

STAND. COM. REP. NO. 1070

Honolulu, Hawaii

MAR 19 2007

RE: H.B. No. 38  
H.D. 2  
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 H.B. No. 38, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO LIABILITY OF STATE AND COUNTY GOVERNMENTS,"

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; and
- (2) Repeals the sunset date of Act 170, Session Laws of Hawaii 2002.

Testimony in support of this measure was submitted by the Department of the Attorney General; the Department of Land and Natural Resources; the Mayor, County of Hawaii; the Mayor, County of Maui; the Department of the Corporation Counsel, City and County of Honolulu; the Department of the Corporation Counsel, County of Maui; the Honolulu Emergency Services Department, City



and County of Honolulu; the Department of Parks and Recreation, County of Hawaii; the Hawaii Fire Department, County of Hawaii; the Kauai Fire Department, County of Kauai; the Hawaii State Association of Counties; the State Fire Council; the Honolulu Fire Department; the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; the Hawaiian Lifeguard Association; and one individual. 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, 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.

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.

It was indicated to your Committees that Act 82, Session Laws of Hawaii 2003, was deleted from this measure. Act 82 established 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. The sunset date of Act 82 is June 30, 2008.



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 work and continue to work in the way that was intended by the Legislature. The Consumer Lawyers of Hawaii indicated that there is currently a lack of sufficient data that indicates the effectiveness and adequacy of these laws. Furthermore, with respect to the warning signs for public recreational areas, the warning signs have 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 adopting language similar to the language in S.B. No. 1603, S.D. 1, to:

- (1) Add Act 83, Session Laws of Hawaii 2003, and extend its sunset date to June 30, 2010;
- (2) Extend the sunset date of Act 190, Session Laws of Hawaii 1996, to June 30, 2010;
- (3) Extend the sunset date of Act 170, Session Laws of Hawaii 2002, to June 30, 2010;
- (4) Create 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; and
  - (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) Insert June 29, 2007, as the effective date of this measure; and
- (6) Make 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 H.B. No. 38, H.D. 2, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 38, H.D. 2, 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.:*   | Committee Referral:   | Date:                                     |     |         |
| HB 38, HD2  | WAH/16M, SDL  | 3/12/07                                   |     |         |
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure.<br>If so, then the previous decision was to: _____ |   |   |     |         |
| The Recommendation is:  |   |   |     |         |
| <input type="checkbox"/> Pass, unamended<br>2312  | <input checked="" type="checkbox"/> Pass, with amendments<br>2311 | <input type="checkbox"/> Hold<br>2310     |     |         |
|   |   | <input type="checkbox"/> Recommit<br>2313 |     |         |
| 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   |   |     |         |
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| <b>TOTAL</b>  | 3   | 0   | 0   | 2       |
| Recommendation:   |   |   |     |         |
| <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted  |   |   |     |         |
| Chair's or Designee's Signature:  |   |   |     |         |
|    |   |   |     |         |
| Distribution:   |   |   |     |         |
| Original<br>File with Committee Report  | Yellow<br>Clerk's Office  | Pink<br>Drafting Agency                   |     |         |

\*Only one measure per Record of Votes

The Senate  
 Twenty-Fourth Legislature  
 State of Hawaii

**Record of Votes**  
**Committee on Intergovernmental and Military Affairs**  
**IGM**

| Bill / Resolution No.:*<br><b>HB 38 HD 2</b>   | Committee Referral:<br><b>WAH / IGM, JDL</b> | Date:<br><b>3-12-07</b> |          |          |
|--|--|-------------------------|----------|----------|
| <input type="checkbox"/> The committee is reconsidering its previous decision on this measure.<br>If so, then the previous decision was to: _____  |  |                         |          |          |
| The Recommendation is:<br><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   |  |                         |          | \        |
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| <b>TOTAL</b>   | <b>2</b>                                     | <b>0</b>                | <b>0</b> | <b>1</b> |
| Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted   |  |                         |          |          |
| Chair's or Designee's Signature:<br>  |  |                         |          |          |
| Distribution:             Original     Yellow     Pink<br>File with Committee Report     Clerk's Office     Drafting Agency  |  |                         |          |          |

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