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

POST OFFICE BOX 621
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**Testimony of
SUZANNE D. CASE
Chairperson**

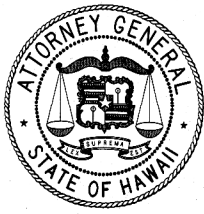
**Before the House Committee on
WATER & LAND**

**Monday, February 1, 2016
10:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2056
RELATING TO PUBLIC LAND LIABILITY**

House Bill 2056 propose to extend the conclusive presumption of signage as legally adequate warning of dangerous conditions to "non-natural" conditions on unimproved public land. **The Department of Land and Natural Resources (Department) strongly supports efforts to limit public entity liability in actions based upon duty to warn of certain conditions.**

At this time, the Department would defer to the Department of the Attorney General on the legal read of the specific language being proposed in this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2056, RELATING TO PUBLIC LAND LIABILITY.

BEFORE THE:

HOUSE COMMITTEE ON WATER AND LAND

DATE: Monday, February 1, 2016 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Robin Kishi, Deputy Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Yamane and Members of the Committee:

The Department of the Attorney General supports this bill.

Hawaii continues to be a destination for visitors seeking outdoor activities, some of which may be risky. Our islands have some of the most beautiful natural conditions, unmatched anywhere else in the world. However, some of those conditions and the paths leading to those areas are hazardous. As a result of the proliferation of commercial guidebooks and the unmonitored websites that have identified many of those areas, visitors have and will continue to gain access to those unimproved public lands. Thus, the identification and evaluation of dangerous natural conditions on unimproved public lands has and will continue to become more important.

The State must balance the safety of its visitors and residents with keeping as much of its public lands open as possible. We believe this bill will help the State achieve this mission.

Section 1 of the bill will ultimately result in the creation of a comprehensive hazard identification and risk assessment process. It should also result in the uniform design and placement of warning signs, devices, and systems by encouraging the State and counties to consult with the risk assessment working group.

Through the eventual elimination of idiosyncratic, island-specific signage and placement, which still exists today, a more comprehensive and uniform warning system should emerge to better ensure the safety of visitors and residents statewide.

Currently, section 663-52, Hawaii Revised Statutes, does not provide a legal presumption that the State and counties have provided adequate warnings, even when and where the government has posted warning signs on unimproved public lands. Section 2 of the bill addresses that issue.

The wording in section 2 will ensure that if, after consultation by the risk assessment working group, the State and counties decide to provide warnings, such approved warning signs, devices, and systems are accorded the same presumption that current law gives to warning signs, devices, and systems on improved public lands.

In order to further encourage hazard identification and risk assessment of dangerous natural conditions on unimproved public lands, the wording in this section makes it clear that no duty to warn is created by the posting of approved warning signs, devices, and systems on unimproved public lands.

The amendments to current law contained in this bill will help the State better achieve its mission to keep the islands enjoyable and safe for both visitors and residents.

For the foregoing reasons, we respectfully recommend that the Committee pass this bill.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 2056

Date: Monday, February 1, 2013
Time: 10:00 am

To: Chairman Ryan Yamane and Members of the House Committee on Water & Land:

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. 2056, relating to Public Land Liability.

Government was provided immunity for dangerous **natural** conditions on **improved** public lands, through the use of warning signs, as promulgated in Act 82 (2003) and codified in HRS sections 663-51 and 663-52, following the tragic Sacred Falls incident where eight people were killed and many others were injured. Act 82 gave government immunity for dangerous **natural** conditions on **unimproved** public lands without the need for warning signs. So no signage was needed for immunity on **unimproved** land, while signage was needed on **improved** lands, but only for **natural** conditions.

This measure seeks to extend immunity to **non-natural** conditions, that is, conditions created, built or installed by people, so long as a warning sign is posted at the dangerous man-made condition. Act 82 limited immunity only to **natural** conditions for good reasons and those reasons remain valid today.

Warnings are not a substitute for safety. Government's first responsibility is to provide reasonably safe conditions for the public in order to prevent unnecessary injury or death. Only when it is impossible or impractical to maintain safe conditions is it sufficient for government to warn of dangers instead of fixing the condition to make it

safe. This is why Act 82 provided immunity only for natural conditions – because many natural conditions are out the control of the government and too costly to remove or fix. On the other hand, man-made conditions are within government’s control to regulate where they are placed, minimum standards for construction and maintenance, and protection for both government and the public through the use of insurance. That is why Act 82, in HRS section 663-51, specifically excluded man-made structures: “excluding buildings and structures constructed upon such lands.”

The DLNR has a permit process for those who wish to conduct activities on state lands. It is currently used for jet ski, parasailing, and concessions and we understood was being implemented for such recreational activities like rock climbing. The permit process is preferable because of the following reasons:

Protection of Important Cultural and Environmental Sites. The permit process ensures that an activity does not damage ancient Hawaiian cultural sites. Without oversight, someone could build a zipline, rock climbing, motocross or other non-natural facility in or on culturally significant sites. Someone could build a motocross course next to bird nesting sites; or damage areas with endangered flora or fauna. The permit process prevents that by regulating where these activities can occur or limit the number of people or times of operation.

Ensure Safe Construction and Maintenance. The permit process can require compliance with minimum safety standards to protect the public. As well as require continuing maintenance and inspection. This will provide safe recreational activities that will remain safe over many years of use. It is more than fair to require anyone who

wishes to construct a non-natural condition on public property to build and maintain it safely. After all, this is being done on public property and not their own private property.

Insurance to Protect the State and Public. The current DLNR permit process requires insurance in amounts appropriate for the activity to protect the State and members of the public. Permit holders must obtain insurance which names the State as an additional insured to protect and indemnify the State under current DLNR rules, thus protecting the State and making immunity unnecessary.

The Law Applies to Everyone. While certain groups, who may be able to use good judgment in selecting appropriate sites, know and meet proper safety standards for building and maintaining non-natural conditions, and have the resources to adequately supervise these dangerous activities may desire these statutory changes, it must be kept in mind that the law will apply to everyone. Not just legitimate organizations or groups but also to individuals who may have no idea whether their activities are impacting sensitive cultural or environmental sites, have no knowledge of safe construction basics, are not capable of maintaining the facilities, or could care less about conducting their activities responsibly or the safety of others. They will simply build what they want where they want and then abandon them to become permanent hazards when they lose interest. That is why the permit process is preferable to uncontrolled immunity for dangerous non-natural conditions.

It is simply better public policy to require that man-made “non-natural” structures or conditions be properly designed, built and maintained to prevent unnecessary injury to the public, than to sanction unsafe man-made structures and conditions by giving

immunity through the placement of a sign warning that those structures are dangerous or unsafe.

The current law strikes a fair balance between public safety, accessibility to recreational activities, regulation of non-natural conditions through the permit process and protection of the State and public through insurance. We ask that this measure be held.

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
Sent: Sunday, January 31, 2016 9:49 AM
To: waltestimony
Cc: skaye@hawaii.edu
Subject: Submitted testimony for HB2056 on Feb 1, 2016 10:00AM

HB2056

Submitted on: 1/31/2016

Testimony for WAL on Feb 1, 2016 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Springer Kaye	Individual	Support	No

Comments: Thank you for continuing to work on this issue. Limiting liability and clarifying standards for signage should help to ensure the continued public access and safe enjoyment of natural areas, which seems to be threatened each time an unfortunate accident occurs.

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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From: mailinglist@capitol.hawaii.gov
Sent: Monday, February 01, 2016 8:58 AM
To: waltestimony
Cc: malamapono744@aol.com
Subject: Submitted testimony for HB2056 on Feb 1, 2016 10:00AM



HB2056

Submitted on: 2/1/2016

Testimony for WAL on Feb 1, 2016 10:00AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mahealani Cypher	Koolaupoko Hawaiian Civic Club	Support	No

Comments: Aloha Chair Yamane and Committee members: The Ko'olaupoko Hawaiian Civic Club strongly supports H.B. 2056, which would protect the State of Hawaii from liability when people enter areas of state land, using signage in areas that may have "improvements". This bill is long overdue. We urge your committee to approve this bill. Mahalo for allowing us to offer our mana'o.

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