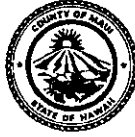


Council Chair  
G. Riki Hokama

Vice-Chair  
Danny A. Mateo

Council Members  
Michelle Anderson  
Gladys C. Baisa  
Jo Anne Johnson  
Bill Kauakea Medeiros  
Michael J. Molina  
Joseph Pontanilla  
Michael P. Victorino




Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

February 21, 2008

TO: Honorable Brian T. Taniguchi, Chair  
Senate Committee on Judiciary and Labor

FROM: Joseph Pontanilla, Treasurer   
Hawaii State Association of Counties

SUBJECT: **HEARING OF FEBRUARY 22, 2008; TESTIMONY IN SUPPORT OF SB 2170,  
RELATING TO PUBLIC LAND**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to provide counties protection from liability as a result of natural conditions on or near public beach parks.

This measure is in the Hawaii State Association of Counties' (HSAC) Legislative Package; therefore, I offer this testimony as HSAC's Treasurer.

HSAC supports this measure for the following reasons:

1. The bill amends Act 82, Session Laws of Hawaii 2003, to remove the exclusion of public beach parks in the definition of improved public lands.
2. Public beach parks are an important part of the public park system and should not be singled out from other types of parks and trails within the State.
3. Deletion of the exclusion would provide the counties with additional immunity in its operation of county parks.

For the foregoing reasons, HSAC supports this measure.

ocs:proj:legis:08legis:08testimony:sb2170\_paf08-061a\_ghr

Senate  
Twenty-fourth Legislature  
Regular Session of 2008

COMMITTEE ON JUDICIARY AND LABOR

Hearing  
Friday, February 22, 2008  
10:00 a.m.

**Testimony in favor of SB2170 – RELATING TO PUBLIC LAND**

Testimony by: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

Chairperson Taniguchi and Honorable Senators,

On behalf of the Hawai'i County Council, I urge you to pass Senate Bill 2170. Senate Bill 2170 protects the counties from liability as a result of natural conditions on or near public beach parks. Passage of this Bill would provide the counties with the same protection that the State currently enjoys. This Bill is supported by all of the County Councils thru the Hawaii Association of Counties.

We humbly ask for your support by passing SB 2170.

**BRYAN J. BAPTISTE**  
Mayor



**MATTHEW S. K. PYUN, JR.**  
County Attorney

**OFFICE OF THE COUNTY ATTORNEY**

COUNTY OF KAUA'I, STATE OF HAWAII  
MO'IKEHA BUILDING  
4444 RICE STREET, SUITE 220  
LIHU'E, KAUA'I, HAWAII 96766-1300  
TEL (808) 241-6315  
FAX (808) 241-6319

Deputies  
Harrison K. Kawate, First Deputy  
Rosa Flores  
Margaret H. Sueoka  
James K. Tagupa

February 21, 2008

**TESTIMONY FROM THE OFFICE OF THE COUNTY ATTORNEY  
COUNTY OF KAUA'I TO THE SENATE COMMITTEE ON JUDICIARY**

Hearing on Senate Bill No. 2170  
Date: Friday, February 22, 2008  
Time: 10:00 a.m.  
Place: Conference Room 016  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Senate Committee on Judiciary  
Honorable Brian Taniguchi, Chair  
Honorable Clayton Hee, Vice Chair  
Committee members

Re: Testimony of the Office of the County Attorney,  
County of Kaua'i, on Senate Bill No. 2170  
Relating to Public Land

My name is Harrison K. Kawate, First Deputy County Attorney, County of Kaua'i, testifying on behalf of the County of Kaua'i.

The County of Kaua'i strongly supports the intent of Senate Bill No. 2170.

The purpose of this bill is to clarify any possible ambiguity included in the definition portion of Act 82 relating to "Improved public lands" by deleting the last phrase of the definition: ", and further excludes any public beach park falling within Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999."

Honorable Brian Taniguchi, Chair  
Honorable Clayton Hee, Vice Chair  
Page 2 of 4  
February 21, 2008

The deletion of this last phrase will clear up any ambiguity between Acts 82 and 190 as they relate to public land liability for the counties.

In order to provide some clarity to this issue, a brief overview of Acts 190 and 82 are set forth below.

#### Act 190

Act 190 was passed in 1996. This Act provided both State and counties limited protection with regard to ocean based natural dangerous conditions if the State and counties complied with certain procedures.

Under the terms of Act 190, the State or county, operating a public beach park, presumptively meets its duty to warn the public of specific dangerous shorebreak or strong currents in oceans adjacent to the public beach park if the State or county posts signs warning of these dangerous conditions and these signs are approved by the chairperson of the board of land and natural resources.

#### Act 82

Act 82 was passed in 2003. The enacting language of Act 82 states in pertinent part that:

There is an increasing public demand for outdoor recreation on public lands. Many of these lands are inherently dangerous and contain many potential risks, especially for those who are unprepared, participate in hazardous recreational activities, or choose to ignore warning signs. . . . Uncertainty regarding the standard of care that must be exercised by the State or counties to prevent costly lawsuits may result in public recreational assets being closed.

To provide a remedy for this problem, a state risk assessment working group could be established to identify methods to mitigate potential risks. . . .

Honorable Brian Taniguchi, Chair  
Honorable Clayton Hee, Vice Chair  
Page 3 of 4  
February 21, 2008

The legislature finds that it is in the best interests of the public to provide the State and counties with a conditional protection from liability arising from the inherent risks on public lands under their jurisdiction, that strikes an equitable balance between the personal responsibility of individuals engaged in recreational pursuits on public lands, and government's duty to protect its citizens from harm. The legislature further finds that allowing the State and counties to manage their risks on public lands . . .

The purpose of this Act is to establish a process in which the State and counties are provided protection from liability on improved public lands when the requirements of this Act are met. (Emphasis added.)

The language of Act 82 clearly and unambiguously cites to both State and counties in providing the limited protection contained in Act 82, and the process through which both State and counties must go through in order to afford themselves of this protection.

However, the definition contained in Act 82 relating to "Improved public lands" states:

"Improved public lands" means lands designated as part of the state park system, parks, and parkways under chapter 184, or as part of a county's park system, and lands which are part of the Hawaii statewide trail and access system under chapter 198D, excluding buildings and structures constructed upon such lands. For purposes of this part, "improved public lands" excludes ocean and submerged lands, and further excludes any public beach park falling within Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999.

Act 190 does not define either "improved public lands" or "public beach parks," however, Act 190 uses the phrase "public beach park" in relation to both State and counties.

It is submitted that it was the intent of the drafters of Act 190 to provide protection for both State and counties with regard to dangerous natural conditions in the ocean and it was the intent of the drafters of Act 82 to provide protection for both State and counties with regard to dangerous natural conditions on land.

Honorable Brian Taniguchi, Chair  
Honorable Clayton Hee, Vice Chair  
Page 4 of 4  
February 21, 2008

The instant bill seeks to remove any ambiguity that may exist in light of the language of Acts 82 and 190, and the intent of the drafters of Acts 82 and 190, by removing the last phrase of the definition portion of "Improved public lands" contained in Act 82.

If there are any questions with regard to the foregoing, I will be present to respond at the hearing of this bill.

Sincerely,

HARRISON K. KAWATE  
First Deputy County Attorney

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER  
LAWYERS OF HAWAII (CLH) IN OPPOSITION TO S.B. NO. 2170, RELATING TO  
PUBLIC LAND**

February 22, 2008

To: Chairman Brian Taniguchi and Members of the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer Lawyers of Hawaii (CLH) in opposition to S.B. No. 2170.

The purpose of this bill is to enlarge immunity for public beach parks. Public beach parks were granted immunity for dangerous natural conditions in the oceans and on their shores by Act 190 in 1996. Other public lands were afforded immunity from liability relating to natural conditions (other than public beach parks) by Act 82 in 2003. The exclusion of public beach parks from Act 82 was a deliberate consideration of the extraordinary immunity provisions already granted to public beach parks earlier in Act 190. The decision to exclude public beach parks from Act 82 struck a fair balance between protection of innocent citizens, limitation of liability for governmental entities and encouraging the safe maintenance and operation of public lands.

Immunity should always be considered a measure of last resort when less drastic measures cannot fairly balance the goals of safe parks for our communities, accountability for governmental failures to exercise reasonable care in the maintenance of our parks, redress for those injured through governmental negligence, and controlling governmental liability for its negligence within reasonable limits. Immunity should be granted only in extreme cases because it eliminates accountability on the part of government and encourages complacency on matters of public safety by removing financial penalties for governmental negligence, while at the same

time arbitrarily depriving those citizens injured by governmental negligence from fair and reasonable redress.

The overwhelming source of liability related to public beach parks involves natural conditions of the ocean and shore which may be beyond human control. That is the reason that public beach parks were granted the extraordinary protection of immunity, regardless of whether government was otherwise negligent in the maintenance and promotion of public safety, for liability related to natural conditions in the ocean and on the shores of public beach parks. There is no crisis or other extraordinary reason for extending public beach park immunity beyond activities in and around the ocean and shore. Indeed, in combination with immunity for lifeguard operations, public beach parks currently enjoy the highest degree of immunity applicable to public or private lands. There simply is no present justification for increasing the immunities already enjoyed by public beach parks.

Thank you very much for this opportunity to testify in opposition to S.B. No. 2170.



**TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FOURTH LEGISLATURE, 2008**

---

**ON THE FOLLOWING MEASURE:**

S.B. NO. 2170, RELATING TO PUBLIC LAND.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY AND LABOR

**DATE:** Friday, February 22, 2008 **TIME:** 10:00 AM

**LOCATION:** State Capitol, Room 016  
*Deliver to: Committee Clerk, Room 219, 1 Copy*

**TESTIFIER(S):** WRITTEN TESTIMONY ONLY

(For further information, please contact Deputy Attorney General Caron Inagaki, at 586-1300.)

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Chair Taniguchi and Members of the Committee:

The Attorney General supports this bill. The purpose of this bill is to clarify Act 82, Session Laws of Hawaii 2003, which excludes any public beach park falling within Act 190, Session Laws of Hawaii 1996, from its purview.

Act 82 established a process by which a legally adequate warning system for improved public lands could be developed that warned of dangerous natural conditions and provided the State and counties with protection for potentially unlimited liability arising out of recreational activities on public lands. Act 190 established a similar warning system and provided immunity from dangerous natural conditions in the ocean adjacent to State or county beach parks.

Act 82 currently defines "improved public lands" to exclude "any public beach park falling within Act 190, Session Laws of Hawaii 1996, as amended by Act 101, Session Laws of Hawaii 1999." Act 190 relates only to dangerous natural conditions in the ocean adjacent to public beach parks. Thus, the current language of Act 82 is confusing because it lends itself to different interpretations with regard to land-based natural hazards, such as falling rocks, on public beach parks. On the one hand, the exclusion could mean that since Act 190 only relates to

hazards in the ocean, a land-based hazard would still be covered by Act 82 since it does not technically "fall within" Act 190. On the other hand, the same language could be interpreted to mean that any land-based natural hazards such as falling rocks that occur on public beach parks would not be covered by either Act 190 or Act 82. This interpretation clearly would be contrary to the intent and purposes of Acts 82 and 190.

The process established by Acts 82 and 190 has allowed the State and counties to refine their signage and improve the quality of its warning signs for hazards both in the ocean and on designated public lands within the State and county park systems, benefiting public users and at the same time providing the State and counties with conditional protection from liability for the inherent risks that exist on public lands and in the ocean. There is no reason why a land-based natural hazard should be excluded simply because it occurs on a public beach park.

This bill would eliminate any confusion as to the interpretation of Act 82 and clarify the intent of Act 82 to cover all land-based natural conditions and Act 190 to cover natural conditions in the ocean. Therefore, we request your support in passing S.B. No. 2170.

LATE

# Hawaii State Association of Counties

Counties of Kaua'i, Maui and Hawai'i, City & County of Honolulu



February 21, 2008



Testimony of Council Vice Chair Mel Rapozo  
President of the Hawai'i State Association of Counties

on

SB 2170, Relating to Public Land  
Senate Committee on Judiciary and Labor

February 22, 2008

10 a.m.

Conference Room 016.

Dear Chair Taniguchi and Members:

Thank you for the opportunity to submit testimony in support of this important measure which is of concern to the counties.

SB 2170 has been approved as part of the Hawai'i State Association of Counties' (HSAC) Legislative Package which is comprised of members from each County Council and the Mayors of each county as ex-officio members.

HSAC supports this measure for the following reasons:

1. The bill amends Act 82, Session Laws of Hawai'i 2003, to remove the exclusion of public beach parks in the definition of improved public lands.
2. Public beach parks are an important part of the public park system and should not be singled out from other types of parks and trails within the State.
3. Deletion of the exclusion would provide the counties with additional immunity in its operation of county parks.

I humbly request your favorable consideration in passage of SB 2170, Relating to Public Land.

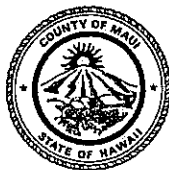
Sincerely,

MEL RAPOZO  
HSAC President



**LATE**

CHARMAINE TAVARES  
MAYOR



200 South High Street  
Wailuku, Hawaii 96793-2155  
Telephone (808) 270-7855  
Fax (808) 270-7870  
E-mail: mayors.office@mauicounty.gov

**OFFICE OF THE MAYOR**  
County of Maui

February 25, 2008

The Honorable Brian Taniguchi, Chair  
The Honorable Clayton Hee, Vice Chair  
Senate Committee on Judiciary and Labor  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

**RE: SB 2170 – RELATING TO PUBLIC LAND**

Dear Chair Taniguchi and Vice Chair Hee:

The County of Maui strongly supports Senate Bill 2170, which amends Act 82, Session Laws of Hawaii 2003, to protect counties from liability arising from natural conditions in county public beach parks.

Act 82 (2003) provides for the design and placement of signs warning of natural hazards on improved public lands, but excludes public beach parks. This exclusion is apparently based on a misapprehension of the applicability of Act 190 (1996), which deals with warnings about dangerous shore break and undertow.

A Status Report prepared by the Department of Land and Natural Resources describes Act 190 as follows:

Act 190 SLH 1996, establishes a process for the State and Counties to provide both meaningful and legally adequate warnings to the general public of extremely dangerous natural conditions in ocean areas adjacent to their respective public beach parks. The Act recognizes a duty to warn specifically of dangerous shore break or strong current in the ocean fronting a beach park, if either condition exists, is extremely dangerous, is typical for that beach park, and poses a risk of serious injury or death.

Act 190 does not address liabilities posed by natural conditions such as rock cliff faces and the like. This is the purpose of Act 82 and it should not refer to Act 190 as a basis for excluding public beach parks. SB 2170 is necessary and prudent. It will protect members of the public who use beach parks by providing approved warnings.

Maui County has many ocean parks that should be included in the immunity provided to "improved public lands". One example is the world-renowned Hookipa Beach Park that is

The Honorable Brian Taniguchi, Chair  
The Honorable Clayton Hee, Vice Chair  
Page 2  
February 25, 2008

partially surrounded by rocky cliffs. Another example is Keanae Park, where the natural shoreline is beautiful but rough and rocky. Another popular ocean park, Honomanu Park, is also in a fairly remote and natural area.

Therefore, I request your support in passing SB 2170.

Sincerely,

A handwritten signature in cursive script, reading "Charmaine Tavares". The signature is written in black ink and has a long, sweeping tail that extends to the right.

CHARMAINE TAVARES  
Mayor, County of Maui