

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE CONSUMER LAWYERS OF HAWAII (CLH) IN OPPOSITION TO S.B. NO. 2177, RELATING TO PUBLIC LAND LIABILITY

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. 2177.

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. 2177.

**TESTIMONY OF THE
OFFICE OF THE COUNTY ATTORNEY
COUNTY OF KAUA`I**

**TO THE SENATE COMMITTEE
ON INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**TWENTY-FOURTH LEGISLATURE
REGULAR SESSION OF 2008**

February 4, 2008
1:15 p.m.

TESTIMONY ON SENATE BILL NO. 2177, RELATING TO PUBLIC LAND

**TO THE HONORABLE LORRAINE R. INOUE, CHAIR, AND MEMBERS OF THE
COMMITTEE:**

My name is Harrison Kawate, First Deputy County Attorney, testifying on behalf of the County of Kaua`i (County).

The County supports the intent of Senate Bill No. 2177.

The Bill includes public beach parks in the definition of "improved public lands" in Act 82, Session Laws of Hawaii 2003, Section 2, thus extending the immunity of Act 82 to the parks. Currently, beach parks are excluded from the coverage of Act 82. By the exclusion, counties are exposed to liability from land-based hazards, which may not be within their control. For example, several beach parks in the County may be susceptible to rockslides originating on State or privately owned lands. The change proposed by Senate Bill No. 2177 will provide the counties protection from liability from these hazards, if warning signs are installed and maintained as required by Act 82.

We have not been able to find reasons for excluding beach parks from the coverage of Act 82 in the legislative history. Therefore, it is very likely that the exclusion was inadvertent. Removal of the exclusion is a high priority for the County Council and the Mayor, who jointly agreed the proposal in Senate Bill No. 2177 should be part of the County package. The Hawaii State Association of Counties has also proposed removing the exclusion, in Senate Bill No. 2170. After close examination of Senate Bill Nos. 2170 and 2177, we discovered minor, non-substantive drafting errors in the introductory sentences of Senate Bill No. 2177. For this reason, we prefer and support Senate Bill No. 2170 as a vehicle to remove the exclusion.

We thank the Committee for the opportunity to present testimony on this matter.