

SB2248

Measure Title: RELATING TO PUBLIC LAND LIABILITY.

Report Title: Public Land Liability

Description: Makes permanent Act 82, Session Laws of Hawaii 2003, as amended, relating to the limitations of liability for public entities based on the duty to warn of dangers on public lands.

Companion:

Package: None

Current Referral: WTL/JDL, WAM

Introducer(s): HEE

<u>Sort by Date</u>		Status Text
1/16/2014	S	Introduced.
1/16/2014	S	Passed First Reading.
1/21/2014	S	Referred to WTL/JDL, WAM.
1/30/2014	S	The committee(s) on WTL/JDL has scheduled a public hearing on 02-07-14 1:30PM in conference room 225.
2/4/2014	S	The committee(s) on WTL/JDL has rescheduled its public hearing to 02-07-14 1:45PM in conference room 225.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the Senate Committees on
WATER AND LAND
and
JUDICIARY AND LABOR**

**Friday, February 7, 2014
1:45 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 2248
RELATING TO PUBLIC LAND LIABILITY**

Senate Bill 2248 proposes to amend Act 82, Session Laws of Hawaii (SLH) 2003, by deleting the sunset date of June 30, 2014, thus making permanent the liability protections provided by warning signs for outdoor recreation on public lands. **The Department of Land and Natural Resources (Department) strongly supports this measure, but asks that the Committees consider the language in Senate Bill 1007, Senate Draft 2, House Draft 1, which was passed by the House Judiciary Committee on Thursday, January 30, 2014.** Senate Bill 1007, Senate Draft 2, House Draft 1 addresses the sunset date of Act 82, but also includes provisions that would clarify government's duty to warn where recreational activities such as rock climbing occur.

Since the passage of legislation in the form of Act 82, SLH 2003, and in the ensuing 11 years, the Department has initiated a comprehensive sign program that is deployed statewide in public recreational areas associated with parks and wilderness trails. These actions have resulted in a variety of critical outcomes and now institutionalized management practices associated with Act 82:

- The creation of a statewide risk assessment working group that established general design and placement standards for of warning signs and continues to review the placement of these signs and new design as warranted by conditions and exposure.
- The promulgation of Chapter 13-8, Hawaii Administrative Rules, for the Design and Placement of Warning Signs
- The approval process through the Board of Land and Natural Resources (Board) on the placement, and as warranted, the design of new warning signs.

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

- Sign inspection that includes records of the date of each sign location Board approval, installation, and the sign's condition over time.
- Over 400 Act 82 warning signs have been installed and are maintained by the Divisions of State Parks and Forestry and Wildlife, Na Ala Hele Trails and Access Program.

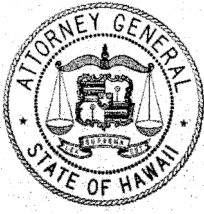
In addition to making Act 82 permanent after 11 years of departmental and county implementation, Senate Bill 1007, Senate Draft 2, House Draft 1 contains language that would allow for liability protection on public land where recreational activities such as rock climbing occur, with the posting of warning signs associated with exposure to hazards associated with this activity.

The public now has become accustomed to seeing the uniform, standard signs warning of potential exposure to hazardous natural conditions at managed trailheads and park entrances - in addition to at the actual point of exposure - across the State of Hawaii.

This sign program strikes the balance between the government's duty to warn, and the public's responsibility to heed that warning and make an informed choice, before engaging in recreational activity.

It is time to now make this warning management protocol permanent.

The Department supports Senate Bill 2248, but prefers the language in Senate Bill 1007, Senate Draft 2, House Draft 1.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2248, RELATING TO PUBLIC LAND LIABILITY.

BEFORE THE:

SENATE COMMITTEES ON WATER AND LAND AND ON JUDICIARY AND LABOR

DATE: Friday, February 7, 2014

TIME: 1:45 p.m.

LOCATION: State Capitol, Room 225

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

Chairs Solomon and Hee and Members of the Committees:

The Department of the Attorney General strongly supports this bill.

The bill will make Act 82, Session Laws of Hawaii 2003, permanent. Act 82 had been successful in improving the safety of public lands for public users by establishing a comprehensive statewide system in which hazards thereon are identified and evaluated for the placement of appropriate warning signs and devices.

The system includes the design of state-of-the-art warning signs, evaluation of placement of those signs, and signage maintenance and monitoring guidelines. If the governmental entity proposes its plan for the warning of a dangerous condition for consideration by the Risk Assessment Working Group, and approval by the Board of Land and Natural Resources, the governmental entity is afforded a conclusive presumption that the hazard-appropriate sign posted provides legally adequate warning of the dangerous condition of which it warns.

The enactment of Act 82 has spurred the State and counties to be more proactive in their hazard identification and risk assessment. The law has also encouraged the uniformity of signs statewide.

Act 82 must be made permanent. The need to preserve the system that the law established is even more imperative now, as Hawaii continues to maintain its status as, and grow, as a destination for visitors seeking outdoor activities, some of which may be very risky.

If it is allowed to sunset on June 30, 2014, the counties and State may gradually lapse and revert to use of more island specific and idiosyncratic signage and placement. Eventually, the

comprehensive statewide hazard evaluation and warning system will dissolve to the detriment of our visitor and residents.

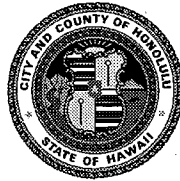
Senate Bill No. 1007, Senate Draft 2, Proposed House Draft 1, was heard before the House Committee on Judiciary and passed. That bill will also make Act 82 permanent. However, it does contain a much needed amendment to the law. For your review and consideration, we have attached a copy of S.B. No. 1007, S.D. 2, Proposed H.D. 1, as well as the testimony of the Department of the Attorney General in support of that measure.

We respectfully recommend that this measure be passed with the amendments contained in S.B. No. 1007, S.D. 2, Proposed H.D. 1.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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KIRK CALDWELL
MAYOR



DONNA Y. L. LEONG
CORPORATION COUNSEL

SHERYL L. NICHOLSON
FIRST DEPUTY CORPORATION COUNSEL

February 5, 2014

The Honorable Malama Solomon, Chair
and Members of the Committee on Water and Land
The Honorable Clayton Hee, Chair
and Members of the Committee on Judiciary and Labor
State Senate
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Solomon, Chair Hee, and Committee Members:

Subject: Senate Bill 2248, Relating to Public Land Liability

The Department of the Corporation Counsel of the City and County of Honolulu strongly supports S.B. 2248, which would repeal the June 30, 2014 sunset date of Act 82, SLH 2003, as amended ("Act 82"). Act 82 provides limited liability protection to the State and counties with regard to dangerous natural conditions on improved public lands, including state and county parks and trails, by creating a conclusive presumption that signs warning of the dangerous condition that are posted in accordance with the requirements of Act 82 are legally adequate to warn of the dangerous condition. It strikes a rational balance between the interests of recreational users seeking access to public lands and government's need to minimize liability resulting from dangerous conditions that may exist on these land and that are beyond its ability to prevent or control.

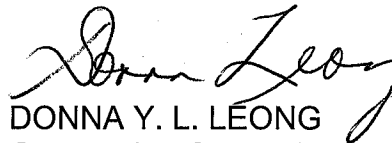
The repeal of the sunset of Act 82 will give the State and the counties the certainty and assurances needed to keep public parks open and accessible for public use, by reducing the threat of unlimited government exposure for conditions on public land that are outside the State's and counties' ability to prevent or control. Repealing the sunset provision may also have the salutary effect of encouraging the counties to expand recreational safety education and public awareness programs, rather than expending time and monies on defending costly litigation.

The Honorable Malama Solomon, Chair and
Members of the Committee on Water and Land
The Honorable Clayton Hee, Chair and
Members of the Committee on Judiciary and Labor
February 5, 2014
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For these reasons, we respectfully request your support in passing
S.B. 2248.

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

Very truly yours,



DONNA Y. L. LEONG
Corporation Counsel

DYLL:ey

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2248

Date: Friday, February 7, 2014
Time: 1:30 pm

To: Chairperson Malama Solomon and Chairman Clayton Hee and Members of the Senate Committee on Water and Land and the Senate Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 2248, Relating to 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 and 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 properly. There are also duties imposed on the risk assessment working group created by Act 82. During the 2013 session there were attempts to amend Act 82 and there are efforts to do so this session as well. In light of these attempts HAJ feels that the legislature should not pass this bill.

We feel that the legislature should consider extending the sunset date to fully assess the impact of this law to a time 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. Please feel free to contact me should you have any questions or desire additional information.

From: mailinglist@capitol.hawaii.gov
To: [WTLTestimony](#)
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB2248 on Feb 7, 2014 13:30PM*
Date: Friday, January 31, 2014 8:47:53 AM

SB2248

Submitted on: 1/31/2014

Testimony for WTL/JDL on Feb 7, 2014 13:30PM in Conference Room 225

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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