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STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

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Testimony of
DAWN N. S. CHANG
Chairperson

Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS

Friday, February 23, 2024
2:00 PM
State Capitol, Conference Room 325

In consideration of
HOUSE BILL 2466, HOUSE DRAFT 1
RELATING TO PUBLIC LAND LIABILITY

House Bill 2466, House Draft 1 proposes to abolish the Task Force on Beach and Water Safety and the Risk Assessment Working Group, and requires the design and placement of warning signs, devices, and systems to be approved by the Chairperson of the Board of Land and Natural Resources (Board) for state beach parks and the county mayors for county beach parks. **The Department of Land and Natural Resources (Department) supports this measure.**

Two groups were created for two comparable signage programs to warn beach, park, and trail users of hazardous natural conditions. The Task Force on Beach and Water Safety was established 27 years ago pursuant to Act 190, Session Laws of Hawaii (SLH) 1996, and the Risk Assessment Working Group was established 20 years ago in section 171-8.6, Hawaii Revised Statutes (HRS), pursuant to Act 82, SLH 2003. Act 82, SLH 2003, also mandated the adoption of Hawaii Administrative Rules, title 13, chapter 8, in 2006. At the time of inception, the initiatives were new and required a panel of subject matter experts to guide in the design and placement of the signage.

Since then, all managed public beaches, parks, and trails have been examined and the requisite warning signs in place. The Department's Division of State Parks (State Parks) has posted and maintains over 300 Act 82 signs and 26 Act 190 signs statewide. Maintenance of warning signage, along with a variety of other closure and regulatory signage, is currently an internal process that is institutionalized as an essential element of government beach, park, and trail management. The signs fulfill the duty to warn and decrease liability for the State and counties with existing signage. The two groups have not assembled for over 15 years and are now defunct and no longer necessary to effectuate proper warnings of dangers at public beach parks and improved public lands.

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

RYAN K.P. KANAKA'OLE
FIRST DEPUTY

DEAN D. UYENO
ACTING DEPUTY DIRECTOR - WATER

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BUREAU OF CONVEYANCES
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CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

The amendments to sections 663-1.56 and 663-52, HRS, require the design and placement of warning signs, devices, and systems on certain areas of the State to be approved by the Chairperson of the Board of Land and Natural Resources for State beach parks and the respective county mayors for county beach parks without consulting the Task Force on Beach and Water Safety or the Risk Assessment Working Group. The repeal of section 171-8.6, HRS, sunsets the Risk Assessment Working Group.

Mahalo for the opportunity to provide testimony supporting this measure.

**TESTIMONY OF EVAN OUE ON BEHALF OF THE
HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION
TO HB 2466 HD1**

Date: Friday, February 23, 2024

Time: 2:00 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION** to HB 2466 HD1, Relating to Public Land Liability.

The purpose of HB 2466 HD1 is to abolish the Task Force on Beach and Water Safety (the "Task Force") and Risk Assessment Working Group (the "Risk WG") and require the design and placement of warnings signs, devices and systems for state beach parks and improve public lands to be approved by the Chairperson of the Board of Land and Natural Resources (BLNR) for State beach parks and the respective mayors for each county.

As background, the Task Force was created 27 years ago under Act 190, and the Risk WG (the "Risk WG") was established 20 years ago pursuant to Act 82. The groups were created to provide expert consultation to the Chairperson of the BLNR regarding the placement of warning signs at public beach parks and places of improved public land.

Primarily, the elimination of the Task Force and the Risk WG poses a threat to public safety. Adequate placement of signs at our state beach parks and improved public lands are vital to protecting the public. Preservation of the Task Force and the Risk WG is crucial to ensure that the placement of signs are reviewed by experts and continue to remain in locations to warn the public of the potential danger and risks of natural conditions on improved public lands and state beaches.

The justification for the proposed abolishment under HB 2466 HD1, is that the groups have not been assembled for over 15 years and are no longer necessary. However, maintaining the Task Force to provide *expert* advice regarding signage is necessary to guarantee that warning signs are adequately placed to enhanced public safety. To emphasize, the Chairperson of the BLNR or the mayors would be given broad discretion to make future sign location determinations without any expertise in the area. Granting this authority to the Chairperson or mayors without guidance by the Task Force or Risk WG would remove any form standard and accountability to guarantee signs are placed in the correct places.

Moreover, HAJ is concerned with the removal of a comprehensive plan under Hawaii Revised Statutes (HRS) Section 663-52 (b), which is reviewed by the Chairperson, the BLNR, and the Risk WG for the design and placement of the warning signs. Eliminating the need to submit a comprehensive plan which is approved by the BLNR removes the conclusive presumption that the warning signs are legally adequate to alert the public of all dangerous conditions on improved public land. This presumption is vital for ensuring that signs are properly placed while maintaining accountability for the BLNR to confirm signs are properly vetted and reviewed by an expert to guarantee public safety.

Furthermore, the removal of HRS Section 663-1.56 (d) similarly eliminates the comprehensive report for signs at state beaches which removes the conclusive presumption that the signs are legally adequate to warn the public for all dangerous natural conditions in the ocean adjacent to public parks. Removing the need for a comprehensive plan exposes individuals to additional risk when visiting a public beach park and removes any expert contribution for future warning signs.

Without the presumptions under HRS Sections Section 663-1.56 (d) and Section 663-52 (b) there is no standard to hold the Chairperson or the mayors accountable for ensuring the signs at improved state lands and state beaches are legally adequate. Accordingly, granting the authority to the Chairperson or mayors without a comprehensive plan or advice from experts puts our residents at risk.

Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.

Dear Chair, and members of the committee,

My name is Jessamy Town Hornor. I am offering personal testimony as a community member who has been advocating for ocean safety for over seven years. **I am testifying in strong opposition to SB3155/HB2466 – RELATING TO PUBLIC LAND LIABILITY and I offer suggestions for consideration.**

In July of 2016 my husband and youngest daughter died in an accident at the Makapu'u Tidepools as a result of a rogue wave set that appeared suddenly from an offshore storm. The tidepools appeared calm when they walked down and many other people were present. The signs indicated via a simple visual that waves were possible on cliff edges, but there was no indication that sets could sweep across the entire tidepool area taking anyone there out to sea with little chance of survival. **There was no live conditions warning or closure at the trailhead even though the offshore storm was known to DLNR and Ocean Safety. If a live conditions warning or closure would have been posted, my husband would not have taken our daughters down there and they would still be alive today.** I cannot fully express to you the impact that their loss has had on my family. And mine is just one story of many other deaths and injuries at the tidepools and other locations where the signage is inadequate. Hawaii has the second highest rate of drowning for residents in the nation and it is the leading cause of death for our visitors, many of them in the ocean, and yet in many cases drowning is preventable with proper information.

While Act 190 establishes liability protection for the state with basic signage, it should also include more robust mechanisms for preventing harm, not less. This bill - with its proposed removal of the Task Force on Beach and Water Safety and the Risk Assessment Working Group that is supposed to review signage - removes the only existing mechanism for consistent, expert oversight and worsens an already significant deficit in safety outreach. The task force has not met for several years due to lack of bandwidth at DLNR, but that does not mean that removing the task force is the solution.

After reading DLNR Chair Dawn Chang's testimony on SB3155, I would like to address her statement: "The signs fulfill the duty to warn and decrease liability for the State and counties with existing signage." **While they may fulfill a legal duty to warn, this bar is extremely low and well below our moral duty to warn.** There needs to be a legislative mandate and funding to improve signage and outreach or people will continue to be injured or die unnecessarily.

In addition to the task force meeting regularly, the state should expand its mandate to advise HTA / CNHA on developing a SMART Tourism Access app / digital platform for both tourists and kama'aina in order to communicate live conditions-based safety information as part of destination management. This could be used to issue alerts in real time in the case of disasters.

This is not simply another expenditure, it would be an investment in our tourism and local safety infrastructure. And by directing users to appropriate destinations and keeping them away from more dangerous ones, a SMART app or platform would also significantly reduce the costs of thousands of on-site preventative interventions by our lifeguards and reduce the burden on all of our first responders. There are currently 4 different platforms (HTA Go Hawaii, DLNR Na Ala Hele, DOH HiOceanSafety, and Safe Beach Day), some of which are outdated - that beach and trail users need to access.

Hawaii has a rich tradition of ocean safety, and this is an opportunity to do more, not less, for both our tourism industry and our way of life.

Thank you for your time.

Jessamy Town Hornor

HB-2466-HD-1

Submitted on: 2/22/2024 8:53:43 PM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Sarah Fairchild	Individual	Oppose	Written Testimony Only

Comments:

Dear Chair and Committee Members,

I'm writing personal testimony in opposition to HB2466 HD1 – Relating to Public Land Liability as I have reservations about the related issues it presents. I am the Executive Director of Outrigger Duke Kahanamoku Foundation and a co-founder of the Hawaii Water Safety Coalition, but I cannot speak for the varied views of our constituents on this matter, only my views. ACT 190 created the Hawaii Water Safety Task Force to regularly bring together safety officials and experts from the State and Counties to create cohesive signage and warning policies. However, the Hawaii Water Safety Task Force it created has not been assembled in several years and thus signage updates have been prevented. While I see the need to clean up the bureaucratic slowdown in updating signage, I am concerned that removing the Hawaii Water Safety Task Force in its entirety is removing the only legally obliged group discussion between the various levels of government to improve aquatic safety. Hawaii currently has the 2nd highest rate of resident drowning, drowning is the leading cause of death for Hawaii keiki 1 to 15, and drowning is the leading cause of injury-related death for our visitors. The ocean lifeguards had to create their own non-profit to collaborate on initiatives because there was no State vehicle for them to do so. Something is broken.

As things stand now, it is probably best to allow Counties and DLNR to create their own signage. However, there must be more government collaboration and investment in water safety and we need this task force to be the driver. The working group should look at using today's technologies through an app or website to deliver a comprehensive risk and warning system for locals and tourists. The failure of ACT 190 has been the insufficient allocation of funding to create a position to drive and align this task force. I would suggest funding a Water Safety Marshall position, probably outside of the overburdened DLNR, to be tasked with convening the task force and creating more synergy in efforts to reduce drowning. After all, Hawaii is home to the best watermen and waterwomen in the world; surely, we can do better in reducing drowning rates.

Mahalo,

Sarah Fairchild