

## ACT 175

H.B. NO. 1276

A Bill for an Act Relating to Public Access.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The Poamoho trail on Oahu was constructed in 1934 as the result of a collaboration between the territorial forestry division and the United States Army in soliciting Congress for critically needed emergency conservation work funds, which established the Civilian Conservation Corps. During this period, several trails were built in the Koolau mountains of Oahu for the purpose of improving access to remove feral animals and for military defense. Over the ensuing sixty years, the Poamoho trail became one of the premier hiking trails on Oahu and, along with other areas of the Ewa forest reserve, is critical for watershed protection as the trail provides access for hunters to control feral pig populations.

In the early 1990s, the Na Ala Hele trail and access program (Na Ala Hele) of the division of forestry and wildlife, department of land and natural resources (DLNR), initiated an aggressive trail restoration project with significant community involvement, including volunteer assistance from hiking groups, hunters, and Boy Scouts. The restoration project included cutting back encroaching noxious and invasive vegetation, and conducting trail surface repairs and grading along approximately seventy per cent of Poamoho trail. Since that time, Na Ala Hele has attempted to continue with a trail maintenance program on Poamoho for public safety and enjoyment as well as watershed protection and management.

Access to the Ewa forest reserve and the Poamoho trail via an unpaved pineapple road has always been subject to the approval of the private landowner, Dole Foods Hawaii. In 2002, Dole Foods Hawaii installed a gate at the primary entrance to this access. This gate was installed because of increasing property and crop damage, theft, dumping of abandoned vehicles, and unauthorized recreational vehicle use on Dole Foods Hawaii agricultural lands below the public forest reserve. Since the gate's installation, public access has been prohibited.

In the ensuing three years, DLNR has been negotiating with Dole Foods Hawaii to reach an agreement on regulated public hiker and hunter access to the Ewa forest reserve that is equitable for both parties. A significant impediment has been the lack of agreement on language for a memorandum of agreement that allows the State to indemnify Dole Foods Hawaii and its affiliates for loss of property and damage claims resulting from public access.

A DLNR management permit system has been devised that would restrict public use to a specific portion of Dole Foods Hawaii property via a section of the unpaved access road that leads to the Ewa forest reserve boundary. DLNR believes that a permit system would ensure that virtually no property, crop damage, or theft would occur as a result of the permittees traversing Dole Foods Hawaii land to reach the Ewa forest reserve. DLNR would absorb the associated costs of managing and maintaining the unpaved access road to ensure the safety of public vehicles crossing the property. DLNR would also indemnify Dole Foods Hawaii from any claims resulting from permitted and regulated use of this access road.

The legislature finds that public access to the Ewa forest reserve and the Poamoho trail is of vital public importance and is critical for providing public hunting access to control feral ungulates in the Ewa forest reserve.

The purpose of this Act is to allow DLNR to enter into indemnity and defense agreements to protect landowners and persons associated with landowners to further the purposes of chapter 198D, Hawaii Revised Statutes.

SECTION 2. Section 198D-7.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[E]§198D-7.5~~ **Agreements to defend and indemnify.** (a) The department may enter into agreements with owners of public or private land to further the purposes of this chapter. Agreements between the State and an owner may provide that the State will defend the owner, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners, from claims made [against the owner] by public users of the owner's land.

(b) These agreements may also provide that the State will indemnify the owner, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners, for property losses incurred due to public use[-], subject to the following provisions:

- (1) The attorney general may review any claim;
- (2) The attorney general may refer a claim associated with property loss to the chairperson of the board of land and natural resources for informal resolution subject to the terms of an agreement;
- (3) All claims of property loss that are subject to the terms of an agreement shall be reviewed in the first instance by the chairperson for resolution as provided for in an agreement. The chairperson may compromise or settle claims for property loss from the trail and access program special funds for an amount not exceeding \$10,000 per fiscal year, and the

chairperson may pay claims for property loss up to this amount without the review of the attorney general;

- (4) Upon referral by the chairperson, the attorney general, in the attorney general's discretion, shall make determinations of whether a claim for property loss would or would not be subject to the terms of an agreement; and
- (5) Claims greater than \$10,000 per fiscal year shall be subject to appropriation and allotment.

~~[(b)]~~ (c) The existence of an agreement does not allow an action to be brought against the State. The State shall not be made a party in any action solely because of the existence of an agreement to defend or indemnify. Any action defended by the State pursuant to an agreement shall be deemed an action against the owner, and the State may assert all defenses available to the owner~~[], its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners.~~

~~[(e)]~~ (d) If the agreement provides for indemnification by the State, no judgment shall be executed against an owner, its affiliates, and their respective heirs, executors, administrators, representatives, successors, trustees, guardians, assigns, lessees, officers, directors, stockholders, employees, agents, and partners, until the legislature has reviewed and approved the judgment.’’

SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 4. This Act shall take effect on July 1, 2005.

(Approved June 30, 2005.)