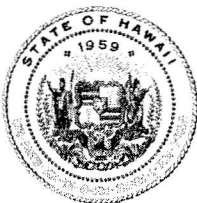
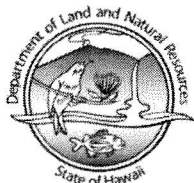


NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

**Before the House Committee on
WATER, LAND, & OCEAN RESOURCES**

**Friday, February 11, 2011
9:00 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 262
RELATING TO TORT LIABILITY**

House Bill 262 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, 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, 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 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.

For the reasons stated in this testimony, the Department strongly supports House Bill 262 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, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 262, RELATING TO TORT LIABILITY.

BEFORE THE:

HOUSE COMMITTEE ON WATER, LAND, AND OCEAN RESOURCES

DATE: Friday, February 11, 2011 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): David M. Louie, Attorney General, or
Caron M. Inagaki, 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. Under Act 152, Act 190 was made permanent, and the liability protections in Acts 170 and 82 were extended to June 30, 2010.

Act 152 also established a task force to examine the effectiveness of, collect data, and provide information to the legislature on, Acts 170, 190, and 82. The report submitted by the task force to the 2009 Legislature found with near unanimity that Act 170 was effective and increases public safety. The task force almost 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.

In 2009 alone, there have been 1,920 lifeguard rescues on Oahu's beaches. Kauai's water safety officers performed 284 rescues in 2009 and 328 rescues in 2010. At Hapuna Beach Park, the only state beach park on the island of Hawaii, there were well over 350 rescues during the fiscal years of 2006-2007 through 2009-2010. In 2008 through 2010, Maui lifeguards

performed approximately 561 rescues. This clearly 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.

The process established by Act 82 has allowed the State and the counties to refine their signage and improve the quality of their warning signs on public lands throughout the State. This benefits public users and provides the State and the counties with conditional protection from liability for the inherent risks that exist on public lands.

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 next legislative session in 2010. By Act 81, SLH 2009, the 2009 Legislature extended the sunset dates for Acts 170 and 82 until June 30, 2014.

The benefits of Acts 170 and 82 are clear, and it is time that these Acts be made permanent.

We therefore respectfully request that the Committee pass this measure.

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

CARRIE K.S. OKINAGA
ACTING CORPORATION COUNSEL

KATHLEEN A. KELLY
FIRST DEPUTY CORPORATION COUNSEL

February 10, 2011

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. 262, Relating to Tort Liability

The City and County of Honolulu ("City") strongly supports H.B. 262 which seeks to make permanent the laws limiting the liability exposure of the 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).

Passage of H.B. 262 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. 262 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
HB262
February 10, 2011
Page 2

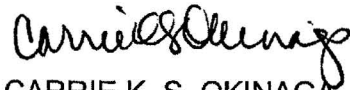
contained therein have been implemented and continue to be implemented by the State and the Counties.

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.

The City fully supports the recommendations of the Act 152 Task Force, and requests your support in passing H.B. No. 262 to make Act 82 and Act 170 permanent laws.

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

Very truly yours,



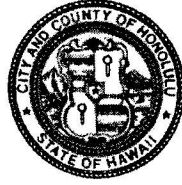
CARRIE K. S. OKINAGA
Acting Corporation Counsel

CKSO:ey

HB262 TESTIMONY

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

February 10, 2011

The Honorable Jerry L. Chang, Chair
and Members of the Committee
The Honorable Sharon E. Har, Vice Chair
and Members of the Committee
Committee on Water, Land, and Ocean Resources
House of Representatives
The Twenty Sixth Legislature
Regular Session of 2011
State Capitol
Honolulu, Hawaii 96813

Dear Chair Chang and Vice Chair Har and Members of the Committee:

Re: HB 262 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 262.

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 262.

Thank you for the opportunity to present this testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Ireland".

James H.E. Ireland, M.D.
Director

Star Advertiser

Lifeguard credited with daring rescue of man sucked off cliff by big wave

POSTED: 10:11 p.m. HST, Feb 09, 2011

Honolulu lifeguard Brian Higa is described by some as a low-key guy who deflects talk about himself but takes his job seriously, sometimes jumping off a cliff at Yokohama Bay as rescue practice.

Higa, a lifeguard for about 18 years, reacted quickly in a daring rescue Tuesday of a 19-year-old Canadian man sucked off a cliff by a 10-foot wave.

Lifeguard Acting Lt. Hall Danon said he's been a lifeguard for 23 years and has seen stunning rescues during winter swells at Waimea Bay, but believes Higa's rescue ranks near the top of those he's witnessed under human strength alone.

Part of the success was Higa's rapid reaction, which Danon attributes to a Higa's sixth sense about beachgoers in danger.

"That's what saved that kid's life," Danon said. "When he gets down to saving people, he's a 200 percent man."

Higa, 54, said he was on a routine patrol in a lifeguard pickup truck about noon Tuesday when he saw four people looking over the edge "oblivious to the waves," despite the warning signs posted along the beach. They were past the road's end at Yokohama Bay near an underground cave, called moi hole, that sends water spraying up onto the ground at its mouth.

He was about to warn the gawkers to move back, but was still about 200 yards away when a wave about 10 feet high crashed against the cave, spraying water over the edge, and sent the sightseers scampering in the other direction.

"I saw the wave, and all I saw was people running up," he said. "I drove in quickly."

The group was waving for help when he arrived, and

Higa saw the man in the water, struggling to stay afloat. "Waves were just washing him like a piece of debris," he said.

Sharp rocks threatened the man, and Higa was in a rush to get him away from the moi hole.

"People get stuck in there, and they die," he said. "When it's that rough it's kind of like a no-man's zone."

Higa radioed to his partner that he was going after the man, put on his fins and helmet, and jumped off the 25-foot cliff "running man-style" with a rescue tube in hand, timing his leap to land in a swell.

He reached his target, who was still conscious, placed him inside the tube and began a quarter-mile swim along the coast to a hole in the cliff, known as the keyhole.

Higa's partner Kekua Flood, who was on the rocks, signaled that it was OK to make a break for the slot, which Higa saw as a one-time shot: if he missed, he would have to swim another half-mile down the coast. While a lifeguard on a Jet Ski was on the way, Higa didn't want to risk getting caught against the rocks in a large set.


Danon said Higa had just swam against the current about 300 yards and was across the cliff opening with about 100 yards to go when he became stuck in a vortex of currents coming from the moi hole and around the point.

"He was just windmilling," he said. "He was swimming like trying to win the Olympics."

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Because of Higa's knowledge of the surf, and how often the sets come in, and he went for the hole to the disbelief of others who thought they should wait for the Jet Ski, Danon said.

"I saw the sets stacking up," he said. "He starts going. He just went for it hard."

Higa reached shore about 10 minutes since jumping in and was met by firefighters at the scene. Paramedics took the victim to the hospital in stable condition, an Emergency Medical Services spokesman said. Lifeguards said he had scrapes and possibly a broken pinkie.

Once the men were back on land, a large set came in, crashing against the rocks as the lifeguard on a Jet Ski arrived, Danon said.

"If (Higa) had waited any further, the victim and the rescuer would have just been like splatter against aa lava," Danon said. "It just went crazy. (Had they been there) it was death."

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

February 8, 2011

TO: Honorable Jerry L. Chang, Chair
House Committee on Water, Land, and Ocean Resources

FROM: Joseph Pontanilla, Council Vice-Chair

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

DATE: February 11, 2011

SUBJECT: **TESTIMONY IN SUPPORT OF HB 262, RELATING TO TORT LIABILITY**

Thank you for the opportunity to testify in support of HB 262 Relating to Tort Liability. The purpose of the legislation deletes the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain signs are posted. I provide this testimony as an individual member of the Maui County Council.

I support **HB 262** for the following:

1. Act 170, SLH 2002, 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. This is a life-saving measure that should be made permanent.
2. Act 82, SLH 2003, 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 Act helped to prevent the closure of recreational public lands, and should be made permanent.

I respectfully urge you to support this measure.

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 10, 2011

The Honorable Jerry L. Chang, Chair
and Members
Committee on Water, Land and Ocean Resources
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Chang and Members of the Committee:

Re: Testimony in Support to House Bill No. 262
Hearing: Friday, February 11, 2011 at 9:00 a.m., Conference Room 325

The County of Hawai'i's Office of the Corporation Counsel and Fire Department (collectively referred to as "County") support House Bill No. 262 because it seeks to make permanent the liability exemptions for state and county governments providing county lifeguard services. The bill repeals the sunset date of Act 170, Session Laws of Hawai'i 2002 ("Act 170") that shields county lifeguards from liability. At present, the liability protections provided in Act 170 will sunset on June 30, 2014. The County respectfully requests that the Committee pass this measure for the reasons stated below.

Passage of the bill will provide more access to the counties' beaches and increase safety to the beachgoers by allowing the counties to place lifeguards at county and State beach parks, without the threat of costly, unnecessary and unwanted litigation arising from dangerous natural conditions in the beach parks, ocean and public recreational areas.

Act 170 protected lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. Removal of the sunset date will provide public benefits that have been well-documented in the findings of the Report of the Task Force Established by Act 152 ("Task Force Report"), submitted to the Twenty-Fifth State Legislature, Regular Session 2009. The Act 152 Task Force was established to advise

the Legislature of the effectiveness of three acts (Act 82 (SLH 2003, liability exemptions for state and county governments relating to recreational areas), Act 190 (SLH 2002, and Act 170 (SLH 1996, liability exemptions for state and county governments relating to actions of county lifeguards)) 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. Where funding has been appropriated, counties have stationed lifeguards at certain state beach parks. The Task Force Report concluded that various programs have been effective in increasing public safety, and that both the State and counties adopted uniform signage design and installed appropriate signage. The Task Force recommended repeal of the 2010 sunset dates, and codification of Act 170 as permanent law.

Act 190 was made permanent in 2007. In 2009, representatives from the Consumer Lawyers of Hawai'i, the lone dissenter, testified that lifeguards had not been on the beaches, specifically on Kaua'i, long enough to determine the efficacy of Act 170; and the liability protections in Acts 170 and 82 were extended to June 30, 2014.

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 2010, for the four (4) beaches on West Hawai'i, there were 7,715,093¹ beachgoers, with 4,114,794² of those beachgoers utilizing Hāpuna, which is the only State Beach on the island of Hawai'i. Even though Hāpuna is the most widely used beach on the island, with approximately 600,000 visitors per year, there have been only two (2) drownings. In addition, at Hāpuna, 770 beachgoers were rescued, 9 were resuscitated, and 434 were provided First Aid by lifeguards. In addition, lifeguards at Hāpuna took 99,049 preventive actions, which could have resulted in 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.

Acts 170 and 82 should be made permanent.

¹ Includes also the best estimates for Hapuna in 2010.

² Ibid.

The Honorable Jerry L. Chang, Chair
and Members
February 10, 2011
Page 3

Thank you for your consideration of our testimony.

Sincerely,



Feb 10 2011 2:06 PM

Joseph Kamelamela
Deputy Corporation Counsel,
Litigation Supervisor
County of Hawai'i

JKK:fc

c via email only: Kevin Dayton, Executive Assistant
Bobby Jean Leithead-Todd, Planning Director
Darryl Oliveira, 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 8, 2011

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

Dear Chair Chang:

Subject: H.B. 262 Relating to Tort Liability

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

Passage of HB No. 262 would make our beaches more accessible and safer by allowing the counties to continue the placement of lifeguards at State beach parks, without the threat of costly litigation for conditions or events that are outside the county's control. Act 170 has provided needed protection to lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. We support removal of the sunset date, so that the public benefits of the Act can continue.

The benefits of the Act were documented in the findings of the Report of the Task Force Established by Act 152 (Task Force Report), submitted to this Legislature this session. In 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. 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. Both the State and the counties have adopted uniform signage design and installed signage compliant with the requirements of Act 82. 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. In the Task Force Report, all task force members, with the exception of the member representing the Consumer Lawyers of Hawai'i (CLH), recommend repeal of the 2010 sunset date, and codification of Act 170 as permanent law.

The Task Force, with the exception of the CLH member, also that Act 82, Session Laws of Hawai'i 2003 (Act 82) be made permanent. Act 82 protects the State and counties from unlimited liability from recreational activities on public lands, including trails. Act 82 also provides protection to the public, because the State and counties are required to implement a system of warning signs. We request that this Bill be amended to include repeal of the June 20, 2010 sunset date of Act 82, which would make the Act permanent. Alternatively, we

The Honorable Jerry L. Chang, Chair

Page 2

February 8, 2011

advocate passage of House Bill No. 848, which would accomplish the same purpose, since it proposes to amend Act 152, Session Laws of Hawai'i 2007, by repealing the sunset dates of Acts 82 and 170.

We also request that this Legislature continue the funding to the County for providing lifeguards on certain state beach parks. On Kaua'i, the funding allows the County to provide lifeguards for Kee Beach on Kaua'i, which is a State beach. Lifeguarding began at Kee Beach 2008, with significant positive results. That first year 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 to continue lifeguarding at Kee Beach.

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

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive, flowing style.

Robert F. Westerman
Fire Chief

RFW/eld

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER
LAWYERS OF HAWAII IN OPPOSITION TO THE H.B. NO. 262**

February 11, 2011

To: Chairman Jerry Chang and Vice Chair Sharon Har and Members of the House Committee on Water, Land and Ocean Resources:

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. 262.

The purpose of this bill is to make Act 170, Session Laws of Hawaii, 2002, as amended, and Act 82, Session Laws of Hawaii, 2003, as amended, permanent. Currently, Act 170 regarding the immunity from negligence for lifeguards is scheduled to sunset on June 30, 2014, and this was enacted by the legislature with the knowledge of all of the parties concerned, including the state and counties. The sunset provision in the original bill passed in 2002 was included to "allow for an evaluation of this measure after sufficient experience has been obtained." See Conference Committee Report No. 66-02 on S.B. 796, C.D.2. The sunset date was extended several times and during the 2009 legislative session, the conference committee, in a bill pertaining to several prior Acts pertaining to lifeguards, beach liability and public recreational lands, determined that it would be best to extend the sunset date to 2014 for Act 170.

Act 170 was passed in 2002 and it was not until July 1, 2008, less than three years ago, that lifeguards were placed on Ke`e Beach on Kauai, which was one of the dangerous beaches at the heart of this legislation. We feel that it is reasonable to let the sunset date of 2014 remain and that the legislature can look at the information prior to 2014 session.

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

Regarding Act 82 which was passed due in large part to the deaths and injuries that occurred by the rock slide at Sacred Falls in 1999 and the ensuing civil trial in 2001 on behalf of those killed and injured. Like in Act 170, the legislature in 2003 included a sunset date of 2008, five years after passage, in order to determine how the intent of the law was working and to provide the legislature with adequate information. It was four years later when the first warning signs were approved and placed (2007) and five years later (2008) when other signs were approved and placed at different locations. So rather than four or five years of experience to give to the legislature, it is more like two and one half to three years of experience and information.

Because the legislature by Act 81 (2009) extended the sunset date to 2014, it at least provides more time to see how the legislation has worked. Further, there is a risk assessment group that should have made reports to the Board of Land and Natural Resources that can be reviewed by the legislature.

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

Because these Acts have a major impact on consumer rights, HAJ feels it is more prudent to first obtain sufficient information on how the law has worked; that is, that immunity from negligence has had the effect it was intended to have – that it helped lifeguards do a better job in protecting beachgoers, residents and tourists alike; and that there are comprehensive plans for the state parks that provide more safety for the residents and tourists. We feel that the legislature should wait to fully assess the impact of this law during the 2014 session when it is scheduled to sunset and when the legislature can make it permanent or modify it according to the information presented.

Thank you for the opportunity to testify on this bill.