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Subject: *Submitted testimony for HB2236 on Feb 5, 2014 09:15AM*

HB2236

Submitted on: 2/3/2014

Testimony for WAL on Feb 5, 2014 09:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Max Cooper	Hawaii Rifle Association	Support	No

Comments:

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**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

H.B. NO. 2236, RELATING TO LANDOWNERS' LIABILITY.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Wednesday, February 05, 2014 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 325

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

Chair Evans and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to amend section 520-2, Hawaii Revised Statutes (HRS), to include government lands by deleting the wording "other than lands owned by the government" from the definition of "land."

Chapter 520 of the Hawaii Revised Statutes is often referred to as the "Recreational Use Statute." The purpose of this chapter is to encourage landowners to make their land available to the public for recreational purposes by limiting the landowners' liability to persons who enter the land for those purposes. At present, however, only private landowners are afforded limited liability under the statute.

The largest acreage of the most scenic natural beauty that visitors as well as residents continually access for recreational purposes are those lands owned by the State and counties. The State, alone, has in excess of 33,000 acres within its parks system upon which people hunt, fish, swim, camp, hike, picnic, rock climb, and otherwise recreate. The total acreage under the Department of Land and Natural Resource is in excess of one million acres.

Under section 662-2, HRS, of the State Tort Liability Act, the State may be sued and held liable in the same manner and to the same extent as private individuals under like circumstances. Ironically, and most unfortunately, the State is not afforded the same protection under the law that private landowner are afforded under chapter 520. The State and counties are not able to assert in lawsuits the same defenses to, and limitations on, liability that private landowners are

able to invoke when they are sued by persons who sustain injury or death while recreating on their lands.

If the State is permitted to be sued for tort liability the same as private individuals under the same circumstances, then the State should have the same defenses to and limitations on liability as private individuals. Without the amendment, the State and its taxpayers will continue to be subject to large judgments awarded by judges arising out of accidents in which visitor and residents recreate on state land -- accidents for which no private landowner in similar circumstances would be liable.

This is illustrated by the decision in Brem, et al. v. State of Hawaii, Civil No. 07-1-0176, Fifth Circuit Court, State of Hawaii, a couple of years ago in which the court found the State 100 percent at fault for the deaths of two tourists who attempted to climb down to the waterfall at Opaekaa Falls on Kauai. The path the tourists took was not an official trail maintained by the State. Instead, it was an area that had been left by the State in its natural condition. Ultimately, the case was settled for more than \$15 million, nearly \$10 million of which was paid by the State's excess insurance carrier and the remainder was paid from the general fund.

The public will continue to seek adventures on state land. However, because many will fail to exercise due care for their own safety, injuries and deaths will continue to occur. In some instances, the State will be forced to close some of the sites. In other instances, the site will have to be evaluated for fencing, signage, or other measures, all of which eventually mar the once beautiful natural sites.

Hawaii has continued to lag behind other states in protecting its governmental entities with appropriate legislation. There is a succinctly written article that is available on the internet:

“What Are Recreational Use Statutes?” includes a state-by-state comparison of recreational use statutes, and citations to those statutes:

http://www.americanwhitewater.org/archive/article/124/AW_Rec_Use_Table.htm#contents

Some states expressly include governmental entities within the definition of the protected landowner, e.g., Alabama, Illinois, and Ohio. This bill, which contains the amendment to the definition of “land” in section 520-2, would do the same thing.

Other states have gone beyond their recreational use statutes and enacted specific recreational liability immunity legislation specifically for their governmental entities, e.g.,

Virginia, Kansas, and Minnesota. In California there is immunity for “hazardous recreational activity” on state lands. Governmental Code section 831.7.

Even the federal courts have deemed that the federal government has the protection of the Hawaii recreational use statute. See Howard v. U.S., 181 F.3d 1064 (9th Cir. 1999). Only the State of Hawaii and the counties are not afforded the protection of limited liability under the law. Our appellate court had determined that the State of Hawaii cannot avail itself of the protection under the recreational use statute. See Lansdell v. County of Kauai, 110 Hawaii 189, 130 P.3d 1054 (2006)

This bill is necessary to ensure that the State and counties, as landowners, can make their land available to the public for recreational purposes by limiting the State’s and counties’ liability to persons who enter the land for those purposes, and to place the State and counties on equal footing with private landowners.

We respectfully request that this bill be passed.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, JR.
Chairperson

Before the House Committee on
WATER & LAND

Wednesday, February 5, 2014
9:15 AM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2236
RELATING TO LANDOWNERS' LIABILITY

House Bill 2236 proposes to amend Section 520-2, Hawaii Revised Statutes (HRS), to delete the exclusion of lands owned by the government in the definition of "land". **The Department of Land and Natural Resources (Department) is supportive of this bill.**

House Bill 2236 will extend the purpose of Chapter 520, HRS, from only covering private lands to government lands. The purpose of Section 520-1, HRS, is to encourage owners of land to make land and water areas available to the public for recreational purposes by limiting their liability toward persons entering thereon for such purposes. This bill will extend same liability protection to the government as is granted to private landowners. With the increase in social media attention, there has been a surge in unauthorized recreational users on unmanaged lands, thus illustrating the need for greater liability protection for government owned lands. Further, with the remote conditions of many of the Department's lands and the limited staff enforcement officers, it is not possible for the Department to police all of the government lands to eliminate recreational users in restricted or hazardous areas.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
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
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 2236
RELATING TO LANDOWNER'S LIABILITY**

**February 5, 2014
9:15AM**

To: Chairperson Cindy Evans and Members of the House Committee on Water and Land:

My name is Bob Toyofuku and I am testifying on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. No. 2236.

The purpose of this bill is to include the state and county governments as part of Chapter 520, HRS by amending the definition of "land". Chapter 520 was enacted to give **private** landowners certain protections from liability when they made their lands available for recreational purposes at no charge to the user. HAJ has always maintained that it is not prudent to alter the basic purpose of Chapter 520. Government lands that are open to the public for recreational purposes are considered public lands and are already accessible by the public without charge unless restricted for some reason. To include government under chapter 520 would create a situation where state and county government would have no duty to keep roads, parks, buildings, etc. safe. This bill will create conflict with the recreational use statute regarding its purpose and interpretation as well as unintended consequences.

HAJ opposes this bill and requests that it not be passed. Thank you for the opportunity to testify on this bill.