

LATE TESTIMONY

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER LAWYERS OF HAWAII (CLH) IN OPPOSITION TO S.B. NO. 2170, RELATING TO PUBLIC LAND

February 4, 2008

To: Chair Lorraine Inouye and Members of the Senate Committee on Intergovernmental and Military Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Consumer Lawyers of Hawaii (CLH) in strong opposition to S.B. No. 2170.

The purpose of this bill is to enlarge immunity for public beach parks. Public beach parks were granted immunity for dangerous natural conditions in the oceans and on their shores by Act 190 in 1996. Other public lands were afforded immunity from liability relating to natural conditions (other than public beach parks) by Act 82 in 2003. The exclusion of public beach parks from Act 82 was a deliberate consideration of the extraordinary immunity provisions already granted to public beach parks earlier in Act 190. The decision to exclude public beach parks from Act 82 struck a fair balance between protection of innocent citizens, limitation of liability for governmental entities and encouraging the safe maintenance and operation of public lands.

Immunity should always be considered a measure of last resort when less drastic measures cannot fairly balance the goals of safe parks for our communities, accountability for governmental failures to exercise reasonable care in the maintenance of our parks, redress for those injured through governmental negligence, and controlling governmental liability for its negligence within reasonable limits. Immunity should be granted only in extreme cases because it eliminates accountability on the part of government and encourages complacency on matters of public safety by removing financial penalties for governmental negligence, while at the same

time arbitrarily depriving those citizens injured by governmental negligence from fair and reasonable redress.

The overwhelming source of liability related to public beach parks involves natural conditions of the ocean and shore which may be beyond human control. That is the reason that public beach parks were granted the extraordinary protection of immunity, regardless of whether government was otherwise negligent in the maintenance and promotion of public safety, for liability related to natural conditions in the ocean and on the shores of public beach parks. There is no crisis or other extraordinary reason for extending public beach park immunity beyond activities in and around the ocean and shore. Indeed, in combination with immunity for lifeguard operations, public beach parks currently enjoy the highest degree of immunity applicable to public or private lands. There simply is no present justification for increasing the immunities already enjoyed by public beach parks.

Thank you very much for this opportunity to testify in opposition to S.B. No. 2170.

Senate
Twenty-Fourth Legislature
Regular Session of 2008

COMMITTEE ON INTERGOVERNMENTAL AND MILITARY AFFAIRS

Hearing
Monday, February 4, 2008
1:15 p.m.

Testimony by: Ralph C. Boyea, Legislative Advocate, Hawai'i County Council

Testimony in favor of SB 2170 RELATING TO PUBLIC LAND

Chairperson Inouye, Vice Chair Tsutsui and Honored Senators,

On behalf of the Hawai'i County Council, I ask you to pass Senate Bill 2170. Senate Bill 2170 protects counties from liability as a result of natural conditions on or near public beach parks. SB2170 removes the exclusion of public beach parks from the definition of "improved public lands." Passage of SB2170 will provide the counties with the same level of protection from liability that is currently enjoyed by the State of Hawai'i for State parks.

The Hawai'i State Association of Counties included this measure as one of four priorities for the 2008 legislative session. All four counties are in agreement.

The Hawai'i County Council and the Hawaii State Association of Counties respectfully request your support of SB 2170.