



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

H.B. NO. 1040, RELATING TO TORT LIABILITY.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Monday, February 26, 2009 **TIME:** 2:15 PM

LOCATION: State Capitol, Room 325

Deliver to: State Capitol, Room 302, 1 Copy

TESTIFIER(S): Mark J. Bennett, Attorney General
or Caron Inagaki, Deputy Attorney General

Chair Karamatsu and Members of the Committee:

The Department of the Attorney General strongly supports this measure.

The purpose of this bill is to make permanent the liability protections for lifeguard services on the beach or in the ocean, except for gross negligence or wanton acts or omissions. At present, the liability protections provided in Act 170, Session Laws of Hawaii (SLH) 2002, will sunset on June 30, 2010.

This limited liability protection was necessary because some counties would not provide lifeguard services at State beach parks, due to fear of potential liability that might ensue. Thus, Act 170 created a climate in which lifeguard services could be provided by the counties with less fear of liability.

Under Act 152, Session Laws of Hawaii (SLH) 2007, the Legislature found that the limitations on state and county liability have proven to be beneficial to the state and county governments, as well as the public. The liability protections of Act 170, as well as Act 82, SLH 2003, and Act 190, SLH 1996, as amended, have reduced the exposure of the state and county governments to substantial damages and, as a result, have allowed the state and county governments to keep recreational areas and public beach parks with potentially dangerous natural conditions open to the public. The

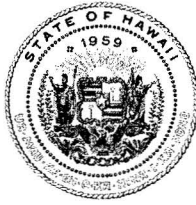
Legislature further found that state and county compliance with the statutorily required public warning of dangerous conditions at recreational areas and public beach parks have contributed to an improvement in public safety in these areas, which justified making the current liability exemptions for state and county governments relating to recreational areas (Act 82) and public beach parks (Act 190) and actions of county lifeguards (Act 170) permanent or extending their protections.

Act 152 also established a task force to examine the effectiveness of, collect data, and provide information to the legislature on, Acts 170, 190, and 82. The report submitted by the task force to the 2009 Legislature found nearly unanimously that Act 170 was effective and promotes and increases public safety. The task force, again, nearly unanimously recommended that Act 170 be made permanent. The lone dissenter was the representative of Consumer Lawyers of Hawaii, who believed that lifeguards had not been on the beaches, specifically on Kauai, long enough to determine the efficacy of Act 170.

Following the enactment of Act 170, there have been a total of 131 lifeguard rescues on Oahu's previously unguarded beaches. In 2007-2008 alone, Kauai's water safety officers prevented at least 312 drowning deaths. At Hapuna Beach Park, the only state beach park on the island of Hawaii, approximately 267 individuals were rescued during the fiscal years of 2006-2007 and 2007-2008. In 2008, Maui lifeguards performed approximately 120 rescues.

This is a life-saving measure that deserves to be made permanent. We therefore respectfully request that the Committee pass this measure.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
JUDICIARY**

**Thursday, February 26, 2009
2:15 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1040
RELATING TO TORT LIABILITY**

House Bill 1040 proposes to make permanent the law that provides the state and county governments with liability protection for lifeguard services at state and county beaches. The Department of Land and Natural Resources (Department) strongly supports this Administration bill as it provides a permanent exception from liability for county lifeguards while carrying out their duties and responsibilities.

This bill amends Act 170 Session Laws of Hawaii (SLH) 2002 (Act 170), as amended by Section 4 of Act 152, SLH 2007, by repealing the June 30, 2010 sunset date.

Act 170 provides liability immunity for counties and county lifeguards while providing rescue, resuscitative or other lifeguard services. The State does not have lifeguards and contracts with the Counties for lifeguard services at its State Parks. Liability concerns had prevented some counties from participating. Act 170 cleared up these concerns and has allowed the State to contract with all counties for lifeguard services at State Park beaches when funding becomes available. Kauai county lifeguards have been on duty at Kee Beach, Haena since July 1, 2008, and Maui County is hiring and training lifeguards for Makena State Park.

For the reasons stated in this testimony, the Department strongly supports House Bill 1040 in its objective to continue the partnership of the State and the Counties to enhance safety of public park users while promoting a greater understanding, respect, and enjoyment of the otherwise inviting ocean that we are blessed with. The sunset provision in Act 170 needs to be removed.

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

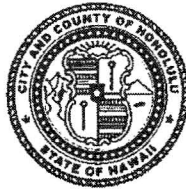
RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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MUFI HANNEMANN
MAYOR

CARRIE K.S. OKINAGA
CORPORATION COUNSEL

DONNA M. WOO
FIRST DEPUTY CORPORATION COUNSEL

February 25, 2009

The Honorable Jon Riki Karamatsu, Chair
and Members of the Committee on Judiciary
State House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members:

Subject: House Bill No. 1040
Relating to Tort Liability

The City and County of Honolulu ("City") strongly supports HB No. 1040 which seeks to make permanent the liability exemptions for State and County governments providing county lifeguard services. Passage of HB No. 1040 would make our beaches more accessible and safer by allowing the Counties to continue the placement of lifeguards at State beach parks, without the threat of costly litigation for conditions or events that are outside the Counties' control.

The City requests that HB No. 1040 be amended to include repeal of the sunset date in Act 82, SLH 2003, as recommended by the Task Force created by Act 152, Sessions Laws of Hawaii, 2007 ("Act 152 Task Force"). The Act 152 Task Force was established to advise the Legislature of the effectiveness of, and collect sufficient data relating to, Act 82, SLH 2003; Act 170, SLH 2002; and Act 190, SLH 1996, as amended. All three acts were adopted to strike a balance between protecting the safety of residents and visitors at public parks and beaches and providing government with protection from liability arising from dangerous natural conditions in the ocean and public recreational areas

In its report to the Twenty-Fifth State Legislature, Regular Session 2009, the Act 152 Task Force concludes that the various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety, that the procedures contained therein have been implemented, and continue to be implemented by the State and the Counties. Both the State and the Counties

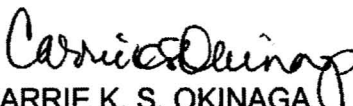
The Honorable Jon Riki Karamatsu, Chair and Members
of the Committee on Judiciary
State House of Representatives
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have adopted uniform signage design and installed signage compliant with the requirements of Act 82. Where funding has been appropriated, counties have stationed lifeguards at certain State beach parks. The report further discusses the benefits of posting Act 190 and Act 82 signage to the public and how lives have been saved as a result of the posting of County lifeguards at State beach parks. Based upon its review of the various County programs for the implementation of Act 82 and Act 170, the Act 152 Task Force concludes with the recommendation that the sunset dates of Act 82 and Act 170 be repealed.

The City fully supports the recommendations of the Act 152 Task Force, and requests your support in amending HB No. 1040 to include repeal of the sunset date of Act 82 and passing HB No. 1040 in its amended form to make Acts 170 and 82 permanent laws.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,

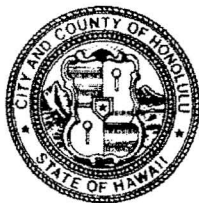

CARRIE K. S. OKINAGA
Corporation Counsel

CKSO:ey

HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1869
Phone: (808) 723-7800 • Fax: (808) 833-3934

MUFI HANNEMANN
MAYOR



ELIZABETH A. CHAR, M.D.
DIRECTOR

February 25, 2009

The Honorable Jon Riki Karamatsu, Chair
and Members
The Honorable Ken Ito, Vice Chair
and Members
Committee on Judiciary
House of Representatives
Hawaii State Capitol
Honolulu, HI 96813

Dear Chair Karamatsu, Vice Chair Ito, and Committee Members:

Re: HB 1040 Relating to Tort Liability

The Honolulu Emergency Services Department, through its Ocean Safety and Lifeguard Services Division, City and County of Honolulu, provides a comprehensive program of ocean safety for the residents of and visitors to the island of Oahu, and strongly urges your support of HB 1040.

As you may be aware, the State of Hawaii, Department of Land and Natural Resources (DLNR) contracts with the City and County of Honolulu to provide lifeguard services at Kaena Point State Park. The provision of these services has occurred since the early 1990's, and has resulted in hundreds of rescues, first aids, and other lifesaving incidents that would surely have resulted in poor outcomes had there not been lifeguards stationed there. Because the State of Hawaii does not have a lifeguard service, DLNR contracts with the counties to provide lifeguards at certain state beach parks. (Kaena Point State Park on Oahu, Ke'e Beach on Kauai, Hapuna Beach on Hawaii Island, and Makena Beach on Maui.)

Act 170, Session Laws of Hawaii 2002, provides the necessary protection from liability for lifeguards and their respective county employers while acting in their normal course of duties. Act 170 does not provide for complete immunity, as gross negligence, wanton acts or omissions are specifically excluded from the statute, however, it does provide for protection without which the counties would not be able to staff these beaches.

The Honolulu Emergency Services Department strongly supports making Act 170 permanent and urges your favorable consideration of HB 1040.

Thank you for the opportunity to present this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth A. Char".

Elizabeth A. Char, M.D., Director
Honolulu Emergency Services Department

William P. Kenoi
Mayor



Lincoln S.T. Ashida
Corporation Counsel

Katherine A. Garson
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

February 25, 2009

The Honorable Jon Riki Karamatsu, Chair,
and Members
Committee on Judiciary
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Karamatsu and Members of the Committee:

*Re: Testimony in Support of House Bill 1040
Hearing: Thursday, February 26, 2009, at 2:15 p.m.
Conference Room 325*

The County of Hawaii's Office of the Corporation Counsel and Fire Department (collectively as "County") support House Bill 1040 because it seeks to make permanent the liability exemptions for state and county governments providing county lifeguard services. The County has submitted similar written testimony of the bill when it was before the Honorable Ken Ito, Chair, and Members of the Committee on Water, Land and Ocean Resources for a hearing held on Monday, February 9, 2009.

The bill repeals the sunset date of Act 170, Session Laws of Hawaii 2002 ("Act 170") that shields county lifeguards from liability. Passage of the bill will provide more access to the counties' beaches and increase safety to the beachgoers by allowing the counties to place lifeguards at county and state beach parks, without the threat of costly, unnecessary and unwanted litigation arising from dangerous natural conditions in the beach parks, ocean and public recreational areas.

Act 170 protected lifeguards from liability when they provide rescue, resuscitative or other lifeguard services. Removal of the sunset date will provide public benefits that have been well documented in the findings of the Report of the Task Force Established by Act 152 ("Task Force Report"), submitted to the Twenty-Fifth State Legislature, Regular Session 2009. The Act 152 Task Force was established to advise the Legislature of the effectiveness of three acts (Act 82 (SLH 2003), Act 170 (SLH 2002) and Act 190 (SLH 1996)) that were enacted to balance the interest of protecting the safety of residents and visitors at public parks and beaches, with that of the interest of

The Honorable Jon Riki Karamatsu, Chair,
and Members
February 25, 2009
Page 2

providing the counties and state protection from liability arising from dangerous natural conditions or events that are outside their control. Where funding has been appropriated, counties have stationed lifeguards at certain state beach parks. The Task Force Report concluded that various programs have been effective in increasing public safety, and that both the state and counties adopted uniform signage design and installed appropriate signage. The Task Force recommended repeal of the 2010 sunset date, and codification of Act 170 as permanent law.

The County's statistics concerning the lifeguards' services on the beaches provide substantial objective basis for passage of the bill. For example, from December 2003 to December 2008, for the four (4) beaches on West Hawai'i, there were 5,423,405 beachgoers, with 3,109,598 of those beachgoers utilizing Hāpuna, which is the only state beach on the island of Hawai'i where the County provides lifeguard services. Even though Hāpuna is the most widely used beach on the island, with more than 600,000 visitors per year, there has been only two (2) drownings. In addition, at Hāpuna, 594 beachgoers were rescued, 6 were resuscitated, and 329 were provided first aid by lifeguards. In addition, lifeguards took 59,112 preventive actions for beachgoers, which could have resulted in more injuries or death. The east side beaches show the same trend of the actions of the lifeguards who save lives, give first aid, and prevent injuries and deaths.

Thank you for your consideration of our testimony.

Sincerely,



JOSEPH K. KAMELAMELA
Deputy Corporation Counsel,
Litigation Supervisor
County of Hawai'i

JKK:fc

c via email only: Kevin Dayton, Executive Assistant
Bobby Jean Leithead-Todd, Acting Deputy Planning Director
Darryl Oliveira, Fire Chief

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

John T. Blalock
Deputy Fire Chief

COUNTY OF KAUAI
Fire Department
Mo'ikeha Building
4444 Rice Street, Suite 295
Lihue, Kauai, Hawaii 96766

February 25, 2009

The Honorable Jon R. Karamatsu, Chair
Committee on Judiciary
41st Representative District
Hawaii State Capitol, Room 302
415 South Beretania Street
Honolulu, HI 96813

Subject: H.B. 1040 Relating to Tort Liability

Dear Chair Karamatsu:

My name is Robert F. Westerman, Fire Chief for the Kauai Fire Department, testifying in support of the Bill, with amendment. The Bill repeals the sunset date and makes permanent Act 170, Session Laws of Hawai'i 2002 (Act 170). Act 170 shields county lifeguards from liability.

Act 170 has provided needed protection to lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. We support removal of the sunset date so that the public benefits of the Act can continue. The benefits of the Act were documented in the findings of the Report of the Task Force Established by Act 152 (Task Force Report), submitted to this Legislature this session. In the Task Force Report, all task force members, with the exception of the member representing the Consumer Lawyers of Hawai'i (CLH), recommend repeal of the 2010 sunset date, and codification of Act 170 as permanent law.

The Task Force, with the exception of the CLH member, also that Act 82, Session Laws of Hawai'i 2003 (Act 82) be made permanent. Act 82 protects the State and counties from unlimited liability from recreational activities on public lands, including trails. Act 82 also provides protection to the public, because the State and counties are required to implement a system of warning signs. We request that this Bill be amended to include repeal of the June 20, 2010 sunset date of Act 82, which would make the Act permanent. Alternatively, we advocate passage of House Bill No. 848, which would accomplish the same purpose, since it proposes to amend Act 152, Session Laws of Hawai'i 2007, by repealing the sunset dates of Acts 82 and 170.


We also request that this Legislature continue the funding to the County for providing lifeguards on certain state beach parks. On Kaua'i, the funding allows the County to provide lifeguards for Kee Beach on Kaua'i, which is a State beach. Lifeguarding began at Kee Beach last year, with significant positive results. Between July 1, 2008, and November, 2008, approximately 48 beachgoers were rescued, two were assisted, and 282

The Honorable Jon R. Karamatsu
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provided first aid by lifeguards. In addition, lifeguards took 4,989 preventive actions, which might have resulted in injuries or deaths. The State funding provided by this Legislature prevented tragedies from occurring because of these incidents. We urge you to provide sufficient funding to continue lifeguarding at Kee Beach.

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

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive style with a long, sweeping underline that extends across the name.

Robert F. Westerman
Fire Chief

RFW/eld

HAWAII COUNCIL OF MAYORS



Testimony of the

Hawaii Council of Mayors

Bernard P. Carvalho, Jr., Mayor of Kauai
Mufi Hannemann, Mayor of Honolulu
Billy Kenoi, Mayor of Hawaii
Charmaine Tavares, Mayor of Maui

Before a Hearing of the
House Committee on Judiciary

February 26, 2009

House Bill 1040, Relating to Tort Liability

The Hawaii Council of Mayors strongly supports House Bill 1040, repealing the sunset date of Act 170 (Session Laws of Hawaii 2002) that extends liability coverage to lifeguards.

We ask for your approval of House Bill 1040, and further request that House Bill 1040 be amended to include the repeal of the sunset date of Act 82 (Session Laws of Hawaii 2003, the "Sacred Falls immunity"), making it permanent law. This repeal was recommended by the Act 152 Task Force in its report submitted to the Legislature earlier this session.

The immunities granted by the Legislature to the counties for dangerous natural conditions on public lands (Act 82) and the provision of lifeguard services have been very beneficial to the county governments and the public by reducing the liability exposure of the counties to substantial damages, which, as a result, has enabled the counties to keep open to the public those recreational areas and beach parks with potentially dangerous natural conditions. The counties' compliance with the posting of signs warning of dangerous natural conditions at these recreational areas has contributed to an improvement in public safety, which justifies making permanent the existing immunities.

This legislation is a priority of the Hawaii Council of Mayors and was included in our legislative package to the 2009 Legislature.

Mahalo.



Mayor Billy Kenoi
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 98720



Mayor Mufi Hannemann
City and County of Honolulu
530 South King Street
Honolulu, Hawaii 96813



Mayor Bernard Carvalho, Jr.
County of Kauai
444 Rice Street
Lihue, Hawaii 96766



Mayor Charmaine Tavares
County of Maui
200 South High Street, 9th Floor
Wailuku, Hawaii 96793

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Danny A. Mateo

Vice-Chair
Michael J. Molina

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Wayne K. Nishiki
Joseph Pontanilla
Michael P. Victorino

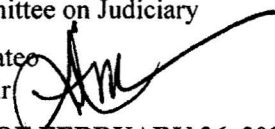


Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.maui-county.gov/council

February 25, 2009

TO: Honorable Jon Riki Karamatsu, Chair
House Committee on Judiciary

FROM: Danny A. Mateo
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 26, 2009; TESTIMONY IN SUPPORT OF HB 1040,
RELATING TO TORT LIABILITY**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is repeal the sunset date and make permanent the law shielding county lifeguards from liability.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

Act 170, SLH 2002, as amended by Act 152, SLH 2007 provided for an exception to tort liability for county lifeguard services while providing rescue, resuscitation, or other lifeguard services on the beach or in the ocean. It has helped the counties place lifeguards on the public beaches and has helped the State to make public parks safer. The liability protections provided by section 1 of this Act will be repealed on June 30, 2010. This is a life-saving measure that should be made permanent.

For the foregoing reasons, I support this measure.

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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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**The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Judiciary**

**Testimony by
Hawaii Government Employees Association
February 26, 2009**

**H.B. 1040 – RELATING
TO TORT LIABILITY**

The Hawaii Government Employees Association strongly supports the purpose and intent of H.B. 1040. This legislation provides state and county governments with a permanent exception from liability for the acts of county lifeguards while acting within the scope of their duties and responsibilities, except for gross negligence or wanton acts of omissions. At present, the liability protections afforded to lifeguards under Act 170, SLH 2002, will expire on June 30, 2010.

This liability protection enables lifeguard services to be provided by the counties without fear of liability. Making the lifeguard immunity permanent ensures that the maximum number of beach parks are guarded, thereby limiting the potential liability for drowning deaths and other injuries sustained at public parks.

Thank you for the opportunity to testify in support of H.B. 1040.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER
LAWYERS OF HAWAII IN OPPOSITION TO H.B. NO. 1040**

February 26, 2009

To: Chairman Jon Riki Karamatsu and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in opposition to H.B. No. 1040.

The purpose of this bill is to make Act 170, Sessions Laws of Hawaii, 2002, as amended, permanent. Currently, Act 170 regarding the immunity from negligence for lifeguards is scheduled to sunset on June 30, 2010, and this was enacted by the legislature with the knowledge of all of the parties concerned, including the state and counties. The sunset provision in the original bill passed in 2002 was included to “allow for an evaluation of this measure after sufficient experience has been obtained.” See Conference Committee Report No. 66-02 on S.B. 796, C.D.2. The sunset date was extended several times and during the 2007 legislative session, the conference committee, in a bill pertaining to several prior Acts pertaining to lifeguards, beach liability and public recreational lands, determined that it would be best to extend the sunset date to 2010 for Act 170.

Act 170 was passed in 2002 and it was not until July 1, 2008, less than one year ago, that lifeguards were placed on Ke’e Beach on Kauai, which was one of the dangerous beaches at the heart of this legislation. We feel that it is reasonable to let the sunset date of 2010 remain and that the legislature can look at the information during the 2010 session.

Please note that the 2002 legislature set the sunset date on this Act for 2007, five years after enactment, on the assumption that lifeguards would be placed on that particular beach and other beaches on Kauai by the end of that year and that there would be at least four years of experience to review. Currently, as to that dangerous beach, we have less than one year of experience.

A sunset provision is included to give the proponents of the legislation as well as others the opportunity to collect sufficient information to present to the legislature so that the members could make a reasonable and informed decision as to whether the law they passed has worked and is still working in the way they intended.

Because this Act has a major impact on consumer rights, HAJ feels it is more prudent to first obtain sufficient information on how the law has worked; that is, that immunity from negligence has had the effect it was intended to have – that it helped lifeguards do a better job in protecting beachgoers, residents and tourists alike. We feel that the legislature should wait to fully assess the impact of this law during the 2010 session when it is scheduled to sunset and when the legislature can make it permanent or modify it according to the information presented.

Thank you for the opportunity to testify on this bill.



HAWAIIAN LIFEGUARD ASSOCIATION

February 25, 2009

The Honorable Jon Riki Karamatsu, Chair,
The Honorable Ken Ito, Vice-Chair, and Members
Committee on Judiciary
House of Representatives
The Twenty Fifth Legislature
State of Hawaii:
Regular Session of 2009
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Karamatsu, Vice-Chair Ito, and Members:

Re: HB 1040 Relating to Tort Liability

The Hawaiian Lifeguard Association (HLA) is the non-profit organization that represents the 400 professional ocean lifeguards in the State of Hawaii. The mission of the HLA is to promote the advancement of professional lifeguarding and to reduce drownings in the ocean surrounding our island state. The HLA attempts to accomplish this mission by supporting the efforts of Hawaii's lifeguards through fundraising and educational programs and by partnering with the government agencies in delivering the statewide Junior Lifeguard Program.

PMB271 • 758 Kapahulu Avenue, Ste A • Honolulu, Hawaii 96816 • (808) 922-3888
Facsimile (808) 922-0411 • Email: lifeguards@aloha.com

SB 1022

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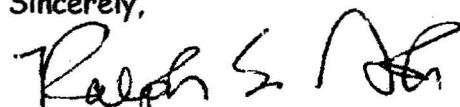
The HLA strongly supports HB 1040, which seeks to make permanent the protection from liability provided by Act 170 (2002) and Act 82 (2003). The protection in Act 170 is necessary for individual lifeguards as well as their employing counties to be able to provide services for the State of Hawaii at Kaena Point State Park on Oahu, Hapuna Beach on Hawaii Island, Makena Beach on Maui, and Ke'e Beach on Kauai. These four beaches are popularly used by the public and would be where drownings and serious injuries occur if lifeguard services were not provided.

The United States Lifesaving Association, the national organization of professional open water lifeguard agencies, has collected data over a twenty year period that shows that the chances of drowning at a lifeguarded beach in the United States is one in 18 million. According to the State Department of Health's Injury Prevention and Control Program, drownings that occur at unguarded beaches in the State of Hawaii far outnumber those at guarded beaches by at least 10 to one.

The necessity of providing trained lifeguards at Hawaii's beaches is obvious, a "no brainer." We urge you to acknowledge this fact by moving to remove the sunset provisions from Act 170 and Act 82 to make both laws permanent.

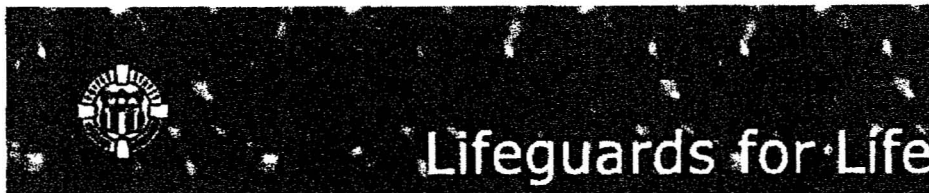
Thank you for the opportunity to present this testimony. I am available to answer any questions you may have. Aloha nui loa.

Sincerely,



Ralph S. Goto

For the Board of Directors



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Statistics

The United States Lifesaving Association annually polls its chapters for the number of rescues, drownings, and other statistical information reported by lifeguard agencies. This is not a complete list of all statistics generated by all beach lifeguard agencies, but the statistics of most major agencies included here.

USLA has calculated the chance that a person will drown while attending a beach protected by affiliated lifeguards at 1 in 18 million (.0000055%). This is based on the last ten years of reports from USLA affiliated lifeguard agencies, comparing estimated beach attendance to the number of drownings in areas under lifeguard protection.

Below you will find a link to the most recent year's statistics, as well as the ability to search by agency, a region and a year.

If you are an Agency, wishing to add your statistics, [Click Here](#).

[View Most Recent Annual Statistics](#) | [View Past 5 Year Statistics](#)

For more detailed statistics the following options are available.

National Statistics by Year

Select a Year:

Statistics for a Selected Agency

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2/23/09

Testimony for: Representative John Riki Karamatsu
Chairman, Judiciary Committee
State of Hawaii House of Representatives

Subject: REGARDING HB 1040

Dear Chairman Karamatsu:

Although I'm not aware of when your Committee will be reviewing HB 1040, I am contacting you in advance with the hope of attracting your attention to it with the following testimony. Successful passage of HB 1040 will eliminate the sunset for Act 170, the sunset is scheduled to occur on June 30, 2010. I don't yet know if my ER schedule will allow me to testify in person. I intend to do that if I am able to.

Also, may I request that you please forward this testimony to your Committee members? Thank you in advance for that, and best wishes with all of your deliberations in these challenging times!

TESTIMONY

Act 170 – That is very near and dear to me. As you know, this Act provides County Lifeguards with immunity (except in the case of gross negligence) when they are guarding State Beaches. This Act, along with State funding, is what has allowed Kauai County Lifeguards to cover Ke'e Beach, our very busy State Park that is at the northern end of the road. (The beach is so busy that if you want to go there you will be lucky to find a parking place within 1/4 mile.) After years of lobbying for Act 170 and for funding, our Lifeguard service began on July 1, 2008 and County Lifeguards are at work there as you read this testimony. We Kauaians are extremely grateful to the State for accepting this responsibility for Ke'e State Beach Park.

Ke'e is very popular for snorkeling because of an outer protective reef that keeps the inside lagoon quite calm and placid appearing. But I'm sure you all are aware of how a protective reef can be a double-edged sword. When there are conditions, as there frequently are, wherein the waves break onto and over the reef, you now have the set-up for a strong Rip Current, the avenue by which the incoming water equilibrates itself back out to sea. Many unsuspecting people have been caught in this Ke'e rip current, and out they go down along the wild cliffs and waters of the NaPali coast. Only ½ the bodies are ever recovered. Our last death was 2 years ago, the pilot of a U.S. Airways flight that was on 24 hour crew layover. His wife

and 9 year old son (and a back-up airline crew) flew in the next day to try and deal with this.

For me personally, I feel a happiness every single day knowing that Lifeguards are at Ke'e and that now we almost certainly won't have to endure another family catastrophe there. Look at these Ke'e numbers, compiled by the Lifeguards since 7/1/08:

Rescues	49
First Aid Assistance	333
Preventions	7,548
Public contacts	18,882
Total # of beachgoers	71,428

By these astonishing numbers you can see that this is very much of a "Prevention" tower, and the Lifeguards have to be good conversationalists/communicators as well as water-people! The Tower is right where you walk onto the beach, and you can see how many snorkelers and beachgoers stop and talk with our Lifeguards. Terrific stuff in our challenged visitor-industry economy. How many deaths would there have been had there not been a Lifeguard? Well, even if the answer is One, I ask you to imagine if that one was your family member.

One other comment about the preventions at this Tower: Ke'e Beach is the starting point for the NaPali Coast trail, which takes you to a couple of extremely dangerous beaches called Hanakapiai and Kalalau. I believe our Ke'e Lifeguards have a significant impact on these dangers, since hikers regularly stop to chat with them about conditions before heading up the trail. Cell-phone communication from these beaches is impossible because of the Pali's, but we are looking into (via the private sector) setting up a satellite-technology Personal Radio Beacon that can be activated into our 911 system in an emergency. With this and with Jetskis, it's conceivable that our Ke'e Lifeguards may one day become able to actually have a meaningful shot at making rescues at these remote State/DLNR beaches. We did suffer a young man drowning at Hanakapiai in 2008, his friends had to run out the 2 miles of trail before any rescue could be attempted, and by then it was much too late.

Please do not take away our Ke'e Lifeguards. Please do not let any more unsuspecting snorkelers die at Ke'e. Please repeal the sunset of Act 170 and please support HB 1040

Respectfully Submitted,



Dr. Monty Downs
Kapaa, Kauai