

Honolulu, Hawaii

FEB 15 2007

RE: S.B. No. 1603
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Madam:

Your Committees on Water, Land, Agriculture, and Hawaiian Affairs and Intergovernmental and Military Affairs, to which was referred S.B. No. 1603 entitled:

"A BILL FOR AN ACT RELATING TO LIABILITY,"

beg leave to report as follows:

The purpose of this measure is to ensure the continued public safety at state and county recreational areas by repealing certain sunset dates of laws that provide the state and county governments with liability protection for public use of certain state and county recreational areas.

Specifically, this measure:

- (1) Repeals the sunset date of Act 190, Session Laws of Hawaii 1996;
- (2) Repeals the sunset date of Act 170, Session Laws of Hawaii 2002; and
- (3) Repeals the sunset date of Act 82, Session Laws of Hawaii 2003.

Testimony in support of this measure was submitted by the Department of the Attorney General; the Department of Land and Natural Resources; the Department of Labor and Industrial Relations; the Office of Hawaiian Affairs; the Mayor, County of Hawaii; the City and County of Honolulu Department of the



Corporation Counsel; the Honolulu Emergency Services Department, City and County of Honolulu; two Council Members of the Maui County Council; one Council Member of the Hawaii County Council; the Fire Department, County of Kauai; the Hawaii State Association of Counties; and the Hawaiian Lifeguard Association. Testimony in opposition to this measure was submitted by the Consumer Lawyers of Hawaii.

Millions of residents and visitors use Hawaii's public beaches and parks for recreational purposes on a yearly basis. Unfortunately, drownings and other serious injuries have occurred due to these recreational activities, which leave the counties and State with the task of dealing with any liability that may arise from the injuries and any resulting lawsuits.

In response to this problem, the Legislature enacted Act 190, Session Laws of Hawaii 1996, to establish a process by which a legally adequate warning system could be developed at public beach parks. As a result of Act 190, the public warning signs were designed and made more uniform throughout the State. Furthermore, Act 190 also provided the State and counties with protection from potentially unlimited liability for incidents occurring in the ocean. In 2002, the Legislature enacted Act 170, Session Laws of Hawaii 2002, to provide liability protection for lifeguard services on the beach and in the ocean, except for gross negligence, wanton acts, or omissions. Act 170 created a climate in which lifeguard services could be provided by the counties with less fear of unlimited liability, thus, further ensuring public safety. In 2003, Legislature enacted Act 82, Session Laws of Hawaii 2003, to establish a risk assessment group to review the design and placement of warning signs to provide the State and counties protection from liability arising out of recreational activities on public lands.

Your Committees find that liability protections can reduce the exposure of the state and county governments to substantial damages, and, as a result, can enable the state and county governments to keep recreational areas with potentially dangerous conditions open to the public. Furthermore, an effective warning sign system can promote public safety by informing users of the recreational areas of potentially dangerous conditions.

Your Committees recognize, however, that the repeal dates under Act 190, Session Laws of Hawaii 1996, and Act 170, Session Laws of Hawaii 2003, have been extended under previous



legislation. The Consumer Lawyers of Hawaii indicated to your Committees that sunset dates were written into all three Acts to allow for the opportunity to collect sufficient data to be presented to the Legislature so that its members could make a reasonable and informed decision as to whether these laws worked and were still working in the way that was intended by the Legislature. The Consumer Lawyers of Hawaii indicated, and your Committees recognize, that there is currently a lack of sufficient data that indicates the effectiveness and adequacy of these laws. Furthermore, it was indicated that, with respect to the warning signs for public recreational areas, these warning signs had not been finalized and approved by the Board of Land and Natural Resources. Thus, your Committees further find that more time is needed to assess the adequacy and effectiveness of Act 190, Session Laws of Hawaii 1996; Act 170, Session Laws of Hawaii 2002; and Act 82, Session Laws of Hawaii 2003, before these laws become permanent.

Accordingly, your Committees have amended this measure by:

- (1) Extending the sunset date of Act 190, Session Laws of Hawaii 1996, to June 30, 2010;
- (2) Extending the sunset date of Act 170, Session Laws of Hawaii 2002, to June 30, 2010;
- (3) Extending the sunset date of Act 82, Session Laws of Hawaii 2003, to June 30, 2010;
- (4) Creating a task force to:
 - (A) Collect data on and examine the effectiveness of providing lifeguards conditional liability protection for lifeguard services at State beach parks;
 - (B) Collect data on and examine the effectiveness and adequacy of warning signs at public beach parks, and protecting the State and counties from unlimited liability with regard to activities in the ocean and at public beaches;
 - (C) Collect data on and examine the effectiveness and adequacy of warning signs at public recreational lands, and protecting the State and counties from




unlimited liability arising out of recreational activities on public lands;

- (D) Submit a written report of its findings and recommendations, including any proposed legislation, to the Legislature prior to the 2008 Regular Session; and
- (5) Making technical, nonsubstantive amendments for the purposes of consistency and style.

Your Committees believe this measure, as amended, fulfills the intent of this measure, which is to ensure the continued safety at state and county beaches and recreational areas.

As affirmed by the records of votes of the members of your Committees on Water, Land, Agriculture, and Hawaiian Affairs and Intergovernmental and Military Affairs that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1603, as amended herein, and recommend that it pass Second Reading in the form attached hereto as S.B. No. 1603, S.D. 1, and be referred to the Committee on Judiciary and Labor.

Respectfully submitted on behalf of the members of the Committees on Water, Land, Agriculture, and Hawaiian Affairs and Intergovernmental and Military Affairs,


LORRAINE R. INOUE, Chair


RUSSELL S. KOKUBUN, Chair



The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Water, Land, Agriculture and Hawaiian Affairs
WAH

Bill / Resolution No.:* <i>S.P. 1603</i>	Committee Referral: <i>WAH/IGM, JDL</i>	Date: <i>2/7/07</i>
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The committee is reconsidering its previous decision on this measure.
If so, then the previous decision was to: _____

The Recommendation is:

<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310	<input type="checkbox"/> Recommit 2313
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Members	Aye	Aye (WR)	Nay	Excused
KOKUBUN, Russell S. (C)	X			
TOKUDA, Jill N. (VC)	X			
FUKUNAGA, Carol				X
HEE, Clayton				X
SLOM, Sam	X			
TOTAL	<i>3</i>			<i>2</i>


Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: *Jill N. Tokuda*

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The Senate
Twenty-Fourth Legislature
State of Hawaii

Record of Votes
Committee on Intergovernmental and Military Affairs
IGM

Bill / Resolution No.:* SB1603	Committee Referral: WAH/IGM, JDL	Date: 2/12/07		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
INOUE, Lorraine R. (C)	/			
TSUTSUI, Shan S. (VC)	/			
HEMMINGS, Fred				/
TOTAL	2			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink File with Committee Report Clerk's Office Drafting Agency				

*Only one measure per Record of Votes