirement stands.

VICE-CHAIR KANE: Okay. Finally, if at some point in the future, because I believe another testifier made a comment or I think in his written testimony maybe. Regarding the Kahale case no matter what happens there as far as whatever evolves the language that is provided to us regarding the time period as provided by law if something happens where even the Kahale case is reviewed again and I don't know if that can happen, but if it is and something does change, that changes and goes the other way. How does that impact what we're looking at in this resolution in putting this on, on the, on the ballot for consideration? What impact would that have?

MR. MOTO: Mr. Chairman, under the revised resolution, the second version--

VICE-CHAIR KANE: Thank you.

MR. MOTO: --then we would simply comply with the State of... State law as, as of that time.

VICE-CHAIR KANE: Okay. Thank you very much. Thank you, Chair.
CHAIR MOLINA: Thank you, Member Kane. Member Johnson followed by Member Anderson.

COUNCILMEMBER JOHNSON: If I'm to understand regardless of whether we as a Council prefer six months or the two years the way that you, your office as the, you know, the Corporation Counsel and really as the legal advisors and the people who process claims, your interpretation right now is that because of the Kahale case it has to be six months? Is that correct?

CHAIR MOLINA: Mr. Moto.

MR. MOTO: Yes, Mr. Chairman. And I'm glad for the question because it must be made clear that with litigation lawsuits that we are currently working on that is the position we are taking. And we, we hope to see it upheld by the courts.

COUNCILMEMBER JOHNSON: And, and that, that I think goes to the heart of it for me. Because basically we're not the people that, you know, I mean we might prefer something different, but basically you're the ones that are interpreting it and applying it based on the Supreme Court decision and the current court rulings. So I, I think that there's no other way, at least in my view, that we can handle this at this point. Whether I agree or whether I disagree with the Supreme Court ruling it is what it is. Thank you very much.

CHAIR MOLINA: Thank you, Member Johnson. Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. So the proposed resolution asked us to approve for putting on the ballot the following question, should the Charter provision relating to the filing of personal injury and property damage claims against the County of Maui be changed so as to require that claims be filed, “within the time period as provided by law”, instead of within two years after the date of injury. You know, I still feel that this question actually gives the voter a clear understanding of what they’re voting on. There’s nothing in here that says we are changing it from six months to two years. And I think that that’s just too ambiguous that should the Charter provision relating to the filing of personal claims against the County be changed, be changed from what?

And you know I know all the legal arguments here, but I’m just looking at this from the point of view of a voter who’s going to be looking at this on the ballot. It’s not telling them what we’re changing it from, and I think if we did, a lot of voters might say no if they know that their vote is changing this from six months to two years.

So I can’t support it for that reason and for many other reasons and, you know, regardless of the Supreme Court decision you folks have that in your, in your--I don’t want to say bag of tricks, that’s not appropriate--in your battle armor to fight cases that you feel are inappropriate regardless of whether or not we pass this Amendment. And just because the State Legislature tried to change this in favor of the two-year claim period, I guess, in response to the Kahale case I’m not willing to support the Governor’s
veto of that by putting such an ambiguous question on the ballot that would have long term repercussions to anybody who might, might have injuries caused by the County.

So I’m sorry I’m not able to support this at this time, Mr. Chair. I think we need time to see how this is going to work out in the Legislature next year, and I’m always gonna vote on the side of the general public. And I think, I think that’s the case in this situation. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Member Anderson. Member Hokama.

COUNCILMEMBER HOKAMA: Chairman, thank you. Obviously, I see it differently. Let me ask this question—and it might help those that either read about this meeting or watch this meeting, Mr. Chair—to our attorneys. We know what the Supreme Court has ruled, it is a ruling, it’s not an opinion anymore. They’ve made a statement of what is law regarding Hawaiian claims. Our Charter currently does not mirror that state of law. So let’s say someone depending, that depends on the Charter’s language and waits year and a half to file the claim based on the Charter, one of our residents. What is more than likely the outcome because of the ruling of the Supreme Court?

CHAIR MOLINA: Mr. Moto.

MR. MOTO: Mr. Chairman, that person may find themselves seriously out of luck, because we will definitely take the position and assert the State’s law that there is a six month requirement to file a claim against the County. And I believe that a court is likely to throw the lawsuit or claim out.

COUNCILMEMBER HOKAMA: Stating that, then will that person or party have sufficient legal grounds to sue the County for deception or providing or, or stating incorrectly what was the legal parameters regarding time to file a legal claim?

CHAIR MOLINA: Corporation Counsel.

MR. MOTO: Yes. Let me step back a little bit, it says that, and say that anyone can file a lawsuit for almost any reason --

COUNCILMEMBER HOKAMA: Understood.

MR. MOTO: --you know, and so we, that’s one aspect we cannot control. It’s, it is perhaps possible that someone who is asserting a late claim or let’s say a claim beyond the six-month period may as a justification or, or defense against our, our move to dismiss the case might try to, would assert that, oh well, that the County Charter provides this additional period of time. They might, they might raise a sympathetic set of facts, I mean, then in, to the extent that they could claim that well, I, I read the Charter and this is what it said and I relied on it and, and now here I am, I’m stuck. Unfortunately, I would have to say that our legal position will remain the same, and I think the court’s legal position is going to be the same that if you go beyond the six-month period the court can’t entertain the lawsuit.
COUNCILMEMBER HOKAMA: All of our sister Counties as you are... or I'm asking, are you aware of, is their six-month period through an ordinance or it's part of their Charter?

MR. MOTO: I'm sorry, Mr. Chairman. I can't answer that question. I...

COUNCILMEMBER HOKAMA: But you can state for a fact this morning to the Members of this Committee that the sister Counties all currently have six-month limitations on the filing of claims, or is it just Maui that seems to be with this two year?

CHAIR MOLINA: Mr. Moto.

MR. MOTO: Well, and I think the answer is yes that and frankly that they have no choice because the Kahale decision is a statement interpreting State law, and as I read it to you, the court was very clear about what they, what applicable statute of limitations statute applies to the Counties. So all, all counties are equally affected.

COUNCILMEMBER HOKAMA: Okay. Thank you, Mr. Chairman, very much.

CHAIR MOLINA: Thank you, Member Hokama. Before the Chair recognizes Member Kane, the Chair would like to ask for a morning recess upon the completion of Member Kane's line of questioning. I know we've been going at this issue with some very compelling Q&A at this point, so I'd like to let the Members know that you do need some time for re-energization, I guess if you will. Mr. Kane.

VICE-CHAIR KANE: No. I'll yield until after the recess, Chair. I have no problem.

CHAIR MOLINA: Okay. Well, thank you very much, Member Kane. It is 10:29. The Chair will call for a morning recess. Committee of the Whole will reconvene at 10:45. Meeting in recess. . . .(gavel) . . .

RECESS: 10:29 a.m.

RECONVENE: 10:48 a.m.

CHAIR MOLINA: . . .(gavel) . . . The Committee of the Whole meeting for August 1, 2006 is now back in session. Thank you for that recess, Members. When we last left off we had Member Kane waiting to ask a question of Corporation Counsel on the floor. Member Kane, you have the floor.

VICE-CHAIR KANE: Thank you, Mr. Chair. Thank you for having this on the agenda. I think there's good discussion. And so I'd to proceed with maybe an example and, and again I'm referencing written testimony. And it's good to have that because it provides Corporation Counsel the ability to respond to the, the lines of questions. So I will for the sake of making it easy for the Members as well as for hopefully for Corporation Counsel who I hope has a copy of the submitted written testimony. And so I'll move forward with that example.
Two vehicles drive down Kaahumanu; they approach a crosswalk; two persons are crossing within the crosswalk at the right angles to the approaching traffic. One car driven by a private citizen from Wailuku, the other car was driven by a County employee acting within the scope of his employment with the County of Maui. The person hit by the County driver loses a leg at the scene. The person hit by a private citizen loses his leg at the scene. The person hit by the private driver from Wailuku files Notice of Claim and sued eight months after the collision. The person hit by the County driver files Notice of Claim and sued eight months after the collision.

Result, the claim asserted by the person hit by the private citizen from Wailuku will go forward for proper compensation. The claim, the claim had by the person hit by the County driver will be thrown out. And then they, they pose a question, does that make sense? So in other words similar, exact same situation but two different people involved in the accident, a County employee, which we just heard one previously, couple of situations where we looked for indemnification, and a private citizen.

So the question is to Corporation Counsel, given that as one example that’s been given to us in public testimony, can you provide comment on how what we’re doing would impact these two citizens of Maui County or for that matter two people who are visiting from wherever U.S.A. or that are on the cruise boat and are going back to the boat? How would that impact them, one being hit by a private citizen, another being hit by a County, County employee?

CHAIR MOLINA: Mr. Moto.

MR. MOTO: Mr. Chairman, two main points. First, in the scenario that hypothetically you just described, what I would say is that what the Charter Amendment would do is it would amend the, the Charter provision so that at least the person who was hit by the County vehicle would have the, would not be misled if they read the Charter as to the amount of time that they had to file a claim. Because right now if they read the Charter and if that’s all the thing that they read and if they didn’t get proper legal advice or counsel they might be stuck, because they would think they would have two years when in fact the State Supreme Court has said they only have six months.

The other thing I would say to the scenario that was just posed is that fundamentally the policy decision as to the amount of time that should be given an injured party to file an asserted claim is really something that can and should be addressed by the State Legislature and the Governor through legislation. The fact of the matter is that under the Kahale decision, as we interpret it, the State law now is that if a person wants to pursue a claim against the County they have six months to do it.

And this, this County Charter Amendment, even if passed, will not necessarily prevent people from changing the law in future if that is what is desired. What this Amendment will do is to eliminate the possibility that there is, someone will be misled by the current contradiction in the statement of laws as reflected in the Charter and in the Kahale decision.

VICE-CHAIR KANE: So my question now becomes regarding these two people in this scenario, is the scenario correct in pointing out that one, one individual citizen would have a different opportunity than
the other one, because State law currently states that the County has six months, but in other situations it’s longer? So these two people who lost their leg, hypothetically, one of them because it’s from the County gets thrown out, and the other one by a private citizen would that go through a State process from a legal perspective or approach and that person would be allowed to proceed? Is the example accurate in describing that there would be a distinction between the, the opportunities for both injured parties?

MR. MOTO: Mr. Chairman.

CHAIR MOLINA: Mr. Moto.

MR. MOTO: Yes. It is true that there are different consequences and treatments for the scenarios that you just mentioned. But it’s also important to note that the proposed Charter Amendment does not create that situation. It’s a situation that already exists by virtue of the Kahale decision and the, and, and actually even deciding not to go forward with this proposed Charter Amendment won’t eliminate that possibility either. If, if this Charter Amendment goes nowhere, the situation, the scenario that you just described would still exist because it’s really governed by State law.

VICE-CHAIR KANE: No, and I appreciate your response. It provides additional clarity for me in how we move forward with this, Mr. Chair. Thank you very much.

CHAIR MOLINA: Thank you, Member Kane. Committee Members, any other questions prior to the Chair’s recommendation? Member Pontanilla.

COUNCILMEMBER PONTANILLA: Mr. Moto, so in other words if we go forward and if we don’t go forward, it’s still going to follow what’s present, six months?

MR. MOTO: Yes, Mr. Chairman.

COUNCILMEMBER PONTANILLA: Thank you.

CHAIR MOLINA: Thank you, Member Pontanilla. Any other questions? Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Mr. Chair. It appears that the Kahale case really didn’t address a conflict in Charter provisions. And in fact it was the City and County of Honolulu that was involved in the case and their Charter already says six months. So does the Big Island. Our Charter says two years and Kauai County says two years. So I guess that, you know, we’re still waiting to see the outcome of how that would affect us because the County is currently involved in a lawsuit where they are citing the Kahale case as a reason to deny a claim that was made after six months. That’s not true?

MS. LUTEY: Actually, I’d like to clarify that. It’s not that we denied the claim, it’s that an issue has been raised on a motion that the claim was filed untimely, it’s not that they filed--
COUNCILMEMBER ANDERSON: Yeah.

MS. LUTEY: --and we denied it.

COUNCILMEMBER ANDERSON: But, but basically you’re citing the Kahale case as a reason to state that the claim was filed in an untimely way?

MS. LUTEY: I actually didn’t file that motion but that is part of the argument. The other part is that the State statute also says it’s untimely.

COUNCILMEMBER ANDERSON: And so I’m assuming that the plaintiff is arguing that the Charter says two years, and so it’s going to be a matter of what prevails, the Charter. . .and the reason I’m disturbed is that the Kahale case didn’t really address--it’s my understanding, you can correct me, please, if I’m wrong--that the Kahale case didn’t really address the conflict between the statute, State statute and a Charter provision since the case involved City and County of Honolulu who already has a six month provision in their Charter.

MS. LUTEY: The Kahale decision says that the law is six months. And the claim that you are talking about or that lawsuit is the suit filed by Mr. Krueger and that motion is currently pending. It will be decided in November. So he does have a vested interest in what he said to you today.

COUNCILMEMBER ANDERSON: Right. And so does the County. Okay. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Member Anderson. Any other questions prior to the Chair’s recommendation? The Chair has one question for Corp. Counsel. . .(end of tape, start 2B @ 11:08 a.m.) . . . Are we currently experiencing claims that having been filed after the six-month period already in conflict with our own Charter and the State’s statute? Are we currently dealing with matters like this already? Ms. Lutey.

MS. LUTEY: Actually, Chairman, that’s happened even when it was two years prior to the Kahale decision. It just happens every so often, it’s not necessarily common, but it does happen.

CHAIR MOLINA: When you say, not common, how many, on average how many of these incidents or claims like these are occurring?

MS. LUTEY: I would guesstimate in the last six months, maybe two, maybe one. And it’s not consistent, in a year we might not have any.

CHAIR MOLINA: Okay. Thank you. Question for Staff with regards to the deliberations going on between the Governor and the State Legislature, do we have any idea as far as a timetable when a decision will be made?
MS. KAWASAKI: Mr. Chair, the Legislature decided not to convene a special session in order to try to override the Governor's veto of this particular measure or any other for this session. So there is really no dialogue that I'm aware of between the Legislature and the Governor regarding this particular measure.

What would be involved is that if the Legislature deemed it wanted to revisit this particular issue and a Legislator reintroduced it, it would be considered in due course at the next legislative session or whenever it's reintroduced. It would go through the same legislative process, and at the end of that process, should that measure still be alive and enacted by the Legislature, it would go to the Governor again for signature or veto.

CHAIR MOLINA: Okay. Thank you. Okay, Members, your Chair at this point, if there are no other questions, the Chair would like to make a comment before his recommendation. I've heard all your concerns and I've heard the arguments made by the Corporation Counsel, but the bottom line is, at least for me, is to our citizens first.

And I think by reducing the amount of time from two years to six months I think would place an unnecessary burden to our citizens. And on top of with what's going on between the Governor and the State Legislature I mean they, it seems like there's some issues that still have yet to be resolved. That's just my opinion. And based on that and I see no point at making a recommendation. I have no recommendation other than a consideration of a deferral; however, the floor is open if any other Member would like to make a recommendation, a motion, the floor is open.

COUNCILMEMBER HOKAMA: Chairman.

CHAIR MOLINA: Member Hokama.

COUNCILMEMBER HOKAMA: I move to adopt the resolution.

CHAIR MOLINA: Okay. A motion has been made by Member Hokama to adopt the--

COUNCILMEMBER HOKAMA: Revised resolution.

CHAIR MOLINA: --proposed, the revised resolution, that is the April 7th.

COUNCILMEMBER CARROLL: Second.

CHAIR MOLINA: Okay. It's been seconded by Member Carroll. Member Hokama, as the maker of the motion, you have the floor.

COUNCILMEMBER HOKAMA: Chairman, thank you. Whether we like it or not, Mr. Chairman, it is the current law of the State as a ruling made by the Hawaii State Supreme Court. The Legislature, through their prerogatives and powers and duties granted by the State Constitution, has the ability to amend,
repeal, delete this law. It is not for this County to decide whether or not we want to follow the law or not follow the law. We all took oaths to uphold the law of the State of Hawaii, County of Maui, United States of America.

There’s times when I would agree on a sympathetic side, Mr. Chairman, I can understand a unwillingness to follow the law. And we have had our discussions regarding other County issues regarding County law through its ordinances. But nonetheless, if we have a disagreement, another position of this law, then I would believe that when the Legislature does take it up that the Members or through the body present its position to our State Lawmakers and make our position known and why we believe that it needs to be taken into consideration prior to their decision on whether or not to change or maintain the current law. So stating that, Mr. Chairman, I believe it is appropriate for us to ask our people to follow the law as it currently exists. Thank you.

CHAIR MOLINA: Thank you, Member Hokama. Member Johnson, followed by Member Kane.

COUNCILMEMBER JOHNSON: I don’t perhaps like what we’re facing. I too think that six months is perhaps not enough time, because when you have someone that’s actually been hospitalized for that length of time they may not and other family members may not really be aware. And the way that our Charter is worded currently they may not be aware that they have to file within this period of time. But I also think that the way that it’s structured currently in our County Charter it’s misleading, and I think that it gives people a false sense of security.

At least if it was there and stated that it’s in accordance with the law, they will at least pursue what is the law and in my view they would be more aware of what the time limitations were. I think just simply by also putting this on the ballot there would be a greater awareness in the general public that this is something that really impacts them. So many times whether it was a water issue or other issues I think when you have public awareness that there’s going to be a change, what that does is it brings to the table a healthy dialogue. And I think that rather than having people be misled or rather than have them think that they have this two years, I’d rather get it out there, discuss it in a public forum, so that they are aware of it, so that there’s publicity. And whether you agree with it or you don’t agree with it perhaps what they would then do is take a proactive approach and lobby their Legislators and educate if they don’t agree with the Governor’s particular position or if they don’t agree with even the court’s position. Perhaps take this one step further.

So I think that it’s healthy to put this on the ballot, I think it should be there and whether it passes or not, as Mr. Moto noted, it’s the application of the law. We’re not applying it, the court is asking and the court is demanding that it be applied with that six month interpretation, that is what Corporation Counsel is doing. So I really don’t see any choice at this point in time and at least get it out there and let the public be made aware of it regardless of the outcome. So I really believe, at this point, we, we should send it forward. Thank you, Mr. Chair.

CHAIR MOLINA: Thank you, Member Johnson. Member Kane.
VICE-CHAIR KANE: Thank you, Chairman. I will speak in favor of the motion on the floor, but it is with some reservation. First, I will state that I appreciate your April 4, 2006 communication to Corporation Counsel asking for amending the original request from a complete deletion of a claims section in section, in Section 13 of our Charter specifically 13-6 to amend it to what we have as the language now as, the time period as provided by law.

I, too, agree that the two-year thing is, the two-year time is something that we as a County have, has had for a very long time, and I think the people of this County have come to rely on that. Member Johnson points out that yes because there is an inconsistency between what was ruled in Kahale and what we have in our Charter makes it difficult for us to, to, to see the breakdown or the distinction of that.

And so I think the language is appropriate - whatever is provided by law. And whatever happens at the State Legislature and with the interaction of the Governor in the next legislative session, if this item becomes an issue again, we as a body or we as individuals in our individual or collective or official capacities, depending on how we feel about this particular issue, have every opportunity to let ourselves be known and our positions be stated.

I, for one, think that the State law should reflect two years because I believe that provides the opportunities for people who are injured their opportunity to move forward with the opportunities to develop their case to show why they’ve been injured. And six months does create a problem for many whether they get hurt and it’s a delayed hurt.

I mean, you know, as a scenario I stated earlier reading from somebody’s, from one of the testifier’s written remarks, that’s an immediate, but there’s a lot of situations where things aren’t so immediate and, and defined and things happen later on. We, we’ve dealt with back injuries, we’ve dealt with all kinds of injuries that unfortunately were a result of people in their official capacities creating, creating hardships for our citizenry.

So I think moving forward with this doesn’t hurt our citizenry. I think it, what it does is, whether we like it or not or whether individuals in our community like it or not, we are looking at complying with what the law is. And we leave it to the State Legislature and the Governor and at the State level to deal with this type of thing because this is their, this is their purview and they make those determinations. And I think this language recognizes that and it provides us opportunity to go and speak for something if they’re going to be making changes.

So, Mr. Chair, I want to thank you for putting forward the recommendation for the revision that’s on the floor. Thank you to our Council Chair for his comments in particular, and I will concur with those remarks and will be supportive of the resolution. Thank you.

CHAIR MOLINA: Thank you, Member Kane. Members, any other discussion on the floor? Member Carroll.

COUNCILMEMBER CARROLL: Thank you, Chair. I, like all of us, have given this a lot of thought. I seconded the motion because I feel that we really have to pass this today. Anything less would be, to
me, intentionally misleading many people, and I think you could do great harm to certain individuals. I think it’s a good thing that we’re doing today, I don’t agree particularly with the time, the six months. I kind of like one year, I’ve heard other States using one year and other Counties, and that seems to be a very good compromise. And I would hope that the Legislature would consider something like that and perhaps they can work that out and get this through.

But for now I think we really need to pass this out, we are looking out after our people when we do this because we’re bringing attention to it. They know where they’re at, hopefully. Thank you.

CHAIR MOLINA: Okay. Thank you, Member Carroll. Members, any other discussion as it relates to the motion on the floor? Member Pontanilla.

COUNCILMEMBER PONTANILLA: Thank you, Chair. You know, I, just like you, you know, would like to see that our people here on Maui County get a fair shake. But the law is the law, six months. Even if we don’t pass this thing Corporation Counsel had indicated that they will still follow HRS 47.

Yesterday I received a mail from a resident in Kahului in regards to some property damage that was done on her hollow tile fence because of the tree that we had planted within the County road right-of-way, you know, overgrowth root system, you know, damaging that particular fence. She filed a claim but the claim was after six months, so she was denied that claim. I think the Legislators, well, our representatives to the Legislature, hopefully, they continue to look at this two-year statute of limitation. And I think the two years will give ample time for our citizenry here on Maui a chance to, if they have personal injuries or property damage, to file their claim. So, the law is the law, Chair. Thank you.

CHAIR MOLINA: Thank you, Member Pontanilla. Any, any other discussion as it relates to the motion on the floor? Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you, thank you very much, Chairman. I, I yes, you know, I had the opportunity to talk story with our two members of Corp. Counsel right during our break. And in looking at the Charter and in looking at State law, it is not about not respecting or recognizing State law nor is it about misleading the public. What I look at is the existing Charter tells us two years. The State Legislature in their efforts, in their attempts, recognized two years as an appropriate timetable.

I can’t believe that, that discussion that ensued during the legislative process in the State Legislature did not come up with many different scenarios to cover the inconsistencies between State law and various County Charters. Two years to me is an appropriate time to allow our people ample time to set or prepare whatever claims or cases they may have that are legitimate against this County. By reducing two years to six months does not mean we’re not going to get anymore frivolous cases. As a matter of fact, I think we will, because there is now going to be a rush to deal with, with claims against this County. So I cannot think that the State Legislature was all wrong, I expect them to again ensue discussion on this particular item. And at this particular point in time, Chairman, I am not able to support the motion on the floor. Thank you.
CHAIR MOLINA: Thank you, Mr. Mateo. Any other discussion before the Chair makes his comments? Mr. Kane.

VICE-CHAIR KANE: Very briefly, Chair. Thank you for my second and final opportunity for the motion on the floor and speaking in favor of the resolution. In hindsight and this by no means is any, being critical of, of the Committee’s work. In hindsight it would have been helpful for us perhaps to get some better insight if we had executive session opportunity. Because I know as a reference point Corporation Counsel has cited an existing lawsuit that it would have provided us, I think, a better inside understanding of why we have people in the legal field coming and testifying in opposition and yet we have our Corporation Counsel who has brought this forward for our consideration. And obviously, you know, in the court room, in the judiciary, you know, it’s, it’s a battleground.

Okay. And so it would have helped, I think, in hindsight, and again so, I want to say that in the future if we do have something like this because there’s reference points that are being cited it, perhaps we would have been able to have that consideration to have executive session to get some additional information. Be that as it may, again, I’m comfortable with moving forward and I thank you for that second and final.

CHAIR MOLINA: Thank you, Member Kane. No other comments from the body which relates to the motion? Then the Chair will make his comments. And it’s been cited the law is the law and I think we can all...oh, is there anybody? Oh I’m sorry, Member Anderson, I didn’t see your hand go up. Okay. Member Anderson--

COUNCILMEMBER ANDERSON: Sorry, Chair,--

CHAIR MOLINA: --you have the floor.

COUNCILMEMBER ANDERSON: --to allow you the last word. This is a hard one for me because I certainly think that we need to follow the law on all instances. And I certainly don’t want to mislead anybody who might be reading our Charter. But I also don’t want to mislead the Legislature, who is attempting to write this in our favor and in fact did. And were it not for the Governor, we wouldn’t even be talking about this today, because the State statute would then be in conformance with our Charter. So I like to side on the, on the favor of the previous Council and the previous voters who set our limitation at two years, and if that’s overturned by the Governor and overturned by the Supreme Court, I’d like to see the challenge to that play out before we actually change it in our Charter. So with reservations I’m going, going to not support this resolution today. Thank you, Chair.

CHAIR MOLINA: Thank you, Member Anderson. Any final comments from the floor before the Chair makes his remarks? Seeing none. As I stated earlier I think the comments the law is the law is, you know, is quite appropriate; however, in this Country we all have the right to disagree with the law constructively. We as Lawmakers serve the people, that I believe first and foremost. We make the laws but we are at the behest of the citizenry. And when you look at the two years that was voted on by our citizenry via
County Charter I think we have to have great respect for that. And so it is just your Chair’s opinion, I’m going to side with the people on this one.

Because many people who have claims, it’s a very cumbersome process, very traumatic for a lot of folks and bureaucracy related to doctors’ offices or government itself exists, it’s a reality. And as I stated earlier, to cut down the amount of time from two years to six months I believe places an unnecessary burden on our citizens. So be that as it may wherever this matter goes, if it passes out of Committee today or fails, it is just for me, my own personal choice to not support the matter on the floor. And I’m sure this will not be the last discussion of this issue whether it be here or up there at the State Legislature. So it’s, you know, a continuing soap opera that I’m sure will be heard from again. So the Chair will not be supporting the motion on the floor. With that being said the Chair will call for the vote. All those in favor signify by saying aye.

VICE-CHAIR KANE: Aye.
COUNCILMEMBER CARROLL: Aye.
COUNCILMEMBER JOHNSON: Aye.
COUNCILMEMBER HOKAMA: Aye.
COUNCILMEMBER PONTANILLA: Aye.
COUNCILMEMBER TAVARES: Aye.
CHAIR MOLINA: All those opposed?
COUNCILMEMBER ANDERSON: No.
COUNCILMEMBER MATEO: No.

VOTE:  AYES: Councilmembers Carroll, Hokama, Johnson, Pontanilla, and Tavares, and Vice-Chair Kane.
NOES: Councilmembers Anderson and Mateo, and Chair Molina.
ABSTAIN: None.
ABSENT: None.
EXC.: None.

MOTION CARRIED.
ACTION: FIRST READING OF REVISED RESOLUTION.

CHAIR MOLINA: Chair votes “no”. Member Anderson “no”, and Member Mateo “no”. The final vote count is six to three. The measure passes out of Committee. Thank you very much, Members.

COW-53 AMENDING CHARTER SECTION 13-2, RELATING TO BOARDS AND COMMISSIONS (C.C. No. 06-174)

CHAIR MOLINA: Members, we have one last item to discuss and that is Committee of the Whole Item 53, which is related to so amending the Charter Section 13-2, relating to boards and commissions. The Committee is in receipt of County Communication No. 06-174 from the Mayor, transmitting a proposed resolution to amend Section 13-2 of the Charter, which relates to boards and commissions.

And in addition, a correspondence dated July 3, 2006, from the Corporation Counsel’s office, transmitted a revised proposed resolution, “Proposing an Amendment to the Revised Charter of the County of Maui (1983), As Amended, Amending Section 13-2, Relating to Boards and Commissions.”

The intent of the revised proposed resolution is to amend Section 13-2, which relates to boards and commissions. I sound a little bit redundant here, Members, forgive me. And this would be by removing reference to political party affiliations and appointments to the various boards and commissions, and by also incorporating the wording of the proposed ballot question.

From the Mayor’s office we have Executive Assistant Mr. Dave DeLeon, as well as Mr. Moto from the Corporation Counsel’s office. And I would like to yield the floor to Mr. DeLeon for opening comments on this proposal, which comes from the Mayor’s office. Mr. DeLeon.

MR. DELEON: Thank you, Mr. Chairman, good morning. The requirement in 13.2, the argument for this amendment is the requirement in 13.2 is no longer necessary or appropriate. And it’s in fact an anachronism of a previous time in our political history. The reality that we experience is that most citizens no longer identify with a party and that plays out in our applications for boards and commissions. We asked every applicant for boards and commissions to identify their party as we currently require in 13.2. The reaction we get is...well, the last, the last slate of applicants we had had 14 Democrats, 11 Republicans, 30, I’m sorry, 23 none, and 24 Independents. So roughly a third identified with parties and two-thirds did not.

I’ve been dealing with boards and commissions for, well, for 12 years but not concurrently, but over a course of 16 years, and it’s been my experience that some applicants are just hesitant to identify their party on a piece of paper. Then this requirement could in some cases actually be a detriment to people applying for service to the County for appointments of boards and commissions.

I believe the attitude of the voters is, was created by, by changes in the law, first, then the requirement the, the removing of the requirement for identification of party for, for Primary Elections. And then
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1998, Maui County itself shifted to a nonpartisan election for, for elected officials. So the question is then, if candidates for Mayor or if County Council are no longer required to identify their party, why should the applicants to volunteer to serve the County on, say, the animal control, the County Animal Control Board or the Commission on Children and Youth have to identify their party?

CHAIR MOLINA: Thank you, Mr. DeLeon. Committee Members, questions for Mr. DeLeon? Member Anderson, followed by Member Tavares.

COUNCILMEMBER ANDERSON: Yes, thank you. Mr. DeLeon, excuse me, you said that, you said that it’s a detriment to people applying. And why would you consider it a detriment? People don’t want to...

MR. DELEON: By the number of blanks I get and the how many times I have to get back and tell people, no you have to, it’s a requirement you have to fill it out. And some people actually argue and say they feel like it’s an impingement on their privacy.

COUNCILMEMBER ANDERSON: And that’s the reason that, that they don’t put down what party they’re affiliated with?

MR. DELEON: That’s why the hesitation, yeah. If you’re a Democrat and you’re identifying and you’re applying for...you want to serve the County and you’re applying for, for appointment to a board or commission and you have somebody who’s in office that you identify as a Republican you might have a sense that well, that person’s not going to appoint me because I’m on the other party.

COUNCILMEMBER ANDERSON: But isn’t the whole idea for this and don’t you explain to people that we’re trying to get a balance on the boards so that we don’t have, you know?

MR. DELEON: It’s really hard, it’s hard to balance a board with Democrats and Republicans when the far majority are Independents or nonpartisan. And it’s self-identified as Independents, nonpartisan, or none.

COUNCILMEMBER ANDERSON: Well that’s, that, that would be another party that would be add to the balance if you had--

MR. DELEON: Actually, we had a ruling on that with Corporation Counsel during the previous Chairman Hokama’s period. He argued that Independents were an Independent Party and the Corporation Counsel ruled that no that was not the case, they don’t have a party identification.

COUNCILMEMBER ANDERSON: And that’s me, I don’t have a party identification either, so I consider myself Independent. Could you just let me finish?

MR. DELEON: Yes, ma’am.

COUNCILMEMBER ANDERSON: But since we do have parties I think that those people who are involved in a party should be proud to state that that’s their party affiliation. And if they feel it’s an invasion of
privacy then, then I think they’d have a hard time being actively involved in any board that they, they might be on and stating their opinion because that certainly is an invasion of privacy, too, you have to state your opinion. So when people put down what party they’re in I’m assuming that, that means that they’re a card-carrying member, they have actually joined the party.

MR. DELEON: That’s self-identification.

COUNCILMEMBER ANDERSON: It’s just self-identification. And so you don’t do any check.

MR. DELEON: No. I really wouldn’t know where to check.

COUNCILMEMBER ANDERSON: Right. And so, well, I guess you could call, call the Republican Party and say are they on your rolls, your membership roll. But I mean that’s really not the issue, I don’t think people are going to misrepresent what party they’re in. They’re just saying we don’t really want to say what party we’re in. But that disturbs me even more, because if they want to hide their party affiliation what’s the reason? And I think it has to go beyond wanting to remain, keep that private.

I just think that the original intention behind putting this provision in was to make sure that we have a balance and that we don’t have, you know, a Republican Mayor appointing Republican people to any one board and eventually have an imbalance. After all, the boards are supposed to be representative of a cross section of the community, and, you know, if it, if it turns out that more of our community are turning Independent or nonpartisan, then so be it. At least we know what their affiliation is and that in approving any of the appointments we can make sure that there is some kind of a balance.

And I can appreciate your position because it’s difficult enough to find people but, and if this provision was gone you wouldn’t have to worry about keeping a balance. So my feeling is the, the requirement is there for a purpose, and I don’t think the purpose has disappeared just because we’re voting nonpartisan now.

MR. DELEON: Well, I think that’s a contention of the, the Amendment that it has disappeared. This is a nonpartisan government. I don’t know who, I don’t know what party the Director of Public Works is, I don’t know what party half the people in the Mayor’s cabinet belong to. We don’t ask, we’re not interested, it’s a nonpartisan government. I don’t know anybody, I mean I really don’t care what the party of somebody on the Animal Control Board is. I don’t know what difference that makes.

COUNCILMEMBER ANDERSON: Well, I mean you can say we’re a nonpartisan government, but we know the Mayor is Republican, we know certain Members on this Council are Democrat. So you know those are party affiliations and they do influence, to some extent the, I guess, the opinions or the viewpoints that these people hold or they wouldn’t be members of the party. So I’m sorry that this makes your job harder but again I think it’s important that we realize party affiliations of... (end of tape, start 3A @ 11:28 a.m.)... people may have, Mr. Chair, so that we can make sure that we have a balance sitting on these boards. And way, where it may not make much of a difference on the Animal Control Board I think there are boards where it could make a big difference. Thank you.
CHAIR MOLINA: Thank you, Member Anderson. Member Tavares.

COUNCILMEMBER TAVARES: Yeah. Mr. DeLeon, you stated that the Independent, when they say Independent it does not count as a party.

MR. DELEON: That’s correct.

COUNCILMEMBER TAVARES: So there’s no way that there would be a Republican or Democrat majority on any of these boards and commissions?

MR. DELEON: I think if you really stretch, you possibly could do it but no.

COUNCILMEMBER TAVARES: A real stretch.

MR. DELEON: Yeah.

COUNCILMEMBER TAVARES: I mean the numbers as I understand it are getting bigger and bigger that where people are saying Independent.

MR. DELEON: Well actually, I’ve been watching this as I said for 16 years and it used to be 50/50, now it’s about two-thirds Independent--

COUNCILMEMBER TAVARES: Right.

MR. DELEON: --or nonpartisan.

COUNCILMEMBER TAVARES: Yeah. I mean, you know, I agree with, with you and I think the voters who voted for nonpartisan elections that we should be taking party out of our County Government. But at the same time this system is so loose, where you don’t check to see if they’re actual dues-paying members of a party. So if I’m a Democrat and I want the Mayor, who is a Republican, even though we’re nonpartisan, to appoint me, on my sheet I’m going to put Republican. There’s no checking, I mean it’s kind of, it’s nuts.

I mean, you know, we all get tagged and associated with a certain letter, but if people were to actually check who are dues-paying members of the parties you will find there are a number of people that call themselves Republicans that are not party members or Democrats that are not party members. I, for one, am not a dues-paying member of the Republican Party, but do you think I’ll ever get rid of that Republican moniker? No, and, and neither do I want to. I mean fine, if you want to think I’m a Republican. I mean I’ve been accused of being a Democrat in disguise. So I mean, you know, it’s, it’s sort of weird.
But you know, if we’re still going to feel that there needs to be those people who feel like they want to declare a party, fine, let them declare a party. But I think we have moved way beyond that, and you know, I would like very much to support it but I don’t think it’s worth the grief to support at this point. I really don’t. There are much more important things that are going to be on our Charter ballot this election and this seems to be, to me, a very, a minor one in a sense given the importance of some of the other Charter Amendments that are going to be, going to be there. So I’m not going to support it at this time. Thank you.

CHAIR MOLINA: Thank you, Member Tavares. Member Johnson.

COUNCILMEMBER JOHNSON: Dave, because you don’t check where, I guess, the balance came in and then the way that the structure, I guess, or there’s additional wording in the Charter that basically said, you may not have more than, I guess, a bare majority for any particular party. Do you even check that?

MR. DELEON: Yeah. We do.

COUNCILMEMBER JOHNSON: Okay. So you do at least try to verify that, you know, there isn’t more Democrats than Republicans?

MR. DELEON: Right.

COUNCILMEMBER JOHNSON: Okay. I can personally say, Mr. Chair, that there’s some people that write down on their forms the, that they’re not affiliated with a party and I know they are because they’re party officials. So I’ve seen it and they’ll just put, you know, Independent or they’ll put nonpartisan. So anyway I just, I wanted to find out. And I thank you.

COUNCILMEMBER TAVARES: Point of clarification.

CHAIR MOLINA: State your point, Member Tavares.

COUNCILMEMBER TAVARES: Yes. In the response to Ms. Johnson’s question, the question was, do you see that there’s no more than a mere majority of Democrats or Republicans? And that, that’s not how it reads. It’s a majority of the members, so the Independents count as--

COUNCILMEMBER JOHNSON: Right.

COUNCILMEMBER TAVARES: --part of it, so there, there, there’s not going to be a majority given the percentages that we’re talking about here.

MR. DELEON: I don’t understand your point.

COUNCILMEMBER TAVARES: That you don’t, just don’t count Republicans and Democrats--
MR. DELEON: Well--

COUNCILMEMBER TAVARES: --or any other party.

MR. DELEON: --or Greens. That’s the only other party. . .

COUNCILMEMBER TAVARES: Or Greens or whatever parties--

MR. DELEON: I don’t--

COUNCILMEMBER TAVARES: --because there’s such an overwhelming number of, of Independents.

MR. DELEON: But you have a nine member board and then you don’t have more than five Democrats or five Republicans on it.

COUNCILMEMBER TAVARES: Right, which is not going to happen because you have so many Independents in there normally. So it applies with the whole number not just the number of Republicans and the number of Democrats. It’s the total number of members on the board. . .five.

MR. DELEON: Could I respond to your earlier comment though?

COUNCILMEMBER TAVARES: Oh. I don’t know if that’s proper--

MR. DELEON: Okay.

COUNCILMEMBER TAVARES: --‘cause I just asked for clarification.

MR. DELEON: I’m sorry. Okay.

CHAIR MOLINA: Member Johnson, you have the floor.

COUNCILMEMBER JOHNSON: Yeah. And, and that’s my point. You know of the parties that are actually registered, I think, in the State, I didn’t mean to imply that there will only be Republicans or Democrats and let’s say Independents. There could be other parties, the Libertarians or whatever.

But my whole point is that there is never more than one party, you know, that gets a clear majority. You know, so in other words, if it’s, happens to be that there’s nine Democrats on a nine member board I just want to be assured that that is not currently occurring and, and that was what Mr. DeLeon did reference. He said, no, that they do check. So thank you.

CHAIR MOLINA: Thank you, Member Johnson. Mr. Hokama.
COUNCILMEMBER HOKAMA: Chairman, I also believe that we have more serious problems, more serious challenges that this body or the Council could focus on instead of this issue. I will just state in my nonsupport for this proposal at this time, Mr. Chairman, that we may have a nonpartisan County government as expressed through the Charter. We do not have an apolitical system, which means there are no parties. We still have parties, whatever they may be or whatever people may choose to be, we still have political parties. Of course, the well known ones are the Democrats and the Republicans. But, you know, other Members have stated, the Libertarian Party, Green Party. Whether Corp. Counsel agrees or not, people have run as Independent and even in Congress we have an Independent listed. Whether you view that as a political party or not that is the status the individual has chosen.

I think it gives, for one, from one point of view, Mr. Chairman, that people when declaring parties express a basic foundation of philosophy others can either relate to or disagree of. But what’s wrong with that? Our Country was based on parties whether it was the Wigs, Wig Party, or the Republican Party, Grand Old Party or the Democratic Party in history because people believe in political philosophy that one can subscribe to or have an affinity that it represents my basic beliefs.

And while we have moved to a nonpartisan type of government, Mr. Chairman, I wish we had an analysis. Because is that one of the reasons, I don’t know, why we have less voter turn out because there’s not a sense of belonging to a party that represents a specific type of political philosophy whether it be for workers, against employers, or whatever it may be? You know, everything is about me now, so maybe we need to have one “me” party. It’s only about me and nobody else. You know, I wish we had those answers, Mr. Chairman, because it may help us make better decisions regarding some of this type of proposals.

But the County does, still does and still exists political parties and still it makes a difference, because we still have State elections that we vote on, and we still have Federal elections that we vote on that depends upon political party affiliation. There’s nothing wrong with that either. But I would state, Mr. Chairman, as someone who has seen many campaigns and for our family we’re going to go through our 27th, I believe, campaign. I believe parties has a place in the political system. And I may be an oldie, I still think it has a place in this County today, also. Thank you for my opportunity to share my comments, Chairman. Thank you.

CHAIR MOLINA: Thank you, Mr. Hokama. The Chair has a question for Mr. DeLeon. Mr. DeLeon, you’ve cited one of the concerns you have with regards to this proposal or for asking for this proposal to be considered is that your, you have a difficult time having to hunt down applicants because they don’t fill out the political party affiliation, that is correct?

MR. DELEON: It’s the one, the one part of the form it’s usually left blank.

CHAIR MOLINA: Has there been any consideration to putting, I don’t know if it’s possible, if you could insert something on the applicant form to state that if you don’t, for example, fill in this portion--

MR. DELEON: It’s already there, Mr. Chair.
CHAIR MOLINA: It’s already in there, on the application already? Is it in bold letters?

MR. DELEON: Yes, sir.

CHAIR MOLINA: Okay. I was just looking at that methodology. And even, in spite of that... what does it say exactly? Can you tell us?

MR. DELEON: That the, I think it cites the Charter, not the Charter provision, but the County Code requirement that, that particular line be filled out in order they’ll have a completed application.

CHAIR MOLINA: And does it state, mention anything to the applicant that your consideration could be delayed if you don’t?

MR. DELEON: Well, basically, it says you don’t have a completed application. You’d have to fill it out.

CHAIR MOLINA: Yeah. I guess for some people you have to, you know, literally spell it out for them to make them be aware of the potential delay they could encounter by not, you know. So I guess I’m trying to look at a different, maybe possible different methodology to try and achieve your objective.

MR. DELEON: I, I think the point of the, the proposal today isn’t so much, you know, about party or about trying to get people to volunteer, they’re secondary. The fact of the matter is this is an anachronism, and we no longer have a partisan government and so it seems to be strange to be asking volunteers who are volunteering to apply to serve the County to have to identify their party when the Mayor and the Members of the County Council don’t have to identify theirs.

CHAIR MOLINA: Okay. Thank you, Mr. DeLeon. Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. I respectfully disagree with Mr. DeLeon’s assertion that we have a nonpartisan government. What we have is nonpartisan elections. And basically what that allows is everyone an equal opportunity in the Primary to get on to the General. So, you know, and hopefully, party affiliation does not interrupt the, the procedures and the processes of government, and hopefully, doesn’t influence Members’ decision-making powers or, or decisions in, in anyone issue. But that’s not a guarantee.

I think our current Mayor is very much a Republican, and hopefully, is, is able to work in concert with the State Administration because it’s headed by a Republican. And I guarantee you the cooperation and affiliation between the two would not be the same if the Governor was a Democrat. And so for all practical purposes the parties do play a large role in government. I mean they’re there for that purpose.

So I just think it’s, it’s, I guess, a misnomer or I mean Mr. DeLeon is certainly allowed his opinion, but I certainly don’t see our government as being nonpartisan in any way, shape, or form. You know, one of the, one of the advantages I feel in being Independent in that I don’t belong to any party is that there’s
nothing constraining me from crossing party lines and working in collaboration with any Members of this body or the State no matter what party they’re in.

But, you know, especially at the State level there are people who will tell you I’m not going to speak to you because you’re not a member of my party. I’m not going to return your phone call because my party members take precedence and I only have so much time. The Governor actually so much as told me that months ago or rather a couple years ago before I ran, trying to influence me to become a Republican so that I would have entrée to her, her office.

So I just want to put that on the record, I don’t think that we are a nonpartisan government at all. We all have party affiliations or group affiliations or while I might be independent from any registered party of any kind, I’m not independent of those people who put me in office and support me. So thank you for letting me have my say on that.

CHAIR MOLINA: Thank you, Member Anderson. Mr. Mateo.

COUNCILMEMBER MATEO: Chairman, thank you. Mr. DeLeon, is it, is it on the application form required that they must identify a party affiliation?

MR. DELEON: Yes, sir.

COUNCILMEMBER MATEO: And if they put no affiliation--

MR. DELEON: That’s--

COUNCILMEMBER MATEO: --you’re saying the application is incomplete?

MR. DELEON: Yes.

COUNCILMEMBER MATEO: But if--

MR. DELEON: No, no, no. If they say no affiliation, it’s complete.

COUNCILMEMBER MATEO: And if they leave--

MR. DELEON: They just have to answer the line.

COUNCILMEMBER MATEO: Okay. So if they put, if they put a “none” on it, is the application complete?

MR. DELEON: Frequently it’s “none”.

COUNCILMEMBER MATEO: I’m sorry?
MR. DELEON: Frequently it’s none.

COUNCILMEMBER MATEO: So the application is complete?

MR. DELEON: Right.

COUNCILMEMBER MATEO: So what’s the big deal?

MR. DELEON: What the big deal is?

COUNCILMEMBER MATEO: Yeah.

MR. DELEON: It’s an anachronism, you like to have, I mean I’m sorry, let me, let me step back. I believe that, that provision was required when, when we had partisan voting and when, when you went to the Primary you had to identify yourself as one of the parties. And, and that the political organization of the County was, was built around party, now it’s built around individuals.

COUNCILMEMBER MATEO: Built...

MR. DELEON: And so, so it’s just that it seems to block people, some individuals from, from wanting to step forward. And that some people hesitate, some, some people take offense to being required.

COUNCILMEMBER MATEO: Uh-huh. And those, then those individuals need not identify their party affiliation and indicate by writing the word none. But I think there’s those who take pride in their affiliation with their respective parties, and they should have that same right to identify it. So, you know, the easiest thing instead of going through a proposed resolution at this particular point would have just, you know, accepted, a “none”, printed on an application form and accept it and move on. I don’t see the big deal in coming to ask us for this kind of, you know, approval of a resolution that really is a no-brainer. I think it’s just easier to just continue as it has been, and if individuals don’t want to recognize their party affiliation, then that’s their prerogative to do so.

I, I, I kind of like, I don’t agree with you that it has prevented individuals from wanting to apply because they didn’t want to write their party affiliation, you know, on an application form. That I have a hard time to, to understand. So, Chairman, my own vote at this particular time I am definitely not in support of this, of this particular proposal. Thank you.

CHAIR MOLINA: Thank you very much, Mr. Mateo. Any final questions for Mr. DeLeon before the Chair makes his recommendation? Seeing none. Prior to the recommendation, Chair’s comments are I’ve personally had a concern with the removal of any disclosure as it relates to government because it may, some may somewhat perceive it as contradictory towards open government. I feel that people should have the right to state their party affiliation, after all I believe if you’re going to become a member of a group, then by all means you should let the world know who you belong to if you do belong to anything.
But I would suggest to the, maybe if I can ask Corporation Counsel this, with regards to our County applications if we, for example, in an application to a board or commission, what is the process of adding additional wording or language to that? Would we have to go through some type of process like this via a Charter Amendment or can this just be done administratively or Council approval? Can you give us insight on that, Mr. Moto? Say, if we wanted to re-emphasize to the applicant with regards to the political affiliation point of making language that’s more maybe simplified or more direct to tell the applicant that you need to put something in this block otherwise consideration for your board or commission could be delayed. Can you give comment on that, Mr. Moto?

MR. MOTO: Mr. Chairman, Chapter 2.41 of the Maui County Code outlines the, the information, among other things, the kind of information that is required of nominees to boards and commissions, and so that’s an area that the Council could review to determine whether it should be or can be amended or not.

CHAIR MOLINA: So we would need to have a communication come to this body for a consideration to amend the application, in a nutshell?

MR. MOTO: I was speaking to sort of amending Chapter 2.41 of the Code.

CHAIR MOLINA: Okay, of the Code itself?

MR. MOTO: Yeah. Of the Code--

CHAIR MOLINA: Okay.

MR. MOTO: --itself.

CHAIR MOLINA: Okay. Thank you. Members, any other comments? Seeing none. At this point the Chair has... excuse me. Member Anderson.

COUNCILMEMBER ANDERSON: Thank you, Chair. You know, the thought just occurred to me that, since this is a provision and a requirement, that maybe we should ask the Administration when they’re collecting these applicants to just call each party and ask them, you know, is this a dues... are these people... or maybe even just ask for a printout of their membership so that there’s some way to check. And I mean if nobody is checking, what’s the point in doing it? I mean I know he’s trying to make this easier and I’m making it harder. But I think that there’s a reason behind this and if, if we’re not checking and people are just leaving it blank or saying none or actually putting, putting the, the party of the Mayor down just so they can get on the board, we should know that.

So I just want to put that in the mix because there’s no good having a rule if you’re not sure that it’s being followed. And I think the intention behind the, the rule is important. I would hate to see, you know, we do away with it and the next thing you know everybody is putting down who, or, you know, everybody is signing up because they know they don’t have to put down their party affiliation. And the next thing you know we have a Planning Commission full of Republicans or we have a Board of
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Variance and Appeals full of Democrats. You know, there needs to be balance and these are appointed positions, not elected, they don’t have to go out and stump to the public and state their viewpoints and what their opinions are in order to get this position. All they have to do is fill out a little application, so I do think party affiliation is important. Affiliation or non-affiliation is important to know. And I think that the Mayor and this body should have some assurance that whatever they’re putting down is accurate. Thank you.

Chair Molina: Thank you, Member Anderson. Seeing no other discussions. The Chair will recommend no recommendation at this point. The floor is open for any recommendation by the body.

Councilmember Hokama: Move to file.

Councilmember Tavares: Second.

Chair Molina: Okay. Motion has been made by Member Hokama to file, seconded by Member Tavares. Member Hokama, as the maker of the motion you have the floor.

Councilmember Hokama: No further discussion, Chairman. Thank you.

Chair Molina: Any other discussion as it relates to the motion on the floor? Seeing none. All those in favor signify by saying aye.

Council Members voiced Aye.

Chair Molina: All those opposed?

VOTE: AYES: Councilmembers Anderson, Carroll, Hokama, Johnson, Mateo, Pontanilla and Tavares, Vice-Chair Kane, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: File County Communication No. 06-174.
CHAIR MOLINA: The Chair will mark it unanimous. Thank you, Members. That concludes our meeting for today. The Chair thanks you for your professionalism and dedication as always. We do have a Budget and Finance meeting under the directorship of Mr. Kane at 1:30, Members, so please be prompt. It is ten minutes to the hour of 12 o’clock on August 1st. The Committee of the Whole meeting for today is now... oops, excuse me.

COW-28 AMENDING CHARTER SECTION 13-6 (C.C. No. 05-215)

CHAIR MOLINA: Members, before you go I do have one housekeeping consideration. If we could go back to Committee of the Whole Item 28 I believe in the motion it was not included the filing of the communication.

VICE-CHAIR KANE: So moved.

CHAIR MOLINA: Okay.

COUNCILMEMBER TAVARES: Second.

CHAIR MOLINA: It’s been moved by Member Kane, seconded by Member Tavares to file the communication as it relates to Committee of the Whole Item 28. Any discussion? Seeing none. All those in favor signify by saying aye.

COUNCIL MEMBERS VOICED AYE.

CHAIR MOLINA: All those opposed?

VOTE: AYES: Councilmembers Anderson, Carroll, Hokama, Johnson, Mateo, Pontanilla and Tavares, Vice-Chair Kane, and Chair Molina.

NOES: None.

ABSTAIN: None.

ABSENT: None.

EXC.: None.

MOTION CARRIED.

ACTION: FILE COUNTY COMMUNICATION NO. 05-215.
CHAIR MOLINA: Okay. Chair will mark it unanimous. And the Chair thanks the Members for that consideration. So with that being said, this meeting for August 1st, Committee of the Whole is now adjourned. . . . (gavel) . . .

ADJOURN: 11:53 a.m.

APPROVED BY:

[Signature]
MICHAEL L. MOLINA, Chair
Committee of the Whole

Transcribed by: Daniel Schoenbeck
CERTIFICATE

I, Daniel Schoenbeck, hereby certify that the foregoing represents to the best of my ability, a true and correct transcript of the proceedings. I further certify that I am not in any way concerned with the cause.

DATED this 21st day of August 2006, in Pukalani, Hawaii.

[Signature]
Daniel Schoenbeck