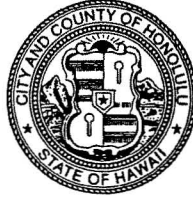


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March 13, 2008

The Honorable Ken Ito, Chair  
The Honorable Jon Riki Karamatsu, Vice Chair  
Committee on Water, Land, Ocean Resources & Hawaiian Affairs  
House of Representatives  
Twenty-Fourth Legislature  
State of Hawaii  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Ito, Vice Chair Karamatsu and Committee Members:

Re: Senate Bill 2170, SD 1 Relating to Public Land

The City and County of Honolulu ("City") strongly supports Senate Bill 2170, SD 1 which seeks to correct an inadvertent error in Act 82, Session Laws of Hawaii 2003 and requests that Senate Bill 2170, S.D. 1 be amended to take effect upon approval.

The purpose of Act 82 was to establish a risk management procedure for the design and placement of signs that warn of dangerous natural conditions on improved public lands to protect the State and counties from liability for injuries resulting from those dangerous conditions. Act 82 defines "improved public lands":

...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.*

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Act 190, Session Laws 1996, provides immunity from liability arising from dangerous conditions in the oceans; *specifically of dangerous shorebreak or strong current in the ocean:*

...the purpose of this Act is to establish a process in which the State and counties can provide both meaningful and legally adequate warnings to the public regarding extremely dangerous natural conditions *in the ocean adjacent to public beach parks*. The legislature believes that this Act will provide a process by which a legally adequate warning system can be developed at public beach parks which will increase public safety, *reduce ocean-related accidents*, and *protect the State and counties from the unlimited liability they face with regards to activities in the ocean and at public beaches*.

Section 1, Act 190 (1996).

In testimony on S.B. No. 2170, the Consumer Lawyers of Hawaii say: "*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.*" However, we believe that the exclusion of public beach parks was an inadvertent error because there are land-based hazards located within or abutting many of the public beach parks, including abutting mountain cliffs which create a potential for falling boulders. The legislative history of Act 82 confirms that the Legislature never intended to exclude dangerous natural conditions not arising in the oceans found on public beach parks. The Legislature's intent in enacting Act 82, Session Laws of Hawaii 2003, was:

...with regard to improved public lands, this measure creates a conclusive presumption that the government's **duty to warn the public of dangerous conditions on improved public lands is met if warning signs are posted.**

2003 Hse. Journal, at 1253, Stand. Comm. Rpt. 308 (emphasis added).

Your committee finds that many of Hawaii's improved and unimproved public lands pose risk of injury to users from dangerous natural conditions. Without some protection from State liability for injuries occurring on public lands, many recreational areas would have to be closed.

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Your Committee further finds that many other states have established complete immunity for liability resulting from public recreational use on state lands. *This measure strikes an equitable balance between the personal responsibility of people engaged in recreational pursuits and the duty of government to take reasonable measures to protect the public from harm by providing adequate warning.*

2003 Sen. Journal, at 1548-1549, Stand. Com. Rep. 1231 (emphasis added).

The committee reports of the Senate Committee on Intergovernmental and Military Affairs and Committee on Judiciary and Labor hearing Senate Bill 2170 further endorse the Senate's understanding that dangerous natural conditions exists in public beach parks and that there is **no rational distinction between public beach parks and public parks:**

**Your Committee finds that dangerous natural conditions exist in public beach parks as well as on inland parks.** Some beach parks abut mountain cliffs that pose a potential for falling boulders. The intent of this measure is to extend to public beach parks the same protections with regard to dangerous natural conditions as apply to other improved public lands of the state park system and county park system. **Your Committee believes that there is no rational distinction between public beach parks and public parks insofar as responsibility for dangerous natural conditions is concerned.**

Stand. Com. Rep. No. 2338, S.B. No. 2170, Sen. Comm. on Intergovernmental and Military Affairs (emphasis added).

Your Committee finds that Act 82, Session Laws of Hawaii 2003, provided the State and the counties with the means to limit their liability for injuries that may be caused by dangerous natural conditions found on public lands.

Stand. Com. Rep. No. 2871, S.B. No. 2170, S.D.1, Sen. Comm. on Judiciary and Labor.

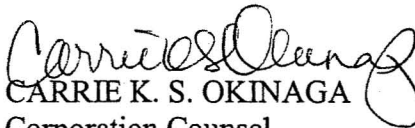
For these reasons, the City requests your support in passing Senate Bill 2170, S.D. 1, to be effective upon approval. The passage of Senate Bill 2170, S.D.1 will correct any ambiguities in the law and will ensure that the intent and

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scope of Act 82 to address dangerous natural conditions in all State and county public beach parks is accomplished.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,

  
CARRIE K. S. OKINAGA  
Corporation Counsel

CKSO:ey

SB2170 SD1 (2008)-TESTIMONY