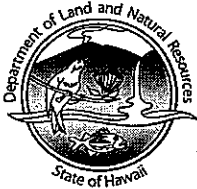


NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

WILLIAM J. AILA, JR.  
INTERIM CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
GUY H. KAULUKUKUI  
FIRST DEPUTY  
WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER  
AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KATHOLOLWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
WILLIAM J. AILA, JR.  
Chairperson

Before the House Committee on  
WATER, LAND, & OCEAN RESOURCES

Friday, February 3, 2012  
9:00 AM  
State Capitol, Conference Room 325

In consideration of  
HOUSE BILL 2463  
RELATING TO PUBLIC LAND LIABILITY

House Bill 2463 and companion Senate Bill 2725 propose to make permanent, laws that provide the state and county governments with liability protection for public use of certain state or county recreational areas. The Department of Land and Natural Resources (Department) strongly supports this Administration bill.

This measure amends Act 82, Session Laws of Hawaii 2003 (Act 82), by eliminating the provision that repeals the Act in 2014. Act 82 established a process that balances the responsibility of the government's duty to warn of dangerous natural conditions in specific state and county recreational areas adjacent to natural conditions, and the public's duty to heed posted signs and make an informed choice.

Act 82 was promulgated due to concern about the adequacy of warning signs for potentially dangerous natural conditions and public exposure at state and county parks and along specific Na Ala Hele trails and access roads (defined as improved public lands under Act 82). The Department contracted the United States Forest Service to conduct an evaluation of these specific state parks and trails to identify reoccurring dangerous natural conditions that could not be mitigated and that warranted signage. The four natural conditions identified are: rock fall, flashfloods, cliffs and submerged object in streams that would cause injury from impact associated with diving or jumping into the water.

Act 82 established a Risk Assessment Working Group (RAWG) that reviewed the beach safety signs, as well as the most current warning sign standards from the American National Standards Institute (ANSI). Using current ANSI guidelines, the RAWG established prototype sign design

and placement guidelines. The prototype signs underwent public review and were modified according to comments. The guidelines were incorporated into Title 13, Chapter 8, Hawaii Administrative Rules, for the design and placement of warning signs on improved public lands, which have been approved by the Governor. The final set of signs and their ancillary locations have been approved by the Board of Land and Natural Resources and are now in place at many parks and trails. The signs are now concluded to be adequate, thus reducing the state and county liability associated with the identified natural conditions.

For the reasons stated in this testimony, the Department strongly supports House Bill 2463 in its objective to enhance safety of public park users while promoting a greater understanding, respect, and enjoyment of the outdoors. The sunset provision in Act 82 needs to be removed.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SIXTH LEGISLATURE, 2012**

---

**ON THE FOLLOWING MEASURE:**

**H.B. NO. 2463, RELATING TO PUBLIC LAND LIABILITY.**

**BEFORE THE:**

**HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES**

**DATE:** Friday, February 3, 2012

**TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Caron Inagaki, Deputy Attorney General or  
Robin Kishi, Deputy Attorney General

---

Chair Chang and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to make permanent the liability protections for warning signs for outdoor recreation on public lands. At present, the warning sign liability protections provided in Act 82, Session Laws of Hawaii (SLH) 2003, will sunset on June 30, 2014.

Act 82 established a system of warning signs to increase public safety, and protect the State and counties from unlimited liability arising out of recreational activities on public lands. Many of these lands are inherently dangerous and contain potential risks. Act 82 created a process by which a risk assessment group reviews both the design and placement of a proposed warning sign. If the risk assessment group approves the sign and placement, the group will then recommend it to the Chairperson of the Board of Land and Natural Resources. Public hearings are conducted and comments are received from the public throughout the process. If the Chairperson approves the design and placement of the sign, the approval will have the legal effect of providing liability protection to the State or the county after the sign is posted. These rigorous requirements must be met in order for the government entities to be afforded protection from liability.

There is now a consistent process for natural hazard evaluation and appurtenant sign designs. Administrative rules have been put in place that eliminate the ambiguity about the design and placement of warning signs, and state and county governments have institutionalized this process.

Under Act 152, SLH 2007, the Legislature found that the limitations on state and county liability have proven to be beneficial to the state and county governments, as well as the public. The liability protections of Act 82, as well as Act 170, SLH 2002, and Act 190, SLH 1996, as amended, have reduced the unwarranted exposure of the state and county governments to substantial damages and, as a result, have allowed the state and county governments to keep recreational areas and public beach parks that may have potentially dangerous natural conditions open to the public. The Legislature further found that state and county compliance with the statutorily required public warning of dangerous conditions at recreational areas and public beach parks have contributed to an improvement in public safety in these areas. This justifies making the current liability exemptions for state and county governments, relating to recreational areas (Act 82) and public beach parks (Act 190) and actions of county lifeguards (Act 170), permanent or extending their protections.

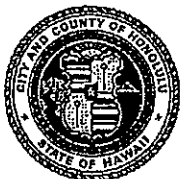
Act 152 also established a task force to examine the effectiveness of, collect data, and provide information to the legislature on, Acts 82, 190, and 170. The report submitted by the task force to the 2009 Legislature found with near unanimity that the program established pursuant to Act 82 was effective and promotes and increases public safety. The task force, again, with near unanimity, recommended that Act 82 be made permanent. The lone dissenter was the representative of Consumer Lawyers of Hawaii (now known as the Hawaii Association for Justice) who wanted this Act considered at a later time.

The process established by Act 82 has allowed the State and the counties to refine its signage and improve the quality of its warning signs on public lands throughout the State, benefiting public users and at the same time providing the State and the counties with conditional protection from liability for the inherent risks that exist on public lands.

Act 82 should be made permanent. We therefore respectfully request that the Committee pass this bill.

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 110 \* HONOLULU, HAWAII 96813  
PHONE: (808) 768-5193 \* FAX: (808) 768-5105 \* INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

PETER B. CARLISLE  
MAYOR



ROBERT CARSON GODBEY  
CORPORATION COUNSEL  
  
KATHLEEN A. KELLY  
FIRST DEPUTY CORPORATION COUNSEL

February 2, 2012

The Honorable Jerry L. Chang, Chair  
The Honorable Sharon E. Har, Vice Chair  
and Committee Members  
Committee on Water, Land, & Ocean Resources  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Chang, Vice-Chair Har, and Committee Members:

Re: H. B. 2463, Relating to Public Land Liability

The City and County of Honolulu ("City") strongly supports H.B. 2463 which seeks to make permanent the law limiting the liability exposure of the government when providing public access to ocean and recreational areas (Act 82, SLH 2003).

Passage of H.B. 2463 would allow the public continued access to our ocean and recreational areas while still providing the Counties with protection from liability arising from dangerous natural conditions in these areas.

In its report to the Twenty-Fifth State Legislature, Regular Session 2009, the Task Force created by Act 152, Sessions Laws of Hawaii, 2007 ("Act 152 Task Force") to advise the Legislature of the effectiveness of, and collect sufficient data relating to Act 82, Act 170, and Act 190, SLH 1996, as amended concluded that the various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety, and that the procedures contained therein have been implemented and continue to be implemented by the State and the Counties.

The Honorable Jerry L. Chang, Chair  
The Honorable Sharon E. Har, Vice Chair  
HB2463  
February 2, 2012  
Page 2

Both the State and the Counties have adopted uniform signage design and installed signage compliant with the requirements of Act 82. Where funding has been appropriated, counties have stationed lifeguards at certain State beach parks. The Act 152 Task Force report further discusses the benefits of posting Act 190 and Act 82 signage to the public and how lives have been saved as a result of the posting of County lifeguards at State beach parks. Based upon its review of the various County programs for the implementation of Act 82 and Act 170, the Act 152 Task Force concluded with the recommendation that the sunset dates of Act 82 and Act 170 be repealed.

The City fully supports the recommendations of the Act 152 Task Force, and requests your support in passing H.B. No. 2463 to make Act 82 a permanent law.

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

Very truly yours,



 ROBERT CARSON GODBEY  
Corporation Counsel

RCG:ey

HB2463 TESTIMONY

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 2463**

Date: Friday, February 3, 2012

Time: 9:00 am

To: Chairman Jerry Chang and Members of the House Committee on Water, Land, &  
Ocean Resources:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the  
Hawaii Association for Justice (HAJ) in OPPOSITION to H.B. No. 2463, relating to  
Public Land Liability.

The purpose of this bill is to make Act 82, Session Laws of Hawaii, 2003, as  
amended, permanent. Currently, Act 82 regarding certain protections for the state and  
counties on improved and unimproved lands is scheduled to sunset on June 30, 2014, and  
this was enacted by the legislature with the knowledge of all of the parties concerned,  
including the state and counties. The sunset provision in the original bill passed in 2003  
was included to allow DLNR to work with various user groups regarding the design  
placement of warning signs and the time for an evaluation of this measure after sufficient  
experience has been obtained. The sunset date was extended several times and during the  
2009 legislative session, the conference committee, in a bill pertaining to several prior  
Acts pertaining to lifeguards and public recreational lands, determined that it would be  
best to extend the sunset date to 2014 for Act 82.

A sunset provision is included to give the proponents of the legislation as well as  
others the opportunity to collect sufficient information to present to the legislature so that  
the members could make a reasonable and informed decision as to whether the law they  
passed has worked and is still working in the way they intended.

Because this Act has a major impact on consumer rights, HAJ feels it is more prudent to first obtain sufficient information on how the law has worked. Further, Act 82 required that the state and counties implement an accident reporting and record keeping program and HAJ feels that the legislature should determine whether this has been done and is working. There are also duties imposed on the risk assessment working group created by Act 82. We feel that the legislature should wait to fully assess the impact of this law during the 2014 session when it is scheduled to sunset and when the legislature can make it permanent or modify it according to the information presented.

Thank you very much for allowing me to testify in OPPOSITION to this measure.