

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

August 14, 2006

**Committee
Report No.**

06-90

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

Chair and Members:

Your Committee of the Whole, having met on February 14, 2006, June 6, 2006, June 8, 2006, July 18, 2006, and August 1, 2006, makes reference to County Communication No. 05-215, from the Council Chair, transmitting correspondence from the Department of the Corporation Counsel, recommending that Section 13-6 of the Revised Charter of the County of Maui (1983), as amended (Charter), relating to the filing of claims against the County of Maui be repealed.

By correspondence dated November 17, 2005, the Council Chair transmitted 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 repeal Section 13-6, of the Charter, relating to the filing of claims against the County of Maui.

Your Committee notes that in Kahale v. City and County of Honolulu, 104 Haw. 341, 90 P.3d 233 (2004), the Hawaii Supreme Court overruled 30 years of precedent and held that tort claims against counties are governed by a six-month statute of limitations.

Your Committee further notes that Section 13-6, of the Charter, references a two-year statute of limitations for the filing of claims against the County that conflicts with the six-month statute of limitations for the filing of claims against the County under Section 46-72, Hawaii Revised Statutes (HRS).

At its meeting of February 14, 2006, your Committee met with the Corporation Counsel and a Deputy Corporation Counsel.

There was no public testimony.

The Deputy Corporation Counsel provided a brief overview of the matter and recommended that Section 13-6, of the Charter, be repealed in its entirety because it conflicts with prevailing State law. She stated that Section 46-72, HRS, provides for the

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applicable six-month statute of limitations and procedures for claims against counties. She further stated that repealing, rather than amending Section 13-6, of the Charter, would avoid potential conflicts between the Charter and State law should State law be amended in the future.

Your Committee discussed the County's decision to include a reference to the two-year limitation in Section 13-6 of the Charter. The Deputy Corporation Counsel stated that the County may have included this reference to be consistent with State law at that time.

Your Committee discussed whether the County should continue to include a reference to claims in the Charter since applicable language is already included in State law. The Deputy Corporation Counsel stated that for the most part, individuals who file a claim against the County tend to receive information through the County Clerk's office rather than through the Charter. Therefore, she did not see a problem with repealing this section of the Charter.

Your Committee briefly discussed whether the Counties of Hawaii and Kauai, and the City and County of Honolulu have experienced similar inconsistencies between their respective Charters and State law. The Deputy Corporation Counsel was unaware of whether other counties faced the same inconsistencies.

Your Committee briefly discussed including a Charter provision that would require automatic amendments to the Charter when changes are made to State law. A Deputy Corporation Counsel stated that such a provision had not been considered.

Your Committee notes that although tort claims against the counties are governed by a six-month statute of limitations, tort claims against the State are governed by a two-year statute of limitations as referenced in Section 662-4, HRS.

In lieu of repealing Section 13-6, of the Charter, in its entirety, your Committee suggested amending the proposed resolution to allow claims to be filed according to "the time period as provided by law".

Your Committee deferred the matter pending further discussion.

By correspondence dated March 2, 2006, your Committee's Chair requested that the Department of the Corporation Counsel revise the proposed resolution to amend,

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instead of repeal, Section 13-6, of the Charter, to allow claims to be filed according to "the time period as provided by law".

By correspondence dated April 4, 2006, your Committee's Chair requested that the Department of the Corporation Counsel incorporate the appropriate ballot question into the body of the proposed resolution.

By correspondence dated April 7, 2006, the Department of the Corporation Counsel transmitted 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, to allow claims to be filed against the County in the time period as provided for by law. The revised proposed resolution also incorporated the ballot question.

At its meeting of June 6, 2006, your Committee met with the Senior Executive Assistant to the Mayor, a Deputy Corporation Counsel, and the Corporation Counsel.

There was no public testimony.

Your Committee received a brief overview of the revised proposed resolution from the Corporation Counsel who also noted that the 2006 Hawaii State Legislature passed House Bill 2208, House Draft 1, to amend Section 46-72, HRS, to extend the statute of limitations for actions against the counties from six months to two years, but the Governor has vetoed the bill.

Your Committee discussed whether it is more of a priority to provide the public with the greatest amount of time to file a claim against the County, rather than protecting the County's interest.

Your Committee discussed what would happen if the conflict between the Charter and State law was not resolved. The Deputy Corporation Counsel said that if the six-month statute of limitation for the filing of claims against the County remains in effect, then the Supreme Court's decision in the Kahale case, which held that tort claims against counties are governed by a six-month statute of limitations, would take precedence over the Charter.

Your Committee recessed its meeting to June 8, 2006.

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At its reconvened meeting of June 8, 2006, your Committee met with the Senior Executive Assistant to the Mayor and the Corporation Counsel.

Your Committee noted that the Hawaii State Legislature has until July 11, 2006 to convene a special session to consider overriding any of the bills vetoed by the Governor.

Your Committee agreed to defer the matter pending further discussion.

At its meeting of July 18, 2006, your Committee met with a Deputy Corporation Counsel.

Your Committee received public testimony from one person in support of the proposal to repeal Section 13-6, Charter.

Your Committee agreed to defer the matter pending further discussion.

By correspondence dated August 1, 2006, Councilmember Joseph Pontanilla transmitted: (1) a copy of correspondence dated July 30, 2006 that he received from Joanne Casayuran, stating that she was not aware of the need to file a claim within six months for damages to a tile wall on her property caused by a County tree; and (2) a copy of correspondence dated July 17, 2006, from John Mullen & Co., Inc. to Ms. Casayuran denying her claim against the County based on the expiration of the statute of limitations.

At its meeting of August 1, 2006, your Committee met with the Senior Executive Assistant to the Mayor, three Deputy Corporation Counsel, and the Corporation Counsel.

Your Committee received public testimony from two people in opposition to the proposed revision to Section 13-6 of the Charter. These individuals also provided their testimony in writing.

Your Committee also received public testimony from one person who suggested seeking an opinion from the Attorney General regarding whether the Charter supercedes State law in this instance.

Your Committee received one additional written testimony in opposition to the proposed Charter revision.

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A Deputy Corporation Counsel provided a brief overview of the proposed revision to the Charter. She also read from the Governor's Statement of Objections to House Bill No. 2208. The Deputy Corporation Counsel indicated that the Department of the Corporation Counsel is in agreement with the Governor's position that the current law includes a claim-filing procedure where the County must be notified of potential actions against it within six months, but allows for the actual filing of a suit within two years of an incident if a claim is filed within the six-month period. She also noted the Department of the Corporation Counsel's agreement with the Governor's position that notification of a claim within six months of the incident allows for "...prompt investigation while facts and circumstances are still fresh, witnesses are still available, and conditions remain substantially the same...". The Deputy Corporation Counsel further noted that the County is responsible for tremendous lengths of roadways and many vehicles. She said that prompt investigation of incidents is critical because the condition of these roadways and vehicles can change over time making it difficult to investigate incidents when much time has elapsed.

Your Committee contemplated whether the proposed revision to the Charter would encourage or discourage the filing of frivolous lawsuits.

The Corporation Counsel again noted the Supreme Court's holding in the Kahale case that tort claims against counties are governed by a six-month statute of limitations.

Your Committee noted that although the State Legislature passed a bill to extend the statute of limitations from six months to two years, the Governor vetoed this measure and the State Legislature did not convene a special session to attempt to override the veto. Your Committee further noted that the measure to extend the statute of limitations may be re-introduced in a future legislative session.

The Corporation Counsel stated that the County cannot enact its own statute of limitations for the filing of claims against the County.

A question arose whether maintaining the Charter provision which currently allows for a two-year statute of limitations to file a claim is more beneficial to the public, rather than revising the Charter to indicate that claims against the County must be filed within the time period as provided by law. The Corporation Counsel said that maintaining such a provision may give the public the false impression that a claimant has two years to file a claim rather than six months as provided for by HRS.

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A concern was raised that the proposed ballot question does not mention a change from two years to six months for the filing of a claim against the County.

Your Committee noted that the proposed resolution to revise Section 13-6, Charter, to establish a claim filing period as provided by law would accommodate any future changes to State law.

After much deliberation, your Committee voted to recommend adoption of the revised proposed resolution and filing of the communication.

Your Committee notes that Section 14-1.1 of the Charter requires that amendments to the Charter shall be initiated by resolution of the Council adopted after two readings on separate days and passed by a vote of six or more members of the Council.

Your Committee of the Whole RECOMMENDS the following:


1. That Resolution No. 06-79, attached hereto, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, AMENDING SECTION 13-6, RELATING TO CLAIMS" be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication No. 05-215 be FILED.

Adoption of this report is respectfully requested.


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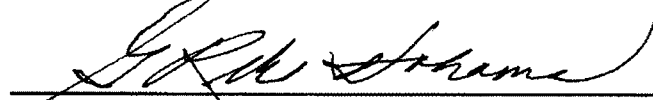
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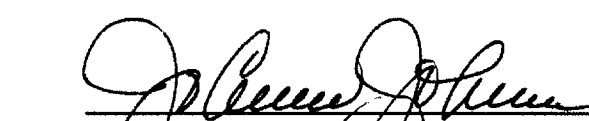

MICHAEL J. MOLINA Chair


 w/k
DAIN P. KANE Vice-Chair


MICHELLE ANDERSON Member


ROBERT CARROLL Member


G. RIKI HOKAMA Member


JO ANNE JOHNSON Member


DANNY A. MATEO Member


JOSEPH PONTANILLA Member


CHARMAINE TAVARES Member

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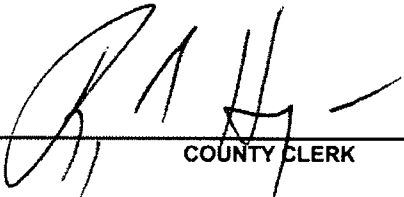
WAILUKU, HAWAII 96793

CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that COMMITTEE REPORT NO. 06-90 was adopted by the Council of the County of Maui, State of Hawaii, on the 14th day of August, 2006, by the following vote:

MEMBERS	G. Riki HOKAMA Chair	Robert CARROLL Vice-Chair	Michelle ANDERSON	Jo Anna JOHNSON	Dain P. KANE	Dennis A. MATEO	Michael J. MOLINA	Joseph PONTANILLA	Charmaine TAVARES
ROLL CALL	Aye	Aye	No	Aye	Aye	Aye	Aye	Aye	Aye

Resolution No. 06-79 was amended prior to passage on first reading.



COUNTY CLERK