

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  
WATER, LAND AND OCEAN RESOURCES**

**Monday, February 9, 2009  
9:00 AM  
State Capitol, Conference Room 325**

**In consideration of  
HOUSE BILL 848  
RELATING TO GOVERNMENT LIABILITY**

House Bill 878 proposes to make permanent, laws that provide the state and county governments with liability protection for public use of certain state or county recreational areas. The Department of Land and Natural Resources (Department) strongly supports this 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 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 counties from participating. Act 170 cleared up these concerns and allowed the State to contract with all counties for lifeguard services at State Park beaches.

This measure also amends Act 82, SLH 2003 (Act 82), by eliminating the provision that repeals the Act in 2008, thus allowing the Act to continue and be codified in Chapters 663 and 171 of the Hawaii Revised Statutes. Act 82 established a process that balances the responsibility of the government's duty to warn of dangerous natural conditions in specific state and county recreational areas adjacent to natural conditions, and the public's duty to heed posted signs and make an informed choice.

Act 82 was promulgated due to concern about the adequacy of warning signs for potentially dangerous natural conditions and public exposure at state and county parks and along specific Na Ala Hele trails and access roads (defined as improved public lands under Act 82). The Department contracted the U.S. Forest Service to conduct an evaluation of these specific state parks and trails to identify reoccurring dangerous natural conditions that could not be mitigated

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

and that warranted signage. The four natural conditions identified are: rock fall, flashfloods, cliffs and submerged object in streams that would cause injury from impact associated with diving or jumping into the water.

Act 82 established a Risk Assessment Working Group (RAWG) that reviewed the beach safety signs, as well as the most current warning sign standards from the American National Standards Institute (ANSI). Using current ANSI guidelines, the RAWG established prototype sign design and placement guidelines. The prototype signs underwent public review and were modified according to comments. The guidelines were incorporated into Title 13, Chapter 8, Hawaii Administrative Rules for the design and placement of warning signs on improved public lands, which have been approved by the Governor. The final set of signs and their ancillary locations have been approved by the Board of Land and Natural Resources. The signs are now concluded to be adequate, thus reducing the state and county liability associated with the identified natural conditions.

For the reasons stated in this testimony, the Department strongly supports House Bill 848 in its objective to continue the partnership of the state and 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 provisions in Act 170 and Act 82 need to be removed.



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 848, RELATING TO GOVERNMENT LIABILITY.

**BEFORE THE:**

HOUSE COMMITTEE ON WATER, LAND AND OCEAN RESOURCES

**DATE:** Monday, February 9, 2009 **TIME:** 9:00 AM

**LOCATION:** State Capitol, Room 325

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

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Chair Ito 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 in lifeguard cases and liability protections for warning signs for outdoor recreation on public lands. At present, the liability protections provided in Act 170, Session Laws of Hawaii (SLH) 2002 and Act 82, SLH 2003, will sunset on June 30, 2010.

The limited liability protection provided in Act 170 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 190 was made permanent in 2007 and the liability protections in Acts 170 and 82 were extended to June 30, 2010.

Act 152 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.

Act 82 established a system of warning signs to increase public safety and protect the State and the counties from unlimited liability arising out of recreational activities on public lands. Many of these lands are inherently dangerous and contain potential risks. Act 82 created a process in which a risk assessment group reviews both the design and placement of a proposed warning sign. If the risk assessment group approves the sign and placement, the group will then



recommend it to the Chairperson of the Board of Land and Natural Resources. Public hearings are conducted and comments are received from the public throughout the process. If the Chairperson approves the design and placement of the sign, the approval will have the legal effect of providing liability protection to the State or the county after the sign is posted. These rigorous requirements must be met in order for the government entities to be afforded protection from liability.

There is now a consistent process for natural hazard evaluation and appurtenant sign designs. Administrative rules have been put in place that eliminate the ambiguity about the design and placement of warning signs and state and county governments have institutionalized this process.

As with Act 170, the Act 152 task force found nearly unanimously that the program established pursuant to Act 82 was effective and promotes and increases public safety, and recommended that Act 82 be made permanent. The lone dissenter was, again, the representative of Consumer Lawyers of Hawaii who wanted this Act considered in the 2010 legislative session.

The process established by Act 82 has allowed the State and the counties to refine its signage and improve the quality of its warning signs on public lands throughout the State, benefiting public users and at the same time providing the State and the counties with conditional protection from liability for the inherent risks that exist on public lands.

Acts 170 and 82 should be made permanent.

We therefore respectfully request that the Committee pass this measure.

# 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

## House Committee on Water, Land & Ocean Resources

February 9, 2009

### House Bill 1040: Relating to Tort Liability

### House Bill 848: Relating to Government Liability

We—the mayors of Hawaii, Honolulu, Kauai, and Maui—support House Bill 1040 and House Bill 848, both of which repeal the sunset date on liability statutes covering county lifeguards.

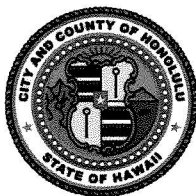
The immunities granted by the Legislature in Act 152 (2007) to the counties for dangerous natural conditions on public lands (referred to as the “Sacred Falls law”) and the provision of lifeguard services have been very beneficial to the county governments and the public by reducing the liability exposure 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 conditions. The counties’ compliance with the posting of signs warning of dangerous conditions at these recreational areas has contributed to an improvement in public safety, which justifies making permanent the existing immunities.

These measures—specifically House Bill 848—were included in the Hawaii Council of Mayors’ legislative package for 2009, and we would be very grateful to the members of the Legislature for your continued support of these proposals.

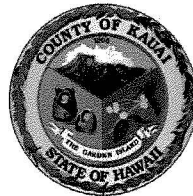
Mahalo.



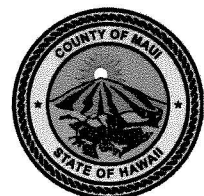
**Mayor Billy Kenoi**  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720



**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

Council Chair  
Danny A. Mateo

Vice-Chair  
Michael J. Molina

Council Members  
Gladys C. Baisa  
Jo Anne Johnson  
Sol P. Kaho'ohalahala  
Bill Kauakea Medeiros  
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](http://www.maui-county.gov/council)

February 5, 2009

TO: Honorable Ken Ito, Chair  
House Committee on Water, Land, and Ocean Resources

FROM: Joseph Pontanilla, Council Member

A handwritten signature in black ink, appearing to read "Joseph Pontanilla".

DATE: Monday February 9, 2009

SUBJECT: **SUPPORT OF HB 848 RELATING TO GOVERNMENT LIABILITY**

Thank you for the opportunity to testify in support of this measure. The purpose of the legislation is to make permanent the tort law exception to liability for county lifeguard services and the conclusive presumptions relating to the duty of public entities to warn of dangers on improved public lands.

I **support HB 848** for the reasons cited in testimony submitted by Maui County Council Chair Danny A. Mateo and urge you to support this measure.

09:02:05:kbrn/JP: HB848

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 6, 2009

The Honorable Ken Ito, Chair,  
and Members  
Committee on Water, Land and Ocean Resources  
Hawaii State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Ito and Members of the Committee:

*Re: Testimony in Support of House Bill No. 848  
Hearing: Monday, February 9, 2009, at 9:00 a.m., Conference Room 325*

The County of Hawaii's Office of the Corporation Counsel and Fire Department (collectively as "County") support HB 848 because it seeks to make permanent the liability exemptions for state and county governments relating to recreational areas and public beaches, and for the provision of county lifeguard services. 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 public beaches and public recreational areas.

The County supports the findings and recommendations contained in 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 the interest of providing the counties and state protection from liability arising from dangerous natural conditions or events that are outside their control. 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. Where funding has been appropriated, counties have stationed lifeguards at certain state beach parks. The Act 152 Task Force recommended repeal of the 2010 sunset dates of Act 82 and Act 170.

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The Honorable Ken Ito, Chair  
and Members  
Committee on Water, Land and Ocean Resources  
February 6, 2009  
Page 2

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.

The County supports HB 848 which will make Act 82 and Act 170 permanent laws.

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

DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 110 • HONOLULU, HAWAII 96813  
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MUFI HANNEMANN  
MAYOR

CARRIE K. S. DKINAGA  
CORPORATION COUNSEL

DONNA M. WOO  
FIRST DEPUTY CORPORATION COUNSEL

February 5, 2009

The Honorable Ken Ito, Chair  
and Members of the Committee  
on Water, Land and Ocean Resources  
State House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Ito and Members:

Subject: House Bill No. 848  
Relating to Government Liability

The City and County of Honolulu ("City") strongly supports HB No. 848, which seeks to make permanent the liability exemptions for State and County governments relating to recreational areas and public beach parks and for the provision of county lifeguard services. Passage of HB No. 848 will provide the Counties with more certainty regarding their programs of creating and installing warning signs at public parks and beaches and would make these facilities 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 supports the findings and recommendations contained in the Report of the Task Force Established by Act 152, Sessions Laws of Hawaii 2007 ("Act 152 Task Force"), filed with the Twenty-Fifth State Legislature, Regular Session 2009. 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.

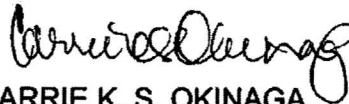
The Honorable Ken Ito, Chair and Members of the  
Committee on Water, Land and Ocean Resources  
State House of Representatives  
HB848  
February 5, 2009  
Page 2

In its report, 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 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 passing HB No. 848 to make Act 82 and Act 170 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

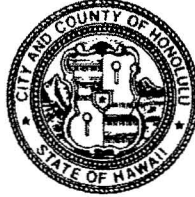
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HONOLULU EMERGENCY SERVICES DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

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 6, 2009

The Honorable Ken Ito, Chair  
and Members  
The Honorable Sharon Har, Vice-Chair  
and Members  
Committee on Water, Land and Ocean Resources  
House of Representatives  
Hawaii State Capitol  
Honolulu, HI 96813

Dear Chair Ito, Vice-Chair Har, and Committee Members:

Re: HB 848, Relating to Government Liability

The Honolulu Emergency Services Department of the City and County of Honolulu supports the intent of HB 848 and urges your favorable consideration.

HB 848 will make permanent certain liability protections provided in Act 170, Session Laws of Hawaii 2002, and Act 82, Session Laws of Hawaii 2003.

As you know, the City & County of Honolulu provides lifeguard services at Oahu's most popular beaches, including Kaena Point State Park. Because the State does not have a lifeguard service, it contracts with the City and County of Honolulu to station lifeguards at Keawaula Beach in Kaena Point State Park. City lifeguards have protected this beach since 1992, and have performed hundreds of rescues and emergency medical responses and have saved hundreds of lives during this time.

Act 170 provides the necessary protection from liability for the lifeguards and the City and County of Honolulu, without which services could not be provided. We strongly support making Act 170 permanent and urge your favorable consideration of this bill.

Thank you for the opportunity to testify on this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "E.A. Char, M.D." with a stylized flourish at the end.

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

Bernard P. Carvalho, Jr.  
Mayor



Robert F. Westerman  
Fire Chief

John T. Bialock  
Deputy Fire Chief

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

February 4, 2009

The Honorable Ken Ito, Chair  
Committee on Water, Land and Ocean Resources  
House of Representatives  
State Capitol, Room 420  
Honolulu, Hawaii 96813

Dear Chair Ito:

**Subject: H.B. 848 Relating to Government Liability**

My name is Robert F. Westerman, Fire Chief of the County of Kauai Fire Department, testifying in support of the Bill. The Bill extends protection from liability to the State and counties under Act 152, Session Laws of Hawai'i 2007 (Act 152).

Act 152 extended the protections of two important measures to the County until June 20, 2010. One of these measures is Act 82, SLH 2003 (Act 82), which protects the State and the counties from unlimited liability arising out of recreational activities on public lands, and provides for a system of warning signs to increase public safety. The other is Act 170, Session Laws of Hawai'i 2002 (Act 170), which provides protection to lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. We support removal of the sunset dates of these acts, because they provide important protection to the County and the public.

The benefits of Act 82 and 170 were documented in the findings of the Report of the Task Force Established by Act 152 (Task Force Report), filed with 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, recommend repeal of the 2010 sunset date, and support codification of Acts 82 and 170 as permanent law. The Task Force Report also states that if Acts 82 and 170 are not made permanent during the 2009 legislative session, that the sunset dates be extended. House Bill No. 848 is consistent with the recommendation for repeal of the sunset dates.

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, 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 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 so lifeguarding can continue at Kee Beach.

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

Sincerely,

Handwritten signature of Robert F. Westerman in black ink.

Robert F. Westerman  
Fire Chief

RFW/crz

CHARMAINE TAVARES  
Mayor



BRIAN T. MOTO  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7741  
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February 5, 2009

The Honorable Ken Ito, Chair  
The Honorable Sharon E. Har, Vice Chair  
And Members of the Committee  
on Water, Land and Ocean Resources  
State House of Representatives  
State Capitol, Room 420  
415 Beretania Street  
Honolulu, Hawaii 96813

Re: H.B. No. 848, Relating to Government Liability  
H.B. No. 1040, Relating to Tort Liability  
DATE OF HEARING: Monday, February 9, 2009  
TIME: 9:00 a.m.  
PLACE: Conference Room 325, State Capitol

Dear Chair Ito, Vice-Chair Har and Committee Members:

On behalf of the County of Maui and its Department of the Corporation Counsel, I submit this testimony in support of H.B. No. 848, Relating to Government Liability, and H.B. No. 1040, Relating to Tort Liability.

H.B. No. 848 is part of the Hawaii Council of Mayors legislative package for 2009, and I respectfully ask for your support of this bill.

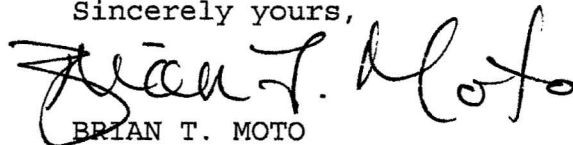
H.B. No. 848 and H.B. No. 1040 will repeal the sunset date and make permanent the state statute that shields counties and their lifeguards from liability while providing rescue, resuscitative, or other lifeguard services on a beach or in the ocean.

H.B. No. 848 will also repeal the sunset date and make permanent the state statute that shields counties, and the State, from liability arising from dangerous natural conditions on public lands.

The Honorable Ken Ito, Chair  
The Honorable Sharon E. Har, Vice Chair  
February 5, 2009  
Page 2

Passage of these measures will enable counties to continue to keep open to the public those recreational areas and beach parks with potentially dangerous natural conditions. Counties' compliance with the posting of signs warning of dangerous conditions at recreational areas has improved public safety, which justifies making permanent existing immunities.

Sincerely yours,



BRIAN T. MOTO  
Corporation Counsel

xc: The Hon. Charmaine Tavares, Mayor  
Sheri Morrison, Managing Director  
Justin Gruenstein, Executive Assistant  
Tamara Horcajo, Director, Dept. of Parks and Recreation

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Council Chair  
Danny A. Mateo

Vice-Chair  
Michael J. Molina

Council Members  
Gladys C. Baisa  
Jo Anne Johnson  
Sol P. Kaho'ohalahala  
Bill Kauakea Medeiros  
Wayne K. Nishiki  
Joseph Pontanilla  
Michael P. Victorino



Director of Council Services  
Ken Fukuoka

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
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[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

February 6, 2009

TO: Honorable Ken Ito, Chair  
House Committee on Water, Land, and Ocean Resources

FROM: Danny A. Mateo  
Council Chair

SUBJECT: **HEARING OF FEBRUARY 9, 2009; TESTIMONY IN SUPPORT OF HB 848,  
RELATING TO GOVERNMENT LIABILITY**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to make permanent the tort law exception to liability for county lifeguard services and the conclusive presumption relating to the duty of public entities to warn of dangers on improved public lands.

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.

I support this measure for the following reasons:

1. 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.
2. Act 82, SLH 2003, as amended by Act 152, SLH 2007, established a risk management procedure for public lands, involving the design and placement of signs that warn of dangerous natural conditions, and provided the State and the counties protection from liability for injuries resulting from those dangerous conditions. The Act struck an equitable balance between the personal responsibility of people engaged in recreational pursuits on public lands, and the duty of government to take reasonable measures to protect its citizens from harm by providing adequate warning. The liability protections provided by this Act will be repealed on June 30, 2010. The Act helped to prevent the closure of recreational public lands, and should be made permanent.

For the foregoing reasons, I support this measure.

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HAWAIIAN LIFEGUARD ASSOCIATION  
PMB 271, 758 KAPAHULU AVE., SUITE A  
HONOLULU, HAWAII 96816

February 7, 2009

The Honorable Ken Ito, Chair,  
The Honorable Sharon Har, Vice-Chair, and Members  
Committee on Water, Land, and Ocean Resources  
House of Representatives  
The Twenty Fifth Legislature  
Regular Session of 2009

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

Re: HB 1040 and HB 848

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.

The HLA strongly supports the intent of both H.B 1040 and H.B. 848, which seek to make permanent the protection from liability provided by Act 170 (2002) and Act 82 (2003). This protection is necessary for the individual lifeguards as well as the 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 20 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 thereby making it 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



Dr. Monty Downs  
E.R. Physician, Wilcox Hospital &  
Co-Chair, Kauai Water Safety Task Force



2/5/09

Testimony for: State of Hawaii House of Representatives  
Committee on Water, Land, and Ocean Resources  
Ken Ito, Chair

Subject: **Hearing on 2/9/09 regarding HB 1040 and HB 848**

Dear Mr. Ito and Committee Members:

A prefacing comment: As you can tell from my title, my interest and expertise is in ocean safety issues. My testimony will therefore focus on HB 1040 and that part of HB 848 which concerns Lifeguard Immunity (i.e. Act 170). I am in favor of the part of HB 848 that deals with Act 82, but I have no expertise in that Act nor in what is covered by that Act, and I will leave it to others who do have that expertise to testify on the Act 82 portion of 848.

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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 of the beach.) 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 4 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 (and 848).

Respectfully Submitted,



Dr. Monty Downs  
Kapaa, Kauai