SB 2293
RELATING TO PUBLIC BEACHES

Senate Committee on Planning, Land and Water Use Management

Public Hearing - February 5, 1996
1:00 P.M., Room 225, State Capitol

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SB 2293 would amend Chapter 663, HRS, to allow public entities to close public beaches by posting warning signs specifying that: (1) beach conditions present a threat to public safety and may present a substantial risk of serious bodily harm; and (2) beachgoers are deemed to assume all risks of injury except those wilfully or maliciously created or allowed to exist by the public entity.

Our statement on this measure is compiled from voluntarily submitted opinions of listed academic reviewers, and as such, does not constitute an institutional position of the University of Hawaii.

Public policy regarding limits of government liability is fraught with controversy, as this measure clearly demonstrates. Particularly in areas with public trust contingencies, navigation along the sensitive boundary between government responsibility to protect public welfare and individual rights to enjoy public resources is immensely difficult. Not surprisingly, our reviewers expressed varying points of view on this measure, largely reflecting the complex nature of the legal and policy considerations it entails.

All agreed that some protection for government entities against liability claims is necessary. Similarly, all agreed that the government has a duty to provide warnings of extraordinary conditions that pose hazards to public health and welfare. In addition, there was general agreement that the capacity for reasonable enjoyment of public resources should not be unduly constrained.

SB 2293 attempts to address these concerns, but we suggest that it is inherently flawed, primarily in that it fails to clearly distinguish guarded beach parks from beaches accessible through public rights-of-way. There are over 200 public access easements to beaches on Maui, over 100 on Oahu, and many more on the other islands, too many to be reasonably posted given constraints of staff and public resources. Rather than placing undue burden on government to deploy, protect from vandalism, and retrieve posted signs responsive to varying conditions of beach hazard, we prefer a course which follows the California model, similar to that passed by this committee in the form of SB 2012. We have some concerns regarding the breadth of that measure, which we will address when it comes before the Committee on the Judiciary.