

CHAPTER 198D

HAWAII STATEWIDE TRAIL AND ACCESS SYSTEM

Section

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Cross References

Search and rescue reimbursement, see chapter 137.

Unencumbered public lands; penalty for violation, see §171-6.5.

Law Journals and Reviews

Beach Access: A Public Right? 23 HBJ 65.

[§198D-1] Definitions. For the purpose of this chapter:

"Access" means an easement or way:

(1) Over which the general public has the right to travel; and

(2) Which is used by the general public or intended for use by the general public primarily to reach or depart a public beach, shore, park, trail, or other public recreational area.

It includes a lateral easement along the shoreline, coastline, or beach.

"Department" means the department of land and natural resources.

"Trail" means an identifiable linear course used primarily for or used to get a recreational, educational, or inspirational experience. It includes, but is not limited to:

(1) A corridor trail, which is a designated route, segregated from a highway, providing a continuous linkage between or among major urban areas, fragmented accesses, and major trail areas;

(2) A segment or connector trail, which is a designated route from one locale to another; and

(3) A special use trail, which is a designated course for a special activity or function. [L 1988, c 236, pt of §2]

§198D-2 Establishment of Hawaii statewide trail and access program. (a) There is established the Hawaii statewide trail and access program, to be known as Na Ala Hele. The department of land and natural resources shall plan, develop, acquire land or rights for public use of land, construct, restore, and engage in coordination activities to implement the program in accordance with this chapter.

(b) The trail and access program shall use funding for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department from the following sources:

- (1) A portion of the highway fuel taxes collected under chapter 243;
- (2) Federal government grants;
- (3) Private contributions;
- (4) Fees, established pursuant to administrative rules and charged by the department for the commercial and other use of trails and trail accesses under the jurisdiction of the department; and
- (5) Transient accommodations tax revenues pursuant to section 237D-6.5.

(c) The moneys specified in subsection (b)(2) shall be deposited in the state treasury; provided that moneys received as deposits or contributions from the federal government shall be accounted for in accordance with the conditions established by the agencies making the contribution.

(d) The moneys specified in subsection (b)(1), (3), (4), and (5) shall be deposited in the special land and development fund under section 171-19 for the management, maintenance, and development of trails and trail accesses under the jurisdiction of the department; provided that the moneys specified in subsection (b)(5) shall be expended for the management, maintenance, and development of trails and access areas frequented by visitors in response to a master plan developed in coordination with the Hawaii tourism authority. [L 1988, c 236, pt of §2; am L 1993, c 273, §1; am L 1997, c 106, §2; am L 2002, c 250, §3; am L 2005, c 235, §3]

§198D-3 Inventory. (a) The department shall establish, maintain, and amend, as required, an inventory of all trails and accesses in the State, whether wholly or partly on public or private lands and whether or not under the jurisdiction of the department, and a separate inventory of all trails and accesses to public hunting areas in the State. The inventories shall include:

- (1) Maps and lists of all trails and accesses;
- (2) Name and length of each trail or access;
- (3) The person or agency having management responsibility for each trail or access;
- (4) The predominant transportation mode for each trail or access;
- (5) The development standard, condition, and grade of each trail and access;
- (6) The description of amenities or other features on or in close proximity to each trail or access;
- (7) The status of availability to the general public of each trail or access; and
- (8) Other information for each trail or access deemed necessary or desirable by the department.

(b) The department shall publish and periodically update documents, which shall be available to the general public. The documents shall contain that portion of the inventories which include trails and accesses available for the use of the general public. The department may charge an appropriate fee for the documents and any updates. [L 1988, c 236, pt of §2; am L 1990, c 53, §1(1)]

§198D-4 Classification. The department shall classify each trail and access in the inventories according to the following:

- (1) Function;
- (2) Type;
- (3) Theme;

(4) Actual and desired use intensity; and

(5) Any other classification deemed necessary or desirable by the department. [L 1988, c 236, pt of §2; am L 1990, c 53, §1(2)]

§198D-5 Identification of proposed, potential, and needed trails and accesses. (a) In addition to the inventories under section 198D-3, the department shall identify and maintain a listing of:

(1) Proposed trails and accesses which may be opened to the public;

(2) Potential expansions of trails and accesses;

(3) Potential or desirable connectors between existing trail systems;

(4) Public beach, shore, park, trail, and other recreational areas to which access is unavailable or inadequate; and

(5) Trails and accesses to public hunting areas.

(b) The listing may be published in the inventories required under section 198D-3. [L 1988, c 236, pt of §2; am L 1990, c 53, §1(3)]

§198D-6 Regulation of use of trails and accesses. The department, by rule adopted in accordance with chapter 91, may regulate the use of trails and accesses under the department's jurisdiction. Regulation of the use of trails and accesses shall be established for the following purposes:

(1) To preserve the integrity, condition, naturalness, or beauty of the trails or accesses;

(2) To protect the public safety; or

(3) To restrict or regulate public access to protected or endangered wildlife habitats, except for scientific or educational purposes. [L 1988, c 236, pt of §2; am L 1990, c 53, §1(4)]

[§198D-7] Examination of legal issues. The department, in consultation with the attorney general, shall examine legal issues relating to trails and accesses. The legal issues examined shall include:

(1) Theories, options, and doctrines by which trails and accesses may be placed into or retained in public use;

(2) The validity and feasibility of dedication requirements to obtain public use of trails and accesses;

(3) The extent of liability exposure of the State, counties, and private landowners when allowing trails and accesses under their respective jurisdictions to be used by the general public; and

(4) Strategies to reduce or limit the liability exposure of the State, counties, and private landowners in order to promote public use of trails and accesses under their respective jurisdictions which are closed to the general public. [L 1988, c 236, pt of §2]

§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 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.

(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.

(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. [L 1992, c 216, §1; am L 2005, c 175, §2]

[§198D-7.6] Limitation on liability. The State shall not be liable for any injury to any person arising from the person's use of unimproved lands owned or controlled by the State and regulated under section 198D-6, unless the injury results from gross negligence on the part of the State. [L 1999, c 106, §1]

§198D-8 Request to acquire rights for public use of additional trails and accesses. The department may request the legislature for appropriations to acquire rights to trails and accesses which are closed to public use or which are necessary to effectuate the trail and access program. [L 1988, c 236, pt of §2; am L 1993, c 273, §2]

§198D-9 Other powers and duties of department. The department:

(1) May establish signing and design standards for classifications of trails and accesses;

(2) Shall establish advisory councils to solicit advice and assistance in the implementation of the trail and access program. The appointment of members to advisory councils shall be made by the department. If advisory councils are established, the members of the advisory councils shall serve part-time and shall not be compensated for official duties performed. Advisory councils may be established on regional, islandwide, countywide, or statewide bases. The statewide council shall include representatives of motorized as well as nonmotorized trail users;

(3) Shall serve as the centralized information agency for matters relating to the trail and access program;

(4) Shall coordinate its activities under this chapter, including its compilation of the inventories and classifications of trails and accesses, with other public agencies;

(5) Shall advise and, when able, assist other public agencies in the development, construction, operation, maintenance, and regulation of trails and accesses under the other agencies' jurisdiction;

(6) Shall advocate before the legislature, governor, and public agencies, for the implementation of the trail and access program; and

(7) Shall submit an annual report to the governor and legislature on activities engaged in under this chapter; provided that the annual report shall include a comprehensive description of the status of the trail and access program and the financial information specified in section 198D-2(b). [L 1988, c 236, pt of §2; am L 1990, c 53, §1(5); am L 1993, c 273, §3]

[§198D-10] Limitation on chapter's provisions. (a) Nothing in this chapter shall be construed as conferring or imposing upon the department any rights, powers, and duties over:

(1) Lands not under its jurisdiction; or

(2) The activities of other public agencies; except if provided by other law or agreement.

(b) The designation as part of the statewide trail and access system of trails and accesses, the use to which the public has no rights, shall not be construed as establishing public rights to use those trails and accesses. [L 1988, c 236, pt of §2]

[§198D-11] Rules. The department may adopt rules in accordance with chapter 91 for the purposes of this chapter. [L 1988, c 236, pt of §2]

[§198D-12] General administrative penalties. (a) Except as otherwise provided by law, the board or its authorized representative by proper delegation may set, charge, and collect administrative fines or bring legal action to recover administrative fees and costs as documented by receipts or affidavit, including attorneys' fees and costs; or bring legal action to recover administrative fines, fees, and costs, including attorneys' fees and costs, or payment for damages or for the cost to correct damages resulting from a violation of this chapter or any rule adopted pursuant to this chapter. The administrative fines shall be as follows:

- (1) For a first violation, a fine of not more than \$2,500;
- (2) For a second violation within five years of a previous violation, a fine of not more than \$5,000; and
- (3) For a third or subsequent violation within five years of the last violation, a fine of not more than \$10,000.

(b) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person. [L 2001, c 34, pt of §1]

[§198D-13] Criminal penalties. (a) In addition to any other penalties, any person violating this chapter, any rule adopted pursuant to this chapter, or the terms and conditions of any permit issued in accordance with this chapter shall be guilty of a petty misdemeanor and shall be fined not less than:

- (1) \$100 for a first offense;
- (2) \$200 for a second offense; and
- (3) \$500 for a third or subsequent offense.

(b) The fines specified in this section shall not be suspended or waived. Each day of each violation shall constitute a separate offense.

(c) Any criminal action against a person for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing civil legal action to recover administrative fines and costs against that person. Any civil legal action against a person to recover administrative fines and costs for any violation of this chapter or any rule adopted pursuant to this chapter shall not be deemed to preclude the State from pursuing any criminal action against that person. [L 2001, c 34, pt of §1]