



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:
H.B. NO. 1753, RELATING TO LIABILITY

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 01, 2012 **TIME:** 2:01 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Keith-Agaran 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, 2014.

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, 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, 2014.

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 with near unanimity that Act 170 was effective and promotes and increases public safety. The task force, again, with near unanimity recommended that Act 170 be made permanent. The lone dissenter was the representative of Consumer Lawyers of Hawaii (now known as the Hawaii Association for Justice), who believed that lifeguards had not been on the beaches, specifically on Kauai, long enough to determine the efficacy of Act 170.

Lifeguards have now been in place on Kauai since 2008. Just a few weeks ago, on February 9, 2012, lifeguards at Kee Beach on Kauai were able to revive a heart attack victim who had no heartbeat and respiration who was then transported to Oahu by air ambulance.

Following the enactment of Act 170, there have been hundreds of lifeguard rescues every year on every state beach park on Oahu, Maui, Kauai, and the island of Hawaii; rescues that would not have occurred if Act 170 had not been in effect and lifeguards had not been assigned to those beach parks.

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 with near unanimity 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 (now known as Hawaii Lawyers for Equal Justice).

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 bill.

NEIL ABERCROMBIE
GOVERNOR



DWIGHT TAKAMINE
DIRECTOR

AUDREY HIDANO
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
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February 27, 2012

The Honorable Gilbert Keith-Agaran, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 302
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: H.B. 1753 Relating to Liability

I am Kenneth G. Silva, Chair of the State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support H.B. 1753, which proposes to delete the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.

Passage of H.B. 1753 would make our beaches accessible and safer by allowing counties to continue posting lifeguards at state beach parks without the threat of costly litigation for conditions or events that are outside the county's control. Act 170 protects lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. We support removal of the sunset date to ensure 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), which was submitted during the 2011 Legislative Session. The task force concluded that various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety. The procedures contained therein have been and continue to be implemented by the state. Where funding has been appropriated, counties have stationed lifeguards at certain state beach parks.

The report further discusses the benefits of posting signage to the public and the lives saved as a result of posting county lifeguards at state beach parks. The state and

The Honorable Gilbert Keith-Agaran, Chair
Page 2
February 27, 2012

counties adopted and installed a uniform signage design that complies with the requirements of Act 82. Based upon its review of various county programs for the implementation of Acts 82 and 170, the task force recommended that the sunset dates of Acts 82 and 170 be repealed.

Task force members, except for the Consumer Lawyers of Hawaii representative, also recommended repealing the 2010 sunset date and codification of Act 170 as permanent law.

The SFC and the HFD urge your committee's support on the passage of H.B. 1753.

Should you have any questions, please contact SFC Administrator Socrates Bratakos at 723-7151 or sbratakos@honolulu.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth G. Silva". The signature is fluid and cursive, with the first name "Kenneth" and last name "Silva" clearly distinguishable.

KENNETH G. SILVA
Chair

KGS/LR:cn

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR.
Chairperson**

**Before the House Committee on
JUDICIARY**

**Thursday, March 1, 2012
2:01 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 1753
RELATING TO LIABILITY**

House Bill 1753 and companion Senate Bill 2050 propose 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, 2014 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 2014. 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

WILLIAM J. AILA, JR.
INTERIM CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUY H. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
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 contracted the United States Forest Service to conduct an evaluation of these specific state parks and trails to identify reoccurring dangerous natural conditions that could not be mitigated 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.

Additionally, this bill clarifies the definition of “improved public lands” to include beach parks. Current language of Act 82 is confusing as it relates to land-based hazard warnings at beach parks.

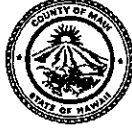
The benefits of having lifeguards cover selected State Parks beaches has recently been punctuated by an incident at Ke’e Beach, Kauai. On the morning of Thursday, February 9, shortly after starting the hike to Hanakapi’ai, a Department employee suffered cardiac arrest and collapsed with no discernable heartbeat or respiration. Kauai County Ocean Safety lifeguards were able to revive him using CPR, and their AED and breathing bag. He was flown to Honolulu for surgery and is back home on Kauai recovering. This helps point out that, although the focus of the lifeguards’ attention is necessarily on ocean safety, they are first responders saving lives on land as well.

For the reasons stated in this testimony, the Department strongly supports House Bill 1753 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.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

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

February 29, 2012

TO: Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary

FROM: Robert Carroll
Council Member, East Maui

A handwritten signature in black ink that reads "Robert Carroll".

SUBJECT: **HEARING OF MARCH 1, 2012; TESTIMONY IN SUPPORT OF HB 1753 ,
RELATING TO LIABILITY**

I SUPPORT HB 1753 for the reasons cited in testimony submitted by the Maui County Council Vice Chair and HSAC Treasurer Joseph Pontanilla, and urge you to pass this measure.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White




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 29, 2012

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary

FROM: Joseph Pontanilla, Treasurer 
Hawaii State Association of Counties

SUBJECT: **HEARING OF MARCH 1, 2012; TESTIMONY IN SUPPORT OF HB 1753,
RELATING TO LIABILITY**

Thank you for the opportunity to testify in support of this important measure. The purposes of this measure are to: (1) make permanent the liability protection for State and county governments regarding the duty to warn of dangers on improved public lands and actions of county lifeguards; and (2) include public beach parks in the definition of "improved public lands".

I am aware that the President of the Hawaii State Association of Counties ("HSAC") has submitted testimony, on behalf of HSAC, in support of this measure, which is in the HSAC Legislative Package. As the Treasurer of HSAC, I concur with the testimony submitted by the President, and urge you to support this measure.

**Hawai'i State Association of Counties (HSAC)
Counties of Kaua'i, Maui, Hawai'i & City & County of Honolulu**

February 27, 2012

**TESTIMONY OF MEL RAPOZO
PRESIDENT, HAWAII STATE ASSOCIATION OF COUNTIES
ON
H.B. NO. 1753, RELATING TO LIABILITY
Committee on Judiciary
Thursday, March 01, 2012
2:01 P.M.
Conference Room 325**

Dear Chair Keith-Agaran and Committee Members:

Thank you for this opportunity to submit testimony in strong support of H.B. No. 1753, relating to Liability. My testimony is submitted in my capacity as President of the Hawai'i State Association of Counties (HSAC).

HSAC is in full support of H.B. No. 1753. In 2003, Act 82, Session Laws of Hawai'i (SLH) 2003, was enacted by the State Legislature to provide the state and county governments with protection from liability arising from dangerous natural conditions at improved public lands if adequate warning signs are erected notifying the public of the dangers of these conditions, but excludes public beach parks from the definition of "improved public lands."

In the interest of safety, this bill would include "public beach parks" in the definition in order to provide liability protection for all counties and county lifeguard services on the beach or in the ocean; therefore, our beaches will become more accessible and safer. It also repeals the sunset date for Acts 82, SLH 2003, and Act 170, SLH 2002, to assure that the counties and the counties' lifeguards have adequate protections from liability.

For the reason stated above, HSAC is in strong support of H.B. No. 1753 and asks for your favorable support.

Again, thank you for this opportunity to submit testimony.

Sincerely,



MEL RAPOZO
President, HSAC

AB_da

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



PETER B. CARLISLE
MAYOR

JAMES H.E. IRELAND, M.D.
DIRECTOR

MARK K. RIGG
DEPUTY DIRECTOR

February 27, 2012

The Honorable Gilbert S.C. Keith-Agaran, Chair,
The Honorable Karl Rhoads, Vice Chair, and Members
House of Representatives
The Twenty-Sixth Legislature
Regular Session of 2012
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran, Vice Chair Rhoads, and Members of the Committee:

Re: HB 1753 RELATING TO TORT LIABILITY

The City and County of Honolulu's Emergency Services Department, through its Ocean Safety and Lifeguard Services Division, provides a comprehensive program of ocean safety for the residents of and visitors to the island of Oahu, and strongly urges your support of House Bill 1753.

As you may be aware, the State of Hawaii Department of Land and Natural Resources 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 1753.

Thank you for the opportunity to present this testimony.

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Ireland", is written in black ink.

James H.E. Ireland, M.D.
Director, Honolulu Emergency Services Department

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Gary K. Heu
Managing Director

John T. Blalock
Deputy Fire Chief

KAUA'I FIRE DEPARTMENT
County of Kaua'i, State of Hawai'i

3083 Akahi Street, Suite 101, Lihu'e, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 28, 2012

The Honorable Gilbert Keith-Agaran, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 325
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: H.B. 1753, H.D. 2 Relating to Tort Liability

I am Robert F. Westerman, Fire Chief of the Kauai Fire Department (KFD) and a member of the State Fire Council (SFC). The KFD and the SFC support H.B. 1753, H.D. 2, which proposes to delete the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.

Passage of H.B. 1753, H.D. 2, would make our beaches accessible and safer by allowing counties to continue posting lifeguards at state beach parks without the threat of costly litigation for conditions or events that are outside the county's control. Act 170 protects lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. We support removal of the sunset date to ensure 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), which was submitted during the 2011 Legislative Session. The task force concluded that various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety. The procedures contained therein have been and continue to be implemented by the state. Where funding has been appropriated, counties have stationed lifeguards at certain state beach parks. The report further discusses the benefits of posting signage to the public and the lives saved as a result of posting county lifeguards at state beach parks. The state and counties adopted and installed a uniform signage design that complies with the requirements of Act 82. Based upon its review of various county programs for the implementation of Acts 82 and 170, the task force recommended that the sunset dates of Acts 82 and 170 be repealed.

The Honorable Gilbert Keith-Agaran, Chair

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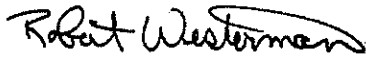
February 10, 2012

Task force members, except for the Consumer Lawyers of Hawaii representative, also recommended repealing the 2010 sunset date and codification of Act 170 as permanent law.

The KFD and the SFC urge your committee's support on the passage of H.B. 1753, H.D. 2.

Please call me at (808) 241-4980 should you have any questions regarding this matter.

Sincerely,

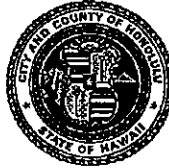
A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive style with a prominent flourish at the end.

Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

PETER B. CARLISLE
MAYOR



ROBERT CARSON GODBEY
CORPORATION COUNSEL

KATHLEEN A. KELLY
FIRST DEPUTY CORPORATION COUNSEL

February 29, 2012

The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Karl Rhoades, Vice Chair
and Committee Members
Committee on Judiciary
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran, Vice-Chair Rhoades, and Committee Members:

Re: H. B. 1753, Relating to Liability

The City and County of Honolulu ("City") strongly supports H.B. 1753 which seeks to make permanent the laws limiting the liability exposure of government when providing public access to ocean and recreational areas (Act 82, SLH 2003) and of lifeguards when providing lifeguard services at our public beaches (Act 170, SLH 2002). H.B. 1753 further seeks to amend and clarify the definition of "improved public lands" in Act 82, Session Laws of Hawaii 2003.

Passage of H.B. 1753 would make our beaches more accessible and safer by allowing the Counties to continue the placement of county lifeguards at State beach parks, without the threat of costly litigation for conditions or events that are outside the Counties' control. In addition, passage of H.B. 1753 would allow the public continued access to our ocean and recreational areas while still providing the Counties with protection from liability arising from dangerous natural conditions in these areas.

Act 152, Sessions Laws of Hawaii, 2007 created a Task Force to advise the Legislature of the effectiveness of, and collect sufficient data relating to Act 82, Act 170, and Act 190, SLH 1996, as amended ("Act 152 Task Force"). In its report to the Twenty-Fifth State Legislature, Regular Session 2009, the Act 152 Task Force concluded that the various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety, and that the procedures

The Honorable Gilbert S. C. Keith-Agaran, Chair
The Honorable Karl Rhoades, Vice Chair
HB 1753
February 29, 2012
Page 2

contained there have been implemented and continue to be implemented by the State and the Counties.

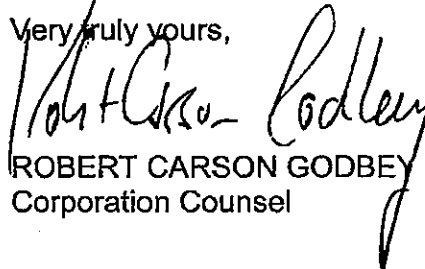
Both the State and the Counties have adopted uniform signage design and installed signage compliant with the requirements of Act 82. Where funding has been appropriated, counties have stationed lifeguards at certain State beach parks. The Act 152 Task Force report further discusses the benefits of posting 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 concluded with the recommendation that the sunset dates of Act 82 and Act 170 be repealed.

H.B. 1753 further seeks to amend and clarify the definition of "improved public lands" in Act 82 to exclude public beach parks falling within Act 190, Session Laws of 1996. Act 190, codified as Section 663-1.56, Hawaii Revised Statutes, provides the State and Counties with limited liability for injuries arising from dangerous natural conditions existing in the ocean abutting the public beach parks, and not for injuries arising from dangerous natural conditions within the public beach parks. In contrast, Act 82 affords the State and Counties protection from liability for injuries resulting from those dangerous conditions found within the improved public lands. Adoption of H.B. 1753 ensures that the lands within the public beach parks fall within the purview of Act 82.

In conclusion, the City fully supports the recommendations of the Act 152 Task Force, and requests your support in passing H.B. 1753 to make Act 82 and Act 170 permanent laws.

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

Very truly yours,



ROBERT CARSON GODBEY
Corporation Counsel

RCG:ey



888 Mililani Street, Suite 601
Honolulu, Hawaii 96813-2991

Telephone: 808.543.0000
Facsimile: 808.528.4059

www.hgea.org

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

Testimony by
Hawaii Government Employees Association
March 1, 2012

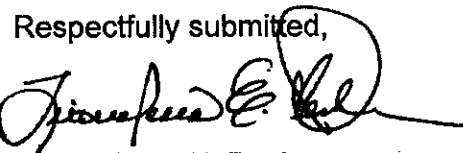
H.B. 1753 - RELATING TO LIABILITY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1753. This bill provides the state and county government permanent exception from liability for the acts of county lifeguards while acting within the scope of their duties, except for gross negligence or wanton acts of omissions.

Presently, the protections from liability originally established under Act 170, SLH 2002, and subsequently amended by Act 152, SLH 2007 and Act 82, SLH 2009, will sunset on June 30, 2014. The liability protection originally established under Act 170, SLH 2002, enables the four counties to provide lifeguard services to the beaches without fear of liability. Eliminating the sunset date will ensure that the maximum number of beaches will be staffed with lifeguards, which will diminish drowning or other injuries sustained at the public beach parks. We support making this liability protection permanent.

We also support a permanent exception under Act 82, SLH 2003, as amended by Act 152, SLH 2007 and Act 81, SLH 2009. This part makes permanent limited liability protections for the State and counties for incidents arising on improved public lands, provided that certain signage requirements are met. As a result, state and county government can take reasonable steps to protect the public from harm, while also preventing the closure of recreational public lands.

Thank you for the opportunity to submit testimony in support of H.B. 1753.

Respectfully submitted,

Leiomalama E. Desha
Deputy Executive Director

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 1753**

Date: Thursday, March 1, 2012

Time: 2:01 pm

To: Chairman Gilbert Keith-Agaran 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. 1753, relating to Liability.

This bill proposes to 1) give public beach parks the immunity applicable to state and county parks and the statewide trail and access system; 2) make the immunity applicable to recreational activities on public lands permanent; and 3) make the immunity applicable to lifeguard permanent. None of these actions should be taken at this time for the following reasons.

Public Beach Park Immunity

Act 82 specifically excluded public beach parks from the immunity given to state parks and trail systems for a good reason. State parks and trail systems can consist of hundreds, if not thousands, of acres of remote lands that are often inaccessible and rarely, if ever, inspected or maintained by State personnel. There are vast areas where few members of the public regularly visit. The resources and time needed to inspect, discover and correct hazardous conditions in these areas is overwhelming, impractical, and unaffordable. That is why hazardous natural conditions are allowed to persist in the parks and trail system without liability.

In contrast, beach parks are relatively small in size, are staffed with lifeguards and personnel to maintain the facilities (such as bathrooms, trash containers, parking facilities, etc.) who are there to discover unsafe conditions on a daily basis, are not remote and inaccessible, are generally developed with roadway, parking, restroom, water/shower and trash facilities, and are used by many residents and visitors on a daily basis. Indeed, beach parks are frequented by millions of residents and tourists alike annually. Maintaining beach parks in a reasonably safe condition is practical and imperative for the safety and welfare of our residents and health of our tourist industry. That is why beach parks are treated differently from parks and trail systems; and why they should continue to be treated differently.

There is no automatic liability for hazardous natural conditions in beach parks as government is only required to exercise reasonable efforts to eliminate unsafe conditions; but they should and must do what is reasonable to provide for the public's safety.

Act 170 Sunset

Act 170 (2002) provides immunity for negligent acts of lifeguards. It is one of the few instances where negligent conduct by government employees is sanctioned and allowed; and where members of the public harmed by such negligence is denied any right of redress whatsoever. Accordingly, Act 170 contained a sunset provision to provide an adequate demonstration period to study and provide data on its effectiveness and value. The legislature would then have sufficient objective data to decide whether to make this extraordinary exception for negligent conduct permanent.

The sunset provision was extended in 2007 because the program to place lifeguards at state beach parks was slow in developing. It was pointed out that the legislature was being asked to make the program permanent before any lifeguards were stationed at even a single state beach park. The sunset was again extended in 2009 and because the program was just beginning with only one state beach park was staffed with life guards beginning in the summer of 2008 insufficient data was available. The sunset date was set for June 2014 to allow sufficient time to fully implement the program throughout the state beach park system, collect and analyze data, and report to the legislature with objective information to decide whether the law should be made permanent. It is not clear from the task force report whether the program has been fully implemented and all state beach parks are now staffed with lifeguards or not.

No reason has been given why the June 2014 sunset date should not be honored and sufficient data has not be gathered and presented to justify abandoning the current sunset date. It does not appear that the task force has made any effort to gather and present substantive data. According to the task force report submitted to the 2011 legislative session, the task force had no activity since its 2009 report (prepared in 2008). The report submitted for this session indicates that the task force met once in 2011 to approve the posting of warning signs at Ka Iwi on Oahu. The task force reports show no activity to gather and submit data to meet the underlying reason for the current sunset date enacted in 2009. The fact that the task force has apparently met only once in the past three years shows a decided indifference to providing the kind of program evaluation needed to make the law permanent.

HAI is not necessarily against giving lifeguards immunity, if the loss of protection for citizens is outweighed by the benefits of providing lifeguard services and such services cannot be provided without immunity, but simply asks those seeking repeal of the sunset to provide the justification for doing so. There is ample time for the proponents of this measure to gather and provide objective data before the June 2014 sunset date.

Act 82 Sunset

Act 82, like Act 170, sanctions and allows negligent conduct by government employees in connection with natural conditions in parks and trail systems as long as signage requirements are met. Act 82 has the same June 2014 sunset date that was extended in 2007 and 2009. HAI objects to repealing the sunset date for the same reasons as discussed for Act 170.

Act 82 was enacted in 2003 and it also took many years before its risk assessment group and DLNR could complete the preliminary decision-making and rule-making process to actually begin placing the warning signs required by the Act. It has only been a few years since the first signs have appeared in significant places and numbers. The task force reports provide no data on its effectiveness, on feedback from the public, on present on-going and future planned installations or on any systematic method to study how the program is working and what, if any, improvements can be made to it. This type of study is basic to evaluating the viability and desirability of continuing any state program. It is not enough for those who benefit from a program to issue the self-serving proclamation that it is working and should be made permanent.

The sunset period exists for the purpose of providing sufficient time to plan, implement and evaluate the program. Planning has been completed. Implementation is on-going. Now, evaluation is needed and should be completed and presented before repealing the sunset period or making the program permanent.

Thank you very much for allowing me to testify in OPPOSITION to this measure. Please feel free to contact me should you have any questions or desire additional information.

Monty Downs, M.D.
ER Physician, Wilcox Hospital
3-3420 Kuhio Hwy
Lihue, HI 96766

2/28/12

To: Gilbert S.C. Keith-Agaran, Chair, House Judiciary Committee
Karl Rhoads, Vice Chair

TESTIMONY IN SUPPORT OF HB 1753 – Hearing on 3/1/12

Dear Chairman Keith-Agaran, Vice Chair Rhoads, and Members of House Judiciary Committee:

Thank you for this opportunity to testify in support of HB 1753, which will do away with the sunset of Act 170, the sunset scheduled for 2014.

Act 170 is what allows our Ke'e Beach, a State Beach Park, to be guarded by our Kauai County Lifeguards. It basically grants immunity, except in the case of gross negligence, when County Lifeguards formally guard a beach that is not under County jurisdiction. (This Act similarly is the underpinning for guarding, I believe, Makena Beach on Maui and Yokohama Bay on Oahu).

What has Act 170, and Ke'e being guarded, meant to Kauai, our people and our visitors?

Ke'e Beach is packed with people on any day when it isn't raining. On calm days it is a snorkeler's paradise. On days, however, where waves break onto the barrier reef, water comes over the reef and this creates a strong, equilibrating, and unseen rip current that pulls unsuspecting people out the "western portal" and out to sea. In the 2 years before we had a Lifeguard Tower there we had a drowning each year. One was very high profile – a U.S. Air pilot from Phoenix who left behind a 10 year old son. That evening's Lihue to Phoenix flight had to be canceled until a new pilot was flown in the following day. The man's wife and 10 year old son were also flown in as part of the funeral arrangements, and those of us who saw the boy's anguish never want to see this kind of circumstance again.

I am really happy to report that we have indeed never seen this happen again at Ke'e, ever since the Ke'e Tower went up on July 1, 2008. We Kauaians are every day relieved to think of Ke'e being guarded. Please check out these numbers for Ke'e Tower:

	RESCUES	PREVENTIONS	BEACHGOERS	DEATHS
2009	53	15,656	132,740	0
2010	33	13,368	120,712	0
2011	Final numbers not tabulated yet except for 0			

“Preventions” refers to conversations that Lifeguards have with beach goers, in which the Lifeguards give them safety advice. Since Ke’e Beach is “The Gateway to the NaPali Coast”, my guess is that these Preventions have impacted the safety we’ve -- knock on wood -- recently enjoyed on the State Park’s very dangerous NaPali beaches (Hanakapiai and Kalalau) for the last few years.

I work in the Wilcox Hospital ER and 2 months ago I received a man who would have been dead were it not for the fast and skillful action of our Lifeguards. The man fell on rocks and suffered an open fracture of his upper arm, and the protruding bone cut his axillary (major) artery. He would have bled to death were it not for our Lifeguards’ fast and expert (and challenging) treatment. And this wasn’t even an ocean-related crisis. Please understand that Paramedics are a full 25 minutes away from Ke’e Beach, even with lights and sirens.

And only 3 weeks ago a man collapsed just as he finished hiking the Kalalau Trail. Our Lifeguards heard the commotion, rushed to the man, found him on the ground pulseless and not breathing, started CPR, hooked up the AED, were instructed that “shock is advised”. They administered the shock And the man’s pulse was restored!! By the time the Paramedics and Fire arrived 25 minutes later, the man was awake and talking – and certainly a bit dazed, having just had a face-to-face encounter with The void. This of course doesn’t qualify as a Lifeguard ocean rescue, but WOW! Of interest is that the saved man is a State of Hawaii employee.

If you believe that Lifeguards at busy and dangerous beaches are essential for our citizens’ safety and for our visitors’ safety (and indeed for our Visitor Industry’s very credibility), then Lifeguards at Ke’e Beach must be maintained. Act 170 allows this service to be maintained, and I ask that you pass HB 1753.

Respectfully Submitted,

Monty Downs, M.D.

Testimony for HB1753 on 3/1/2012 2:01:00 PM

Testimony for HB1753 on 3/1/2012 2:01:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Tuesday, February 28, 2012 12:34 PM

To: JUDtestimony

Cc: lifeguards@aloha.com

Attachments: CDC Lifeguard Effectiveness.pdf (199 KB)

Testimony for JUD 3/1/2012 2:01:00 PM HB1753

Conference room: 325

Testifier position: Support

Testifier will be present: Yes

Submitted by: Ralph S. Goto

Organization:

E-mail: lifeguards@aloha.com

Submitted on: 2/28/2012

Comments:

CDC

Injury Prevention



Lifeguard Effectiveness:

A Report of the Working Group

Events Describing the Efficacy of Lifeguards in Preventing Drowning Deaths

Evidence suggests that lifeguard services benefit public safety by saving lives, lowering drowning rates, and preventing injuries in aquatic recreational environments. Lifeguards also indirectly provide economic and social benefits. They add to the savings in emergency medical care and long-term hospital treatment involving cases of near-drowning (Hassell 1997) and alleviate emotional trauma and social costs to family and friends.

Communities sometimes choose to discontinue lifeguards as a cost-saving measure. We provide a series of case studies to demonstrate the impact of lifeguards on drowning. A few caveats are worth noting when considering these case studies. First, geography, environmental conditions, demographics, and other local conditions may be factors in drownings. Also, national data are not available to assess the number of drownings that occur on beaches without lifeguards because no centralized reporting system exists. Nonetheless, case studies help illustrate the potential effects of lifeguards on public safety.

Case Studies

Case 1: American Beach (Nassau County), Florida

In 1989 the Nassau County Commission decided to eliminate lifeguards on American Beach in order to save county expenses. Less than a year later on Memorial Day, 1990, five persons drowned and 20 others nearly drowned when rough ocean conditions and strong winds caused rip currents to form immediately offshore, making this one of the worst drowning episodes in Florida's history. Shortly after this tragedy, local officials reestablished lifeguarding services. In the eight years since, no one has drowned.

Case 2: Keawaula Beach, Hawaii

Keawaula Beach at Kaena Point State Park is located at the westernmost point on the island of Oahu. The beach is exposed to high surf; a strong shore break; and a strong, often severe, current. The remote, pristine site attracts many surfers, sunbathers, swimmers, and waders. The combination of dangerous physical features and heavy use by patrons increases the risk for water-related injury and death. From 1985 to 1991, two drownings and 40 near-drownings occurred at Keawaula Beach. Although the State of Hawaii does not provide lifeguards, it elected to contract with the City and County of Honolulu to place lifeguards at Keawaula Beach beginning in January, 1992. Since then, no drownings have occurred at this beach.

Case 3: Ocean Beach, San Francisco, California

Ocean Beach covers more than five miles of the Pacific shore in the City and County of San Francisco. Rip currents are common in the water off this beach. The beach is administered by the U.S. National Park Service and is part of the Golden Gate National Recreation Area (GGNRA). Until the early 1990s, GGNRA provided lifeguards at several beaches in the region, including Stinson Beach, China Beach, and Aquatic Park near

Summary and Conclusions

When making choices about drowning prevention interventions in their areas, decision makers must balance a sincere desire to protect the public with "real-world" issues of budgets and legal liability. In this report, we have attempted to provide useful information and relevant questions that can be applied when making these decisions. One effective drowning prevention intervention is to provide trained, professional lifeguards to conduct patron surveillance and supervision at aquatic facilities and beach areas.

USLA data during 1988-1997 indicate that more than three-quarters of drownings at USLA sites occurred at times when beaches were unguarded and that the chances of drowning at a beach protected by lifeguards trained under USLA standards is less than one in 18 million. The four case studies provided in this report also describe the positive impact of lifeguards at beaches where multiple drownings had occurred when unguarded. When lifeguards are employed, it is vital that they be trained effectively in detecting persons in distress, and when assigned to water surveillance not be given duties other than public safety. The presence of lifeguards may deter behaviors that could put swimmers at risk for drowning, such as horseplay or venturing into rough or deep water, much like increased police presence can deter crime. Also, the experiences of the U.S. Army Corps of Engineers suggests that environmental design changes (at inland lakes) and safety information campaigns can also play a role in reducing drowning deaths. Owners and managers of natural water recreation venues should consider these design characteristics, regardless of the presence or absence of lifeguards.

Regardless of the evidence, or lack thereof, of lifeguard effectiveness, some communities insist on lifeguard services, based on local circumstances. Policy makers need to make use of the available local evidence and consider public attitudes and the legal environment when making decisions about lifeguard services and other means for increasing public safety in aquatic settings. Providing a safe aquatic environment and instituting programs to prevent water-related injury or death offer significant economic savings. Table 2 in the Appendix can serve as a useful tool for estimating the human and economic impact of not providing lifeguards.

Finally, if a community develops water recreational facilities to attract patrons who spend money in the local area, then it can be argued that the community has an obligation to protect these patrons. When weighing the costs and legal implications of interventions to prevent drowning, decision makers should never lose sight of the enormous importance of protecting people from harm and preventing tragedy at beaches and pools, places where people go for pleasure, for health, and for solace.

Kalani Vierra – Water Safety Officer
P.O. Box 266
Kōloa, HI 96756

3/1/12

To: The House Judiciary Committee

TESTIMONY IN SUPPORT OF HB 1753

Dear Chairman:

I am in full support of HB 1753

Act 170 is what allows Ke'e Beach, a State Beach Park on Kauai, to be guarded by our Kauai County Lifeguards. It basically grants immunity, except in the case of gross negligence, when County Lifeguards are placed at a beach that is not under County jurisdiction.

Act 190, Act 170 and Act 82 have had meaningful and positive effects on the safety of our residents and visitors. By repealing the sunset provisions, you will be ensuring the continued safety of the public and protection for the counties and the State. We respectfully urge your favorable consideration on this matter and thank you for the opportunity to testify on this very important issue.

Ke'e Beach is packed with people almost every day. On calm days it is a snorkeler's paradise. On days, however, where waves break onto the barrier reef, water comes over the reef and this creates a strong, equilibrating, and unseen rip current that pulls unsuspecting people out the "western portal" and out to sea. In the past years before a Lifeguard Tower was there we had a drowning each year. This did not happen again at Ke'e, ever since the Ke'e Tower went up on July 1, 2008.

"Preventions" refers to conversations that Lifeguards have with beach goers, in which the Lifeguards give them safety advice. Since Ke'e Beach is "The Gateway to the Na Pali Coast", These Preventions have definitely impacted public safety.

If you believe that Lifeguards at busy and dangerous beaches are essential for our citizens' and visitors' safety, then Lifeguards at Ke'e Beach must be maintained. Act 170 allows this service to be maintained, and I ask that you pass HB 1753.

Respectfully Submitted,

Kalani Vierra