

STAND. COM. REP. NO.

923

Honolulu, Hawaii

MAR 25 2009

RE: H.B. No. 1040
H.D. 1
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Transportation, International and Intergovernmental Affairs, to which was referred H.B. No. 1040, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO TORT LIABILITY,"

begs leave to report as follows:

The purpose of this measure is to make permanent Act 170, Session Laws of Hawaii 2002 (Act 170), relating to county liability for lifeguard services, and Act 82, Session Laws of Hawaii 2003 (Act 82), relating to public land liability.

Your Committee received testimony in support of this measure from the Attorney General; the Department of Land and Natural Resources; Hawaii Council of Mayors; City and County of Honolulu, Departments of the Corporation Counsel and Emergency Services; County of Hawai'i; Kaua'i County Fire Department; Hawaiian Lifeguard Association; Hawaii Government Employees Association; Hawaii Association for Justice; two Maui County Councilmembers; one Kaua'i County Councilmember; and one individual. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that Act 170 created a climate in which lifeguard services could be provided by the counties without fear of liability, and, therefore, is a life-saving measure that should be made permanent.



Your Committee further finds that Act 82, providing limited liability protections for the State and counties for incidents arising on improved public lands if certain signage requirements are met, should also be made permanent.

According to testimony of the State Attorney General, following the enactment of Act 170 there have been:

- (1) A total of 131 lifeguard rescues on Oahu's previously unguarded beaches;
- (2) 48 rescues since July 1, 2008 when lifeguard services commenced at Ke'e Beach on Kaua'i; and
- (3) Approximately 267 rescues at Hapuna Beach Park on Hawai'i.

Testimony of an emergency room physician at Wilcox Hospital who is also Co-Chair of the Kauai Water Safety Task Force, indicated that since July 1, 2008 at Ke'e Beach, out of a total estimated 71,428 beachgoers, there have been:

- (1) 49 rescues;
- (2) 333 first aid assistance;
- (3) 7,548 prevention incidences; and
- (4) 18,882 public contacts.

Your Committee finds that these numbers more than justify passage of this measure, notwithstanding that the number of cases actually culminating in a lawsuit is probably relatively small. This measure encourages the State and counties to provide lifeguard services and to keep recreational areas and public beach parks open to the public, by limiting exposure to liability.

Your Committee has amended this measure by changing the effective date to upon approval.

As affirmed by the record of votes of the members of your Committee on Transportation, International and Intergovernmental Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1040, H.D. 1, as amended herein, and recommends that it pass Second Reading in the



form attached hereto as H.B. No. 1040, H.D. 1, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,
International and
Intergovernmental Affairs,




J. KALANI ENGLISH, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Transportation, International and Intergovernmental Affairs
TIA

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 1040, HDI	TIA, JGO	3-18-09.		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
ENGLISH, J. Kalani (C)	✓			
GABBARD, Mike (VC)	✓			
ESPERO, Will	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam	✓			
TOTAL	5	—	—	—
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes