

---

---

# A BILL FOR AN ACT

RELATING TO PUBLIC LAND LIABILITY.

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

1           SECTION 1. Act 190, Session Laws of Hawaii 1996 (Act 190),  
2 created a process for the State and counties to provide legally  
3 adequate warning signs to warn the public of potentially  
4 dangerous ocean conditions adjacent to state beach parks and  
5 county beach parks. Act 190 also established the task force on  
6 beach and water safety.

7           Over the ensuing twenty-seven years, the department of land  
8 and natural resources (department) and the counties posted the  
9 requisite warning signage at state beach parks and county beach  
10 parks in consultation with the task force on beach and water  
11 safety, adequately warning of ocean dangers at virtually all  
12 public beaches that warrant the signage.

13           Section 171-8.6, Hawaii Revised Statutes, provides for a  
14 risk assessment working group that was established twenty years  
15 ago pursuant to Act 82, Session Laws of Hawaii 2003 (Act 82).  
16 Act 82 also mandated the adoption of rules for warning sign  
17 design and placement of warning signs to warn the public of the



1 potential danger and risks of the natural conditions on improved  
2 public lands.

3       When the signage initiatives were new, it made sense to  
4 assemble the task force and working group to guide staff on new  
5 methods to warn the public. The department and the counties,  
6 however, are no longer reliant on them regarding design and  
7 placement of warning signs. State and county staff routinely  
8 continue to maintain and manage warning signage, along with a  
9 variety of other closure and regulatory signage in an internal  
10 process that is institutionalized as an essential element of  
11 management. New trail, park, or beach locations that need  
12 warning signage are rarely identified, so this process is  
13 predominantly for sign monitoring and replacement due to  
14 deleterious sign conditions.

15       The purpose of this Act is to abolish the task force on  
16 beach and water safety and the risk assessment working group and  
17 to require the design and placement of warning signs, devices,  
18 and systems on certain areas of the State to be approved by the  
19 chairperson of the board of land and natural resources for state  
20 lands and to be approved by the mayor of the respective county  
21 for county lands. This Act is intended to eliminate bureaucracy



1 and an unfunded mandate to manage and assemble groups that have  
2 not and may not need to meet for years at a time but maintain  
3 the liability protection for the government.

4 SECTION 2. Section 663-1.56, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "~~§~~663-1.56~~§~~ **Conclusive presumptions relating to duty**  
7 **of public entities to warn of dangers at public beach parks.**

8 (a) The State or county operating a public beach park shall  
9 have a duty to warn the public specifically of dangerous  
10 shorebreak or strong current in the ocean adjacent to a public  
11 beach park if these conditions are extremely dangerous, typical  
12 for the specific beach, and if they pose a risk of serious  
13 injury or death.

14 (b) A sign or signs warning of dangerous shorebreak or  
15 strong current shall be conclusively presumed to be legally  
16 adequate to warn of these dangerous conditions, if the State or  
17 county posts a sign or signs warning of the dangerous shorebreak  
18 or strong current and the design and placement of the warning  
19 sign or signs has been approved by the chairperson of the board  
20 of land and natural resources [~~.—The chairperson shall consult~~  
21 ~~the governor's task force on beach and water safety prior to~~



1 ~~approving the design and placement of the warning sign or~~  
2 ~~signs.]~~ for state beach parks and the mayor of the county in  
3 which the sign or signs shall be placed for county beach parks.

4 (c) A sign or signs warning of other extremely dangerous  
5 natural conditions in the ocean adjacent to a public beach park  
6 shall be conclusively presumed to be legally adequate to warn of  
7 the dangerous natural conditions, if the State or county posts a  
8 sign or signs warning of the extremely dangerous natural  
9 condition and the design and placement of the sign or signs have  
10 been approved by the chairperson of the board of land and  
11 natural resources[~~. The chairperson shall consult the task~~  
12 ~~force on beach and water safety prior to issuing an approval of~~  
13 ~~the design and placement of a warning sign or signs pursuant to~~  
14 ~~this section.]~~ for state beach parks and the mayor of the county  
15 in which the sign or signs shall be placed for county beach  
16 parks.

17 [~~(d) The State or county operating a public beach park may~~  
18 ~~submit a comprehensive plan for warning of dangerous natural~~  
19 ~~conditions in the ocean adjacent to a public beach park to the~~  
20 ~~chairperson of the board of land and natural resources who shall~~  
21 ~~review the plan for adequacy of the warning as well as the~~



1 ~~design and placement of the warning signs, devices, or systems.~~  
2 ~~The chairperson shall consult with the task force on beach and~~  
3 ~~water safety prior to issuing an approval of the plan. The task~~  
4 ~~force on beach and water safety may seek public comment on the~~  
5 ~~plan. In the event that the chairperson approves the plan for~~  
6 ~~the particular beach park after consulting with the task force~~  
7 ~~and the State or county posts the warnings provided for in the~~  
8 ~~approved plan, then the warning signs, devices, or systems shall~~  
9 ~~be conclusively presumed to be legally adequate to warn for all~~  
10 ~~dangerous natural conditions in the ocean adjacent to the public~~  
11 ~~beach park.~~

12 ~~(e)]~~ (d) Neither the State nor a county shall have a duty  
13 to warn on beach accesses, coastal accesses, or in areas that  
14 are not public beach parks of dangerous natural conditions in  
15 the ocean.

16 ~~[(f)]~~ (e) Neither the State nor ~~[any]~~ a county shall have  
17 a duty to warn of dangerous natural conditions in the ocean  
18 other than as provided in this section.

19 ~~[(g)]~~ (f) In the event that a warning sign, device, or  
20 system posted or established in accordance with this section is  
21 vandalized, otherwise removed, or made illegible, the conclusive



1 presumption provided by this section shall continue for a period  
2 of five days from the date that the vandalism, removal, or  
3 illegibility is discovered by the State or county. The State or  
4 county operating a public beach park shall maintain a record  
5 regarding each report of vandalism, removal, or illegibility  
6 that results in the replacement of a warning sign, device, or  
7 system at a State or county public beach park. The record shall  
8 include the date and time of the reporting and the replacement  
9 of the warning sign, device, or system. ~~[The State and county~~  
10 ~~shall provide a copy of the record annually to the chairperson~~  
11 ~~of the board of land and natural resources and the task force on~~  
12 ~~beach and water safety.~~

13 ~~(h)]~~ (g) The chairperson shall consider the needs of the  
14 public to be warned of potentially dangerous conditions in the  
15 ocean adjacent to a public beach park prior to issuing an  
16 approval for the design and placement of a warning sign ~~[or a~~  
17 ~~comprehensive plan]~~. The chairperson may require warning  
18 devices or systems in addition to the signing before approving  
19 the design and placement of a warning sign ~~[or a comprehensive~~  
20 ~~plan]~~. The approval of the design and placement of a warning



1 sign, device, or system [~~or comprehensive plan~~] provided in this  
2 section shall be a discretionary decision under chapter 662.

3 [~~(i)~~] (h) Chapter 91 shall not apply to any process,  
4 including any action taken by the chairperson, established or  
5 made pursuant to this section.

6 [~~(j)~~] (i) Nothing in this section shall be construed to  
7 have an impact upon governmental liability for the performance  
8 of rescue services or duties and responsibilities of lifeguards  
9 other than the duty to warn as set forth in this section."

10 SECTION 3. Section 663-52, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "~~[+]§663-52[+]~~ **Conclusive presumptions relating to duty of**  
13 **public entities to warn of dangers on improved public lands.**

14 (a) A sign or signs warning of dangerous natural conditions on  
15 improved public lands shall be conclusively presumed to be  
16 legally adequate warning of the dangerous natural conditions of  
17 which the sign or signs warn, if the State or a county posts a  
18 sign or signs warning of the dangerous natural conditions and  
19 the design and placement of the warning sign or signs are  
20 approved by the [~~board. The board shall consult the risk~~  
21 ~~assessment working group established by chapter 171, prior to~~



1 ~~approving the design and placement of a warning sign pursuant to~~  
2 ~~this section.]~~ chairperson of the board for state beach parks  
3 and the mayor of the county in which the sign or signs shall be  
4 placed for county beach parks.

5 ~~[(b) The State or a county may submit to the board a~~  
6 ~~comprehensive plan for warning of dangerous natural conditions~~  
7 ~~at a particular area of improved public lands. The board shall~~  
8 ~~review the plan for adequacy of the warning as well as the~~  
9 ~~design and placement of the warning signs, devices, or systems.~~  
10 ~~The board shall consult with the risk assessment working group~~  
11 ~~before approving the plan. The risk assessment working group~~  
12 ~~shall seek public comment on the plan. In the event that the~~  
13 ~~board after consulting with the risk assessment working group~~  
14 ~~approves the plan for a particular area of improved public~~  
15 ~~lands, and the State or a county posts the warnings provided for~~  
16 ~~in the approved plan, then the warning signs, devices, or~~  
17 ~~systems shall be conclusively presumed to be legally adequate~~  
18 ~~warning of all dangerous natural conditions on the improved~~  
19 ~~public lands.~~

20 ~~(e)]~~ (b) The State or a county shall have no duty to warn  
21 of dangerous natural conditions on unimproved public lands.





1        [~~(d)~~] (c) If a warning sign, device, or system is posted  
2 or established in accordance with this section on unimproved  
3 lands, the posting or establishment of the warning sign, device,  
4 or system shall not create a duty on the part of the State or  
5 county to warn of other dangerous natural conditions on  
6 unimproved lands or to place or establish an additional warning  
7 sign, device, or system in other locations on the unimproved  
8 lands.

9        [~~(e)~~] (d) The State and the counties shall implement and  
10 maintain a sign inspection program in which a park caretaker or  
11 other authorized person conducts documented inspections of all  
12 signs in the park or trail area on a quarterly or more frequent  
13 basis.

14        Records shall be kept under the sign inspection program  
15 which document the date of each sign inspection and whether the  
16 particular sign inspected was in place, free of vandalism, and  
17 legible. [~~The State and the counties shall annually provide the~~  
18 ~~board with a copy of the documentation of all sign inspections~~  
19 ~~under the sign inspection program.]~~

20        The conclusive presumption provided by this section shall  
21 continue for any sign posted pursuant to this section for a



1 period of one hundred twenty days after the last inspection that  
2 documented that the sign was in place and legible, after which  
3 the presumption shall lapse until the time at which the sign is  
4 subsequently inspected and documented to be in place and in  
5 legible condition.

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

12 ~~[(f) The board shall adopt rules pursuant to chapter 91~~  
13 ~~establishing standards to guide the department of land and~~  
14 ~~natural resources and the risk assessment working group in the~~  
15 ~~general design and placement of warning signs; provided that~~  
16 ~~chapter 91 shall not apply to any other process or action~~  
17 ~~undertaken pursuant to this part.~~

18 ~~(g) The State and the counties shall implement an accident~~  
19 ~~reporting and recordkeeping program whereby all known accidents~~  
20 ~~in park and trail areas are documented on an accident report~~  
21 ~~form, and all such accident reports are kept on a permanent~~



1 ~~basis. The risk assessment working group shall review and use~~  
2 ~~accident reports kept as part of this program as part of its~~  
3 ~~consultation to the board under this section.]"~~

4 SECTION 4. Section 171-8.6, Hawaii Revised Statutes, is  
5 repealed.

6 ~~["~~§171-8.6~~ Risk assessment working group. (a) There is~~  
7 ~~established a risk assessment working group that shall be~~  
8 ~~administratively attached to the department. The risk~~  
9 ~~assessment working group shall provide consultation to the board~~  
10 ~~regarding the design and placement of warning signs, devices, or~~  
11 ~~systems on improved public lands as defined in section 663-51,~~  
12 ~~including any comprehensive plan submitted by the State, a~~  
13 ~~county, or managing entity, to the board for approval. The risk~~  
14 ~~assessment working group shall consist of the following members,~~  
15 ~~who shall serve without compensation:~~

- 16 ~~(1) The chairperson of the board, or designee;~~
- 17 ~~(2) The mayor of each county, or designee;~~
- 18 ~~(3) The administrators of the department's division of~~  
19 ~~forestry and wildlife and the division of state parks,~~  
20 ~~or their designees;~~
- 21 ~~(4) The attorney general, or designee; and~~



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

3       ~~[(b)] The risk assessment working group shall submit a~~  
4 ~~report of its recommendations and of the consultation provided~~  
5 ~~to the board of land and natural resources under [Act 82,~~  
6 ~~Session Laws of Hawaii 2003], including a listing of warning~~  
7 ~~signs, devices, and systems on improved and unimproved public~~  
8 ~~lands subsequently approved or disapproved by the board, to the~~  
9 ~~legislature no later than twenty days prior to the convening of~~  
10 ~~each regular session." ]~~

11       SECTION 5. Act 190, Session Laws of Hawaii 1996, as  
12 amended by Act 101, Session Laws of Hawaii 1999, as amended by  
13 Act 170, Session Laws of Hawaii 2002, as amended by Act 152,  
14 Session Laws of Hawaii 2007, is amended by amending section 3 to  
15 read as follows:

16       "SECTION 3. ~~[There is established the task force on beach~~  
17 ~~and water safety which shall be administratively attached to the~~  
18 ~~department of land and natural resources. The task force shall~~  
19 ~~provide consultation to the chairperson of the board of land and~~  
20 ~~natural resources regarding the design and placement of warning~~  
21 ~~signs, devices, or systems at public beach parks including any~~



1 ~~comprehensive plan submitted by the State or county operating a~~  
2 ~~public beach park to the chairperson of the board of land and~~  
3 ~~natural resources for approval. The task force shall consist of~~  
4 ~~the following members, who shall serve without compensation:~~

5 ~~(1) The chairperson of the board of land and natural~~  
6 ~~resources, or a designated representative;~~

7 ~~(2) The director of business, economic development, and~~  
8 ~~tourism, or a designated representative;~~

9 ~~(3) The chairperson of the department of oceanography at~~  
10 ~~the University of Hawaii at Manoa, or a designated~~  
11 ~~representative; and~~

12 ~~(4) Four persons appointed by the governor, each of whom~~  
13 ~~shall be publicly employed water safety personnel;~~  
14 ~~provided that the governor shall appoint one person~~  
15 ~~from each of the respective counties.~~

16 ~~The chairperson of the board of land and natural resources shall~~  
17 ~~serve as chairperson of the task force. The task force shall~~  
18 ~~submit a report of its recommendations to the legislature and~~  
19 ~~the governor no later than twenty days prior to the convening of~~  
20 ~~the 1997, 1998, and 1999 Regular Session.] Repealed."~~



1 SECTION 6. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 7. This Act shall take effect on July 1, 3000.



**Report Title:**

Beach and Water Safety Task Force; Risk Assessment Working Group

**Description:**

Abolishes the Task Force on Beach and Water Safety and the Risk Assessment Working Group. 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 for state beach parks and the county mayors for county beach parks. Effective 7/1/3000. (HD1)

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

