

JAN 22 2016

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# A BILL FOR AN ACT

RELATING TO PUBLIC LAND LIABILITY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. Section 171-8.6, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) There is established a risk assessment working group  
4 that shall be administratively attached to the department. The  
5 risk assessment working group shall provide consultation to the  
6 board regarding the design and placement of warning signs,  
7 devices, or systems on improved public lands as defined in  
8 section 663-51[7] and unimproved public lands, including any  
9 comprehensive plan submitted by the State, a county, or managing  
10 entity, to the board for approval. The risk assessment working  
11 group shall consist of the following members, who shall serve  
12 without compensation:

- 13 (1) The chairperson of the board, or designee;  
14 (2) The mayor of each county, or designee;  
15 (3) The administrators of the department's division of  
16 forestry and wildlife and the division of state parks,  
17 or their designees;



1 (4) The attorney general, or designee; and

2 (5) A person appointed by the chairperson of the board  
3 knowledgeable in warning sign design."

4 SECTION 2. Section 663-52, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "[~~f~~]**\$663-52**[~~f~~] **Conclusive presumptions relating to duty of**  
7 **public entities to warn of dangers on ~~improved~~ public lands.**

8 (a) A sign or signs warning of dangerous natural conditions on  
9 improved public lands or of dangerous non-natural conditions on  
10 unimproved public lands shall be conclusively presumed to be  
11 legally adequate warning of the dangerous [~~natural~~] conditions  
12 of which the sign or signs warn, if the State or a county posts  
13 a sign or signs warning of the dangerous [~~natural~~] conditions  
14 and the design and placement of the warning sign or signs are  
15 approved by the board. The board shall consult the risk  
16 assessment working group established by chapter 171, prior to  
17 approving the design and placement of a warning sign pursuant to  
18 this section.

19 (b) The State or a county may submit to the board a  
20 comprehensive plan for warning of dangerous natural conditions  
21 at a particular area of improved public lands[~~-~~] or of dangerous



1 non-natural conditions on unimproved public lands. The board  
2 shall review [~~the~~] any plan for adequacy of the warning as well  
3 as the design and placement of the warning signs, devices, or  
4 systems. The board shall consult with the risk assessment  
5 working group before approving [~~the~~] a plan. The risk  
6 assessment working group shall seek public comment on [~~the~~] any  
7 plan. In the event that the board after consulting with the  
8 risk assessment working group approves [~~the~~] a plan for a  
9 particular area of improved public lands[~~7~~] or unimproved public  
10 lands, and the State or a county posts the warnings provided for  
11 in the approved plan, then the warning signs, devices, or  
12 systems shall be conclusively presumed to be legally adequate  
13 warning of [~~all~~] the dangerous [~~natural~~] conditions [~~on the~~  
14 ~~improved public lands.~~] of which the sign or signs warn.

15 (c) The State or a county shall have no duty to warn of  
16 dangerous natural conditions on unimproved public lands.

17 (d) If a warning sign, device, or system is posted or  
18 established in accordance with this section on unimproved public  
19 lands[~~7~~] warning of dangerous natural conditions, the posting or  
20 establishment of the warning sign, device, or system shall not  
21 create a duty on the part of the State or county to warn of



1 other dangerous natural conditions on unimproved public lands or  
2 to place or establish an additional warning sign, device, or  
3 system in other locations on the unimproved public lands.

4 (e) The State and the counties shall implement and  
5 maintain a sign inspection program in which a park caretaker or  
6 other authorized person conducts documented inspections of all  
7 signs in the park or trail area or particular area of unimproved  
8 public land on a quarterly or more frequent basis.

9 Records shall be kept under the sign inspection program  
10 which document the date of each sign inspection and whether the  
11 particular sign inspected was in place, free of vandalism, and  
12 legible. The State and the counties shall annually provide the  
13 board with a copy of the documentation of all sign inspections  
14 under the sign inspection program.

15 The conclusive presumption provided by this section shall  
16 continue for any sign posted pursuant to this section for a  
17 period of one hundred twenty days after the last inspection that  
18 documented that the sign was in place and legible, after which  
19 the presumption shall lapse until the time at which the sign is  
20 subsequently inspected and documented to be in place and in  
21 legible condition.



1           In any circumstance in which the conclusive presumption  
2 lapses because of the lack of a documented inspection, the  
3 presumption shall be reestablished if the State or county, as  
4 the case may be, proves by a preponderance of the evidence that  
5 at the time of the incident at issue, the sign was in place and  
6 in legible condition.

7           (f) The board shall adopt rules pursuant to chapter 91  
8 establishing standards to guide the department of land and  
9 natural resources and the risk assessment working group in the  
10 general design and placement of warning signs; provided that  
11 chapter 91 shall not apply to any other process or action  
12 undertaken pursuant to this part.

13           (g) The State and the counties shall implement an accident  
14 reporting and recordkeeping program whereby all known accidents  
15 in park and trail areas and particular areas of unimproved  
16 public land where non-natural conditions exist are documented on  
17 an accident report form, and all such accident reports are kept  
18 on a permanent basis. The risk assessment working group shall  
19 review and use accident reports kept as part of this program as  
20 part of its consultation to the board under this section."



1 SECTION 3. Chapter 663, Hawaii Revised Statutes, is  
2 amended by amending the title of part VI to read as follows:

3 "LIMITATIONS ON PUBLIC ENTITY LIABILITY IN ACTIONS BASED UPON  
4 DUTY TO WARN OF NATURAL AND NON-NATURAL CONDITIONS"

5 SECTION 4. Statutory material to be repealed is bracketed  
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.  
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# S.B. NO. 2620

**Report Title:**

Public Land Liability; Unimproved Public Land; Signage

**Description:**

Extends the conclusive presumption of signage as legally adequate warning of dangerous conditions to "non-natural" conditions on unimproved public land.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

