

JAN 24 2024

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 27 years, the department of land and
8 natural resources (department) and the counties have 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 20 years ago
15 pursuant to Act 82, Session Laws of Hawaii 2003 (Act 82). Act
16 82 also mandated the adoption of rules for warning sign design
17 and placement of warning signs to warn the public of the

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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. Rarely, new trail, park, or beach locations are
12 identified that need warning signage, as this process is
13 predominantly sign monitoring and replacement due to deleterious
14 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,
17 and to require the design and placement of warning signs,
18 devices, and systems on certain areas of the State to be
19 approved by the chairperson of the board of land and natural
20 resources for state lands and to be approved by the mayors of
21 the respective counties for county lands. This Act is intended
22 to eliminate bureaucracy and an unfunded mandate to manage and

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1 assemble groups that have not and may not need to meet for years
2 at a time but maintain the liability protection for the
3 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~~
22 ~~approving the design and placement of the warning sign or~~

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

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

16 [~~(d) The State or county operating a public beach park may~~
17 ~~submit a comprehensive plan for warning of dangerous natural~~
18 ~~conditions in the ocean adjacent to a public beach park to the~~
19 ~~chairperson of the board of land and natural resources who shall~~
20 ~~review the plan for adequacy of the warning as well as the~~
21 ~~design and placement of the warning signs, devices, or~~
22 ~~systems. The chairperson shall consult with the task force on~~

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

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

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

17 ~~[(g)]~~ (f) In the event that a warning sign, device, or
18 system posted or established in accordance with this section is
19 vandalized, otherwise removed, or made illegible, the conclusive
20 presumption provided by this section shall continue for a period
21 of five days from the date that the vandalism, removal, or
22 illegibility is discovered by the State or county. The State or

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1 county operating a public beach park shall maintain a record
2 regarding each report of vandalism, removal, or illegibility
3 that results in the replacement of a warning sign, device, or
4 system at a State or county public beach park. The record shall
5 include the date and time of the reporting and the replacement
6 of the warning sign, device, or system. ~~[The State and county~~
7 ~~shall provide a copy of the record annually to the chairperson~~
8 ~~of the board of land and natural resources and the task force on~~
9 ~~beach and water safety.~~

10 ~~(h)~~ (g) The chairperson shall consider the needs of the
11 public to be warned of potentially dangerous conditions in the
12 ocean adjacent to a public beach park prior to issuing an
13 approval for the design and placement of a warning sign ~~[or a~~
14 ~~comprehensive plan]~~. The chairperson may require warning
15 devices or systems in addition to the signing before approving
16 the design and placement of a warning sign ~~[or a comprehensive~~
17 ~~plan]~~. The approval of the design and placement of a warning
18 sign, device, or system ~~[or comprehensive plan]~~ provided in this
19 section shall be a discretionary decision under chapter 662.

20 ~~(i)~~ (h) Chapter 91 shall not apply to any process,
21 including any action taken by the chairperson, established or
22 made pursuant to this section.

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

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

7 "~~[(f)]~~ §663-52 ~~[(f)]~~ **Conclusive presumptions relating to duty of**
8 **public entities to warn of dangers on improved public lands.**

9 (a) A sign or signs warning of dangerous natural conditions on
10 improved public lands shall be conclusively presumed to be
11 legally adequate warning of the dangerous natural conditions of
12 which the sign or signs warn, if the State or a county posts a
13 sign or signs warning of the dangerous natural conditions and
14 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.]~~ chairperson of the board for state beach parks
19 and the mayor of the county in which the sign or signs shall be
20 placed for county beach parks.

21 ~~[(b) The State or a county may submit to the board a~~
22 ~~comprehensive plan for warning of dangerous natural conditions~~

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

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

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

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1 sign, device, or system in other locations on the unimproved
2 lands.

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

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

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

21 In any circumstance in which the conclusive presumption
22 lapses because of the lack of a documented inspection, the

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1 presumption shall be reestablished if the State or county, as
2 the case may be, proves by a preponderance of the evidence that
3 at the time of the incident at issue, the sign was in place and
4 in legible condition.

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

11 ~~[(g) The State and the counties shall implement an accident~~
12 ~~reporting and recordkeeping program whereby all known~~
13 ~~accidents in park and trail areas are documented on an accident~~
14 ~~report form, and all such accident reports are kept on a~~
15 ~~permanent basis. The risk assessment working group shall review~~
16 ~~and use accident reports kept as part of this program as part of~~
17 ~~its consultation to the board under this section.] "~~

18 SECTION 4. Act 190, Session Laws of Hawaii 1996, as amended
19 by Act 101, Session Laws of Hawaii 1999, as amended by Act 170,
20 Session Laws of Hawaii 2002, as amended by Act 152, Session Laws
21 of Hawaii 2007, is amended by amending section 3 to read as
22 follows:

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1 "SECTION 3. ~~[There is established the task force on beach~~
2 ~~and water safety which shall be administratively attached to the~~
3 ~~department of land and natural resources. The task force shall~~
4 ~~provide consultation to the chairperson of the board of land and~~
5 ~~natural resources regarding the design and placement of warning~~
6 ~~signs, devices, or systems at public beach parks including any~~
7 ~~comprehensive plan submitted by the State or county operating a~~
8 ~~public beach park to the chairperson of the board of land and~~
9 ~~natural resources for approval. The task force shall consist of~~
10 ~~the following members, who shall serve without compensation:~~

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

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

15 ~~(3) The chairperson of the department of oceanography at~~
16 ~~the University of Hawaii at Manoa, or a designated~~
17 ~~representative; and~~

18 ~~(4) Four persons appointed by the governor, each of whom~~
19 ~~shall be publicly employed water safety personnel;~~
20 ~~provided that the governor shall appoint one person~~
21 ~~from each of the respective counties.~~

22 ~~The chairperson of the board of land and natural resources~~

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1 ~~shall serve as chairperson of the task force. The task~~
2 ~~force shall submit a report of its recommendations to the~~
3 ~~legislature and the governor no later than twenty days prior to~~
4 ~~the convening of the 1997, 1998, and 1999 Regular Session.]~~

5 Repealed."

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

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

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

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

12 SECTION 6. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 7. This Act shall take effect upon its approval.

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INTRODUCED BY: 

BY REQUEST

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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.

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

JUSTIFICATION SHEET

DEPARTMENT: Land and Natural Resources

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC LAND LIABILITY.

PURPOSE: To abolish the Task Force on Beach and Water Safety and Risk Assessment Working Group; and to require 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 respective county mayors for county beach parks.

MEANS: Amend sections 663-1.56 and 663-52, Hawaii Revised Statutes (HRS); amend section 3 of Act 190, Session Laws of Hawaii (SLH) 1996, as amended by Act 101, SLH 1999, as amended by Act 170, SLH 2002, and as amended by Act 152, SLH 2007; and repeal section 171-8.6, HRS.

JUSTIFICATION: 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, SLH 1996, and the Risk Assessment Working Group was established 20 years ago in section 171-8.6, 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, the initiatives were new and required a panel of subject matter experts to guide in the design and placement of the signage. These groups were intended to advise the Chairperson of the Board regarding the design and placement of warning signs, devices, or systems at public beach parks and improved public lands.

Since then, virtually all managed public beaches, parks, and trails have been examined and the requisite warning signs are

in place. State and county staff are required to ensure the legibility and maintenance of the signage. On occasion, due to a change in natural conditions or management, new sign locations are identified, and warning signs are installed. Over the ensuing decades, this activity has become an institutionalized element of government beach, park, and trail management. 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. The signs fulfill the duty to warn and decrease liability for the State and counties.

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 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.

Impact on the public: Placement of warning signs, devices, and systems at certain areas of the State would not be compromised as the approval on the placement of signage would be delegated to the Chairperson of the Board and the respective county mayors.

Impact on the department and other agencies: This bill would provide the Department with more efficacy to identify new sign locations and install warning signs as needed due to a change in natural conditions or management while maintaining the State and counties' duty to warn and decreasing liability with existing signage. This bill would also provide the Department with more time and resources in managing, maintaining, and

improving the design and placement of warning signs, devices, or systems at public beach parks and improved public lands.

GENERAL FUND: None.

OTHER FUNDS: None

PPBS PROGRAM
DESIGNATION: LNR 806 and LNR 804.

OTHER AFFECTED
AGENCIES: City and County of Honolulu, Neighbor Island Counties.

EFFECTIVE DATE: Upon approval.