

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
WATER, LAND, & OCEAN RESOURCES**

**Monday, February 13, 2012
9:00 AM
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. Last Thursday morning, a Department employee suffered a heart attack, collapsed, and had 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 medical treatment. 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.



**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 WATER, LAND, AND OCEAN RESOURCES**

DATE: Monday, February 13, 2012 **TIME:** 9:00 a.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General or
Robin Kishi, Deputy Attorney General

Chair Chang 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 several days 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).

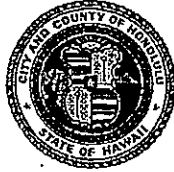
The process established by Act 82 has allowed the State and the counties to refine its signage and improve the quality of its warning signs on public lands throughout the State, benefiting public users and at the same time providing the State and the counties with conditional protection from liability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

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
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PETER B. CARLISLE
MAYOR



ROBERT CARSON GODBEY
CORPORATION COUNSEL

KATHLEEN A. KELLY
FIRST DEPUTY CORPORATION COUNSEL

February 10, 2012

The Honorable Jerry L. Chang, Chair
The Honorable Sharon E. Har, Vice Chair
and Committee Members
Committee on Water, Land, & Ocean Resources
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Chang, Vice-Chair Har, 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.

In its report to the Twenty-Fifth State Legislature, Regular Session 2009, the Task Force created by Act 152, Sessions Laws of Hawaii, 2007 ("Act 152 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 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 Jerry L. Chang, Chair
The Honorable Sharon E. Har, Vice Chair
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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 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,



Jr. ROBERT CARSON GODBEY
Corporation Counsel

RCG:ey

ALAN M. ARAKAWA
MAYOR



JEFFREY A. MURRAY
CHIEF

ROBERT M. SHIMADA
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY

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February 10, 2012

The Honorable Jerry Chang, Chair
Committee on Water, Land, and
Ocean Resources
House of Representatives
State Capitol, Room 435
Honolulu, Hawaii 96813

The Honorable Faye Hanohano, Chair
Committee on Hawaiian Affairs
House of Representatives
State Capitol, Room 303
Honolulu, Hawaii 96813

Dear Chairs Chang and Hanohano:

Subject: H.B. 1753 Relating to Tort Liability

I am Jeffrey A. Murray, Fire Chief of the County of Maui, Department of Fire & Public Safety (MFD) and a member of the State Fire Council (SFC). The MFD and the SFC 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 Honorable Jerry Chang and Faye Hanohano, Chair
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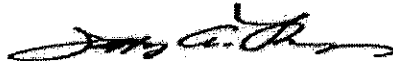
The benefits of the act were documented in the findings of the Report of the Task Force Established by Act 152 (Task Force Report), which was submitted during the 2011 Legislative Session. The task force concluded that various programs developed under Acts 82, 170, and 190 have been effective in increasing 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.

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

Should you have any questions, please call SFC Administrator Socrates Bratakos at 723-7151.

Sincerely,



JEFFREY A. MURRAY
Fire Chief

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, Līhu'e, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 10, 2012

The Honorable Jerry Chang, Chair
Committee on Water, Land, and
Ocean Resources
House of Representatives
State Capitol, Room 435
Honolulu, Hawaii 96813

The Honorable Faye Hanohano, Chair
Committee on Hawaiian Affairs
House of Representatives
State Capitol, Room 303
Honolulu, Hawaii 96813

Dear Chairs Chang and Hanohano:

Subject: H.B. 1753 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, 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

The Honorable Jerry Chang, Chair
The Honorable Faye Hanohano, Chair
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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.

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

Sincerely,



Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld

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

February 10, 2012

TESTIMONY OF MEL RAPOZO
PRESIDENT, HAWAII STATE ASSOCIATION OF COUNTIES

ON

H.B. NO. 1753, RELATING TO LIABILITY
Committee on Water, Land, & Ocean Resources

Committee on Hawaiian Affairs

Monday, February 13, 2012

9:00 A.M.

Conference Room 325

Dear Chair Chang, Chair Hanohano, 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, 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; however, it excluded public beach parks from the definition of "improved public lands."

In the interest of safety for our lifeguards, this bill would include "public beach parks" in the definition in order to provide liability protection for all county lifeguard services on the beach or in the ocean. It also repeals the sunset date for Acts 82 and 170 to assure that the counties and the counties' lifeguards have adequate protection 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/wa2012-525

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The Twenty-Sixth Legislature, State of Hawaii
House of Representatives
Committee on Water, Land and Ocean Resources
and
Committee on Hawaiian Affairs

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
February 13, 2012

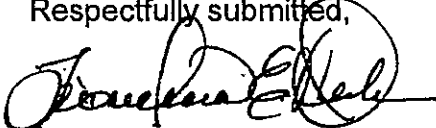
H.B. 1753 – RELATING TO LIABILITY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 1753. This bill provides 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 its 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