



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:
H.B. NO. 215, RELATING TO LIABILITY.

BEFORE THE:
HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, February 7, 2013 **TIME:** 2:02 p.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Rhoads 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, now known as the Hawaii Association for Justice (HAJ), who believed that lifeguards had not been on the beaches, specifically on Kauai, long enough to determine the efficacy of Act 170.

Since Act 170 was enacted, there have been thousands of lifeguard rescues on Oahu, Kauai, Maui and Hawaii, and still more thousands of preventative measures by lifeguards which resulted in potential lives saved. 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 (nka HAJ) 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 they have both been in effect for approximately 10 years. It is time that these Acts be made permanent.

We therefore respectfully request that the Committee pass this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
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WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
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

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

**Before the House Committee on
JUDICIARY**

**Thursday, February 7, 2013
2:02 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 215
RELATING TO LIABILITY**

House Bill 215 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, and laws that provide state and county governments and county lifeguards with liability protection while carrying out their duties and responsibilities. **The Department of Land and Natural Resources (Department) strongly supports this bill.**

House Bill 215 amends Act 170, Session Laws of Hawaii (SLH) 2002 (Act 170), as amended by Act 152, SLH 2007, as amended by Act 81, SLH 2009, 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 some 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.

The benefit of having lifeguards cover selected State Parks beaches has been punctuated by an incident at Ke'e Beach, Kauai. On the morning of February 9, 2012, 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 cardiopulmonary resuscitation (CPR), and their automated external defibrillator (AED) and breathing bag. He was flown to Honolulu for surgery and has made a recovery and is back at work. 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.

House Bill 215 also amends Act 82, SLH 2003 (Act 82), as amended by Act 152, SLH 2007, as amended by Act 144, SLH 2008, as amended by Act 81, SLH 2009, 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 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. When the signs and their ancillary locations have been approved by the Board of Land and Natural Resources they are 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 215 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 and natural resources that we are blessed with. The sunset provisions in Act 170 and Act 82 need to be removed.



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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February 6, 2013

The Honorable Karl Rhoads, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 326
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: H.B. 215 Relating to Liability

I am Robert Westerman, Vice Chair of the State Fire Council (SFC) and Fire Chief of the Kauai Fire Department (KFD). The SFC and the KFD support H.B. 215, 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. 215 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 Karl Rhoads, Chair
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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 SFC and the KFD urge your committee's support on the passage of H.B. 215.

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

Sincerely,


for ROBERT WESTERMAN
Vice Chair

RW/LR

Bernard P. Carvalho, Jr.
Mayor



Gary K. Heu
Managing Director

OFFICE OF THE MAYOR
County of Kaua'i, State of Hawai'i
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Testimony of Mayor Bernard P. Carvalho Jr.

Before the House Committee on the Judiciary

Thursday, February 7, 2013
2:02 p.m.
Conference Room 325
State Capitol

House Bill 215 Relating to Liability

Honorable Chair Karl Rhoads and Members of the Committee on the Judiciary,

I am writing in support of House Bill 215 which makes permanent certain state and county protections from liability on improved lands, and makes permanent the protection from liability for county lifeguards, counties, and the State for damages resulting from rescue, resuscitative, or other lifeguard services

In the past years, legislative bills have extended the sunset provisions of this law but have failed to make this law permanent. I believe that it is of great importance to make these liability protections permanent not only to protect the County and its lifeguards, whom I believe are the best in the world. But also to ensure that there is a continued governmental presence at these areas to provide essential public safety services to ensure the safety and well being of our residents and visitors alike.

I support the passage of House Bill 215 and thank the committee for the opportunity to present testimony on this important measure.

Sincerely yours,

Bernard P. Carvalho Jr.
Mayor

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 6, 2013

The Honorable Karl Rhoads, Chair
Committee on Judiciary
House of Representatives
State Capitol, Room 326
Honolulu, Hawaii 96813

Dear Chair Rhoads:

Subject: H.B. 215 Relating to 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. 215, 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. 215 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.

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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 MFD and the SFC urge your committee's support on the passage of H.B. 215.

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

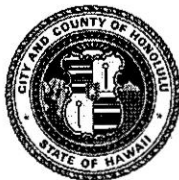
Sincerely,

A handwritten signature in black ink, appearing to read 'J. Murray', is written over a circular stamp or seal.

JEFFREY A. MURRAY
Fire Chief

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU
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KIRK CALDWELL
MAYOR



DIANE T. KAWAUCHI
ACTING CORPORATION COUNSEL

February 6, 2013

The Honorable Karl Rhoads, Chair
and Members of the Committee on Judiciary
State House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Rhoads and Committee Members:

Subject: House Bill 215, Relating to Liability

The City and County of Honolulu strongly supports H.B. 215 which repeals the sunset dates of Act 170, Session Laws of Hawaii ("SLH") 2002 and Act 82, SLH 2003.

Act 170, which has been in effect for the past ten years, limits the liability exposure of the government when providing lifeguards at our public beaches. Act 170 gives the counties limited liability protection needed in order for the counties to place county lifeguards at State-owned beaches. Act 170 specifically excludes from this liability protection, any gross negligence or wanton acts or omissions of the lifeguard when providing lifeguard services.

Act 82 limits the liability exposure of government when providing public access to ocean and recreational areas. In 2007, a Task Force was established by Act 152, SLH 2007, to advise the Legislature concerning the effectiveness of, collect sufficient data relating to, and provide to the Legislature information on Act 190, SLH 1996 (grants immunity for dangerous natural conditions in the ocean); Act 170, SLH 2002; and Act 82, SLH 2003. All three Acts were adopted to strike a balance between protecting the safety of residents and visitors at public beach parks and providing government with protection from liability arising from dangerous natural conditions in the ocean and public recreational areas. Act 190, codified as Hawaii Revised Statutes § 663-1.56, became permanent law in 2007.

In its report to the 2009 Legislature, attached hereto, the Task Force with the exception of the Consumer Lawyers of Hawaii ("CLH"), concluded that the various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety, and that the procedures contained therein have been implemented and continue to be implemented by the State and the counties. Both the State and the respective counties have adopted uniform sign design criteria and installed signage compliant with the requirements of Act 82. Where funding has been appropriated, the counties have stationed lifeguards at certain State beach parks. The Task Force report further discussed the benefits of posting Acts 190 and 82 signage to the public, and how lives have been saved as a result of the posting of county lifeguards at State beach parks.

Representatives of the Hawaii Association for Justice fka CLH, may argue that the sunset provision should not be repealed to allow for further evaluation of Acts 82 and 170 after sufficient experience has been obtained. However, in 2007, the House Committee on Water, Land, Ocean Resources and Hawaiian Affairs acknowledged that collection of such data would be difficult and possibly inaccurate and accordingly, deleted language in a bill which sought to amend Act 170 to require the establishment of a task force to evaluate the effectiveness of Acts 170, 82 and 190. The City has repeatedly testified in the past that the "effectiveness" of the statutes is not measurable without asking every single beach user whether the posted sign or the presence of a lifeguard at the beach park affected their behavior. Any reduction in the number of lawsuits, claims or deaths, may be unrelated to the effectiveness of the legislation. Rather the reduction could be the result of government's other efforts to educate the public through recreational safety education and public awareness programs.

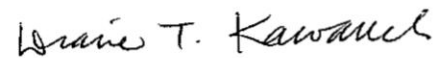
Thus, the City and County of Honolulu supports passage of H.B. 215 in its present form without any additional amendments. Passage of H.B. 215 will give the State and the counties the liability protection, certainty and assurances needed to keep beach parks open for public use and would make beaches more accessible and safer by allowing the counties to place lifeguards at State-owned beaches without the threat of costly litigation for conditions or events that are outside the counties' control. Placing county lifeguards at State-owned beaches will help reduce the number of deaths and injuries at these beaches. Repealing the sunset provision would further encourage counties to expand recreational safety education and public awareness programs, rather than expending time and monies on defending costly litigation.

The Honorable Karl Rhoads, Chair, and
Members of the Committee on Judiciary
February 6, 2013
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215. For these reasons, we respectfully request your support in passing H.B.

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

Very truly yours,

A handwritten signature in cursive script that reads "Diane T. Kawachi".

DIANE T. KAWAUCHI
Acting Corporation Counsel

DTK:ey

Enclosure

State of Hawaii
Department of the Attorney General



**Report of the Task Force Established by
Act 152, Session Laws of Hawaii 2007**

*Submitted to
The Twenty-Fifth State Legislature
Regular Session of 2009*

This report has been prepared for submission to the Twenty-Fifth Legislature, Regular Session of 2009, pursuant to Act 152, Session Laws of Hawaii (SLH) 2007, twenty days prior to the convening of the 2009 regular session.

I. BACKGROUND

Under Act 152 the Legislature found that 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 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 also found that state and county compliance with the statutorily required public warning of dangerous natural conditions at recreational areas and public beach parks has contributed to an improvement in public safety in these areas, which justifies making the current liability exemptions for state and county governments relating to recreational areas and public beach parks and actions of county lifeguards permanent or extending their protections.

Accordingly:

Act 152, SLH 2007, amended Act 82, SLH 2003, by extending its mandate through June 30, 2010.

Act 152, SLH 2007, amended Act 170, SLH 2002, by extending its mandate through June 30, 2010.

Act 152, SLH 2007, amended Act 190, SLH 1996, as amended by Act 101, SLH 1999, as amended by Act 170, SLH 2002, by making Act 190 permanent.

II. ACT 152 TASK FORCE CREATION

The Act 152 Task Force was convened after participants were solicited via their respective county mayors and formally appointed pursuant to Act 152. Other Task Force members were seated because of their knowledge and expertise in the subject areas covered by Acts 82, 170, and 190.

The Task Force members are:

- (1) Caron M. Inagaki (Task Force Chairperson), Deputy Attorney General, as designee of the Attorney General;
- (2) Jay Furfaro, designee of the President of the Hawaii State Association of Counties;
- (3) Ralph Goto, Director, Ocean Safety & Lifeguard Services Division, Department of Emergency Services, designee of the

Mayor of the City and County of Honolulu;

(4) Tamara Horcajo, designee of the Mayor of the County of Maui
(Act 82);

(5) Marian Feenstra, designee of the Mayor of the County of Maui
(Acts 170/190)

(6) Clint Coloma, designee of the Mayor of the County of Hawaii;

(7) Kalani Vierra, designee of the Mayor of the County of Kauai
(Acts 170/190)

(8) Lani Nakazawa, designee of the Mayor of the County of Kauai
(Act 82)

(9) Robert S. Toyofuku, designee of Executive Director of the
Consumer Lawyers of Hawaii

Also participating in the Task Force were:

Dan S. Quinn, Department of Land and Natural Resources (Acts
82/170/190)

Curt Cottrell, Department of Land and Natural Resources (Act 82)

William V. Brilhante, Deputy Corporation Counsel, County of
Hawaii

Randolph R. Slaton, Deputy Attorney General (Acts 170/190)

Dawn Spurlin, Deputy Corporation Counsel, City and County of
Honolulu

Jeffrey Ueoka, Deputy Corporation Counsel, County of Maui

Mary Kielty, County of Maui

III. SUMMARY OF TASK FORCE ACTIVITIES

The purpose of the Task Force is to advise the Legislature of the effectiveness of, collect sufficient data relating to, and provide to the Legislature information on Act 82, SLH 2003; Act 170, SLH 2002; and Act 190, SLH 1996, as amended. In this regard, the Act required the State and the counties to:

(1) Collect data on and examine the effectiveness of providing lifeguards conditional liability protection for lifeguard services at

state beach parks, except for gross negligence and wanton acts or omissions;

(2) Collect data on and examine the effectiveness and adequacy of warning signs at public beach parks in increasing public safety, reducing ocean-related accidents, and protecting the State and the counties from unlimited liability with regard to activities in the ocean and at public beaches; and

(3) Collect data on and examine the effectiveness and adequacy of warning signs at public recreational lands in increasing public safety, and protecting the State and the counties from unlimited liability arising out of recreational activities on public lands.

As the Task Force was not funded for any services, the members relied on available, reliable sources of data and information in an effort to review what steps already have been undertaken to implement the Acts under study; to gauge whether the steps seem to have been successful or undertaken in an appropriate process to provide greater safety for the public; and to obtain the opinions of the members of the Task Force with specific expertise about what additional steps, if any, could or should be undertaken in the future subject to the approval of and funding by the Legislature.

Specific steps undertaken in implementing Acts 82, 170, and 190 are contained in the reports that have been submitted to the Legislature in regard to each of those acts. In regard to Act 152, the Task Force made the following determinations.

A. Act 82

The members reviewed sources of data and their interpretation regarding the effectiveness and adequacy of warning signs at public recreational lands in increasing public safety, and protecting the State and the counties from unlimited liability arising out of recreational activities on public lands. Act 82 provides for a system of warning signs to increase public safety, in turn, protecting the State and the counties from unlimited liability arising out of recreational activities on public lands, in particular, trails. The general consensus was that the warning signs aid the recreational user in exercising caution, and that a reasonable recreational user will inquire further about conditions of the trails if not certain about the conditions or the user's own familiarity with the trails or skills that might be involved in using the trails. As the Legislature is aware, the design of various signs and their placement have been the ongoing responsibility of another task force, the Risk Assessment Working Group (RAWG), to which reference is made for specifics of the program.

Using the current American National Standards Institute (ANSI) guidelines, RAWG designed safety signs to address the following priority natural hazards: flash floods, falling rocks, hazardous cliffs, submerged hazards as well as ancillary uniform management signs (end of trail, end of road, area closed). In 2004, public input was solicited through statewide public informational meetings. Specific aspects related to sign design were revised as a result of comments received from the public.

That same year, as mandated by Act 82, SLH 2003, the Department of Land and Natural Resources (DLNR) completed the first draft of the proposed chapter 13-8 of the Hawaii Administrative Rules (HAR) for the Design and Placement of Warning Signs on Improved Public Lands.

In February of 2005, the Board of Land and Natural Resources (Board) approved the draft chapter 13-8, HAR, and the release of the draft document for public hearings. In May 2005, Governor Lingle approved the proposed chapter 13-8 for public hearing. A public hearing was conducted on August 23, 2005. Oral and written comments were received from the public and minor revisions were proposed. No substantive changes were requested.

On November 18, 2005, the Board approved the staff's revision based upon public hearing comments and recommended approval of the proposed chapter 13-8, HAR, to the Governor. On January 6, 2006, the Department of the Attorney General approved the draft chapter 13-8 as to form. On January 23, 2006, the Governor approved the proposed chapter 13-8, HAR, and the finalized rule was filed on February 4, 2006. There is now a consistent process for natural hazard evaluation and appurtenant sign designs. The administrative rules have eliminated the ambiguity about the design and placement of warning signs and state and county governments have institutionalized this process.

In 2007, the Board approved placement of signs at Manoa Falls Trail on Oahu, Kealakekua State Historical Park on the island of Hawaii, Makena Beach State Park on Maui, and at Diamond Head and Kuilei Cliffs County Beach Parks on Oahu.

In 2008, the Board approved warning signs for the Kauai County Bicycle Path and a variety of Division and Forestry Wildlife and Na Ala Hele Trails on the islands of Kauai (22), Maui (18) and Hawaii (11), for a total of 51 signs. Also in 2008, the Board approved various locations at Kalalau Beach and Opaekaa Falls on Kauai and Diamond Head, Pali Lookout, and Sacred Falls on Oahu.

A prime example of the efficacy of, and the necessity for, Act 82 is the wildfire that burned approximately 2,300 acres of public forest within Kula and Kahikinui Forest Reserves on Maui in 2007. This fire event resulted in scores of hazard trees having to be removed from along the access roads and trails, but thousand of mature trees, although damaged, were still left standing. This posed a potential hazard for any users who deviated from the access roads and trails. This hazardous situation would potentially require many years of constant mitigation for a vast area and a countless and unknown number of damaged trees. Both Kula and Kahikinui Forest Reserves contain Na Ala Hele trails, while Polipoli State Park lies completely within the boundaries of Kula Forest Reserve. To deal with this potential hazard, pursuant to Act 82, new warning signs were proposed, intended to warn of dangerous natural conditions related to hazard trees to members of the public who use these roads and trails to access these areas, and for public hunters who retrieve game from the interiors of the forest reserves. Following the solicitation of public comment, on May 23, 2008, the Board approved the design and placement of 23 new site specific hazard tree signs in the Kula and Kahikinui Forest Reserves. Without Act 82, the State would be faced with a long-term immitigable hazard with no viable means to protect the safety of public users within the Reserves.

The processes established by RAWG to create and place warning signs to warn of potential hazards has had an effect beyond just the previously identified natural hazards (flash floods, falling rocks, hazardous cliffs, submerged hazards). Earlier this year, the Department of Health (DOH) sought RAWG's assistance in creating a warning sign based on design guidelines developed by RAWG to revise the DOH's existing Leptospirosis signs. Leptospirosis is a clear bacteriological threat that can cause gastrointestinal problems, fever, and, in some severe cases, death. The existing warning signs contained a long narrative in English that would be ineffective for any non-English speakers. Following the Act 82 guidelines, a sign was designed with pictographs warning of the exposure and the potential consequences of exposure. Thus, without Act 82, this threat to the public's health and safety would not be effectively disseminated and understood by the maximum number of people.

The members of this Task Force considered that the program, as being administered, is effective and promotes and increases public safety. Additional steps that could be undertaken include further education efforts, both for residents as well as visitors, similar to that outlined in Senate Concurrent Resolution No. 166, offered on March 13, 2008, requesting the assistance of the Hawaii Tourism Authority and the Department of Health in providing safety information to visitors regarding potential hazards on hiking trails and other recreational areas. The counties, Kauai in particular, are looking for ways to address the problem with guidebooks, not sanctioned by the State, that may not contain sufficient information that fully or adequately warns tourists, or recreational users unfamiliar with the area, of existing dangers.

B. Act 170

The members reviewed sources of data and their interpretation regarding the effectiveness of providing conditional liability protection for lifeguard services at state beach parks while providing rescue, resuscitative, or other lifeguard services. As the Legislature is aware, the function of Act 170 has been the ongoing responsibility of another task force, to which reference is made for specifics of the program.

The primary data that the members reviewed for studies of drownings in Hawaii were prepared by Daniel J. Galanis, Ph.D., the state epidemiologist with the Department of Health, Injury and Prevention Control Program. Methods of estimating attendance at guarded beaches include estimated attendance from lifeguards (a method limited due to the fact that not all beaches are guarded, though new technology now provides the capacity for Oahu to undertake counts), and population figures. Lifeguards on Oahu, for example, maintain extensive logs for their stations, including data for attendance, contacts with the public, preventive actions, first aid, rescues, and drownings. These data could provide a valuable source for further study pending funding. There were some 700 drownings in Hawaii from 1993 through 2004, almost equally divided among residents and visitors, except for the period 2002-2004, when non-resident drownings exceeded resident drownings by almost fifty percent. During the period 2003-2007, an average of 67 drownings occurred annually. Not surprisingly, Dr. Galanis noted that some 81 percent of the victims drowned in the ocean.

While Dr. Galanis determined that there were no consistent trends in the annual number

of ocean drownings, whether considering all victims or stratifying by residence status, in absolute numbers, the drownings involving non-residents tended to go up and down, while the drownings involving residents trended downward, from 2.7 drownings per 100,000 population in 1993 to 1.8 drownings per 100,000 population in 2004. While statistical analysis might not consider the figures to be statistically significant, the lower numbers mean that people are not drowning and families are not suffering the loss or injury of loved ones. During the period 2003-2007, at least 713 “near-drownings” occurred, almost two-thirds involving non-residents.

The members of the Task Force, with the exception of the Consumer Lawyers of Hawaii (CLH), considered that the program, as being administered, is effective, and promotes and increases public safety. It cannot be disputed that a guarded beach is safer than an unguarded beach. Every rescue on a guarded beach is a life saved. Following the enactment of Act 170, there have been a total of 132 lifeguard rescues on Oahu's previous unguarded beaches, Keawaula Beach and Kaena Point State Park. In 2007-2008 alone, Kauai's water safety officers has saved an estimated 312 lives through 234 water rescues, 37 jet ski rescues and 41 assists. The concerns previously expressed by CLH in their legislative testimony have been addressed now that certain beaches on Maui and Kauai that were identified by CLH as being unguarded (Makena and Kee Beach) are now guarded or will soon be guarded. At Hapuna Beach State Park, the Big Island's only state beach park, approximately 267 individuals were rescued during the fiscal years of 2006-2007 and 2007-2008. (There were 549 rescues at the Big Island county beaches during that same time period.) Contrary to CLH's belief, the State of Hawaii has entered into contracts with the County of Maui and the County of Kauai for lifeguard services at previously unguarded state beach parks.

Additional steps that could be undertaken include further education efforts, both for residents as well as visitors, such as that outlined in Senate Concurrent Resolution No. 166, offered on March 13, 2008, requesting the assistance of the Hawaii Tourism Authority and the Department of Health in providing water safety information to visitors. As with recreational use lands, efforts are being made to address the problem of non-State-sanctioned guidebooks that may not contain information sufficient to warn visitors of risks associated with ocean conditions at particular beaches. While Act 170 provides the capacity for the State to contract with all counties for lifeguard services for state park beaches, funding remains a challenge and a limit on the overall effectiveness of the program.

While the majority of the members consider that the program works well currently, the members recognize that the difficulty of providing additional funding continues to place a limit on the program. In addition, Act 170 has been estimated to have saved the State approximately \$1,000,000 in liability insurance costs over the course of the first four contract periods since Act 170 became effective.

C. Act 190

Act 190 provides meaningful warning to the general public of extremely dangerous natural conditions in ocean areas adjacent to public parks, and establishes legally adequate and defensible standards for those warnings. While the standardization of ocean hazard signs at public beach parks affords greater liability protection, it is even more valuable from the resident

or visitor beachgoer perspective, as the signs are meaningful, consistent, more and more recognizable, and, therefore, result in promoting greater understanding, respect, and enjoyment of the ocean environment. Signs developed through the Act 190 process have been used by other agencies throughout the country and are being considered for adoption by at least one international organization. In addition, the format of the Act 190 signs was used by RAWG as a template for signs to warn people of natural hazards under Act 82.

As the Legislature is aware, the design of various signs and their placement has been the ongoing responsibility of another task force, to which reference is made for specifics of the program. As Dr. Galanis noted earlier, many factors are involved in drownings and these factors “vary between individual drownings”; in addition, data “are of unknown quality or completely lacking.” The general consensus was that the warning signs aid the recreational user in exercising caution, and that a reasonable recreational user will inquire further about conditions of the ocean if not certain about the conditions or the user’s own familiarity with the ocean or skills that might be involved in enjoying the ocean. Warning sign work has been undertaken pursuant to Act 190 at beach parks statewide, including more recent signage on Kauai and the Big Island at Anahola, Kahaluu, Lehia, and Laaloa Beach Parks.

All members of the Task Force, except CLH, consider that the program, as being administered, is effective, and promotes and increases public safety. Additional steps that could be undertaken include further education efforts, both for residents as well as visitors, similar to that outlined in Senate Concurrent Resolution No. 166, offered on March 13, 2008, requesting the assistance of the Hawaii Tourism Authority and the Department of Health in providing water safety information to visitors. Hawaiian Airlines began a voluntary program earlier. A significant step forward in this process is providing information so that people can make educated, responsible decisions—the best example of this is the Hawaii Beach Safety website (<http://oceansafety.soest.hawaii.edu>), a project spearheaded earlier by member Ralph Goto, through the University of Hawaii. The site is easily accessible from anywhere, and can be used by those in the visitor industry, particularly hotel and lodging employees who are asked questions or for advice or directions by visitors. In addition, other efforts have been made to inform the general public of beach safety issues, such as the web site for Kauai, http://www.kauaiexplorer.com/guides/beach/beach_safety.php. A key factor is that education needs to focus on helping individuals increase their understanding of and respect for the various factors involved in using Hawaii’s natural resources, rather than creating a sense of fear.

IV. RECOMMENDATION

The CLH has taken a dissenting position from the rest of the Task Force members. The CLH's position is stated below. The remainder of the Task Force members does not necessarily agree to the accuracy of, or concur with, any of the facts, representations, and statements made by CLH.

Despite the CLH's desire for additional data, the remainder of the Task Force members believes that it would not be possible to collect data to prove a negative; i.e. how many people were not injured or killed because they heeded a warning sign. Moreover, the remainder of the Task Force believes that without funding for the appropriate research, it would be difficult to

collect meaningful data of any kind to prove the effectiveness of preventive programs such as signage or guarded beaches. The CLH provides no suggestion on how such data can be obtained. The remainder of the Task Force members believes that the benefits of placing warning signs and having guarded beaches are self-evident. Aside from CLH, the Task Force members believe that the programs developed under Acts 82, 170, and 190 have been effective in increasing public safety. They strike a reasonable balance between the government's duty to warn of potentially hazardous natural conditions in the ocean and on public recreational lands, and the public's responsibility to make informed choices when accessing recreational use lands. All Task Force members, except CLH, would recommend that the 2010 sunset date on Acts 82 and 170 be repealed (as with Act 190 in 2007) and Acts 82 and 170 be codified into the Hawaii Revised Statutes as permanent law.

If Acts 82 and 170 are not made permanent during the 2009 legislative session and the Legislature determines that the Task Force should continue to gather additional data, the Task Force requests that the Legislature extend the sunset dates for Acts 82 and 170 and that sufficient funds be appropriated to allow the Task Force to perform to its optimal effectiveness.

V. DISSENTING POSITION OF THE CONSUMER LAWYERS OF HAWAII

As stated in the main body of this report, Act 170 is scheduled to sunset on June 30, 2010, and Act 82 is scheduled to sunset on June 30, 2010. CLH is opposed to having these two acts codified into the Hawaii Revised Statutes and recommends that the Legislature visit these acts during the 2010 session when sufficient data is available.

The sunset provisions in these Acts were included to give the task forces created by these Acts, as well as other parties, the opportunity to collect sufficient data 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.

These sunset dates were included with the knowledge of all of the parties concerned, including the State and the counties, for the same purpose; that is, to collect adequate data and information to determine the impact and effectiveness of this law. CLH's position has always been that before a policy decision is made on making any law permanent, the proponents of this bill should present adequate information to the Legislature on how these various laws have worked.

Regarding Act 170, the major reason for the bill proposed in 2002 was the fact that the County of Kauai did not want to place lifeguards on certain state beach parks for fear of liability. It was promised that county lifeguards would be stationed at certain state beach parks if Act 170 were passed. There has not been sufficient information presented as to when lifeguards were placed on those beaches, how many have been on guard and which beaches on Kauai, and whether a contract was entered into between the State and County of Kauai for lifeguard services. Further, there has been no reporting as to whether drownings have been reduced, especially on Kauai. Our understanding is that it was only in 2007 or 2008 that lifeguards have ever been placed on the beaches on Kauai, but the immunity from negligence applies to all lifeguards presently employed in the State. It has been over five years since Act 170 was first

passed and it has been only about a year since the intent of this was actually implemented on Kauai; that is, placing lifeguards on those dangerous beaches on Kauai. CLH is of the opinion that the Legislature needs more time to have proper data presented to it regarding the effectiveness of this law.

Act 82 passed in 2003 and is scheduled to sunset on June 30, 2010. The position of CLH is that it should not be made permanent, if at all, before that time. CLH's understanding is that the warning signs were only approved in February 2007 and were not placed until later in the year. This is almost five years after the act was passed. Similar to the comments made regarding Act 170, the same analysis applies to this law. The Legislature needs the time to review sufficient data in order to consider the effectiveness of the act. If the Legislature is to consider making the act permanent, it will have less than two years of information since the placement of the signs required by this act. CLH's opinion is that this act should be considered in the 2010 legislative session and not in the 2009 session.

VI. KAUAI COUNTY'S REBUTTAL TO CLH'S DISSENTING POSITION

The members of the Task Force from Kauai County submitted a rebuttal in response to CLH's position as follows.

Paragraph 4 of CLH's submittal states that "the major reason for the bill proposed in 2002 was the fact that the County of Kauai did not want to place lifeguards on certain state beach parks for fear of liability" and that "it was only in 2007 or 2008 that lifeguards have ever been placed on the beaches on Kauai, but the immunity from negligence applies to all lifeguards presently employed in the state." These statements are incorrect and misleading. The legislative history shows that Act 170 and other lifeguard immunity measures proposed by the Legislature addressed concerns regarding rising exposure to liability voiced by lifeguards in all jurisdictions, and by the State and the counties. In the conference committee report for Senate Bill No. 796, SD1 HD1 CD2 (Act 170), the legislature makes clear that immunity was granted to promote lifeguard presence on beaches throughout the State. "Testimony on this measure indicated that the prospect of large damage suits contributes to the costs of insurance and the reluctance to providing lifeguards. Your Committee on Conference believes that the lifeguards and the State or county must have immunity so that lifeguards can at least be provided on the beaches." (Conference Committee Report No. 66-02 re: SB No. 796, SD1 HD2 CD2).

CLH also states that "[i]t was promised that county lifeguards would be stationed at certain state beach parks if Act 170 were passed," and "[t]here has not been sufficient information presented as to when lifeguards were placed on those beaches, how many have been on guard and which beaches on Kauai, and whether a contract was entered into between state and county of Kauai for lifeguard services." CLH is aware that Kee Beach is the only State beach on Kauai that was identified for lifeguarding. The CLH is also aware that no State funding was provided for lifeguarding at Kee Beach until the 2007-2009 biennium. This funding was released in May 2008, and county lifeguarding services commenced at Kee Beach on July 1, 2008. Since July 1, 2008, county lifeguards at Kee Beach have performed 48 rescues and 2 assists, taken 4,989 preventive actions; and administered minor first aid in 282 instances. If lifeguards had not been present, the rescues, assists, and even some of the preventive actions

could have resulted in drownings. In addition, lifeguards at Kee Beach responded to 12,668 inquiries from 52,482 visitors to the beach. These are staggering figures for a period of less than five months, and illustrate the public safety benefits of a guarded beach.

CLH states that “there has been no reporting as to whether drownings have been reduced, especially on Kauai.” This statement is incorrect. This report documents that in 2007-2008, an estimated 312 lives on Kauai were saved by lifeguards. In addition, the Kauai Fire Department statistics quoted in the previous paragraph evidence that 48 lifeguard rescues were performed at Kee Beach. These incidents would likely have resulted in drownings without lifeguard intervention.

Finally, CLH opposes extension of Acts 170 and 82 because it believes that the Legislature needs more time to have proper data presented to it regarding the effectiveness of these Acts. Yet, the CLH Task Force member admitted at the last Task Force meeting that there was no reasonable way to collect such data. That being the case, there is no reason to delay legislative action to continue the benefits of Act 152, SLH 2007.

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

KIRK CALDWELL
MAYOR



MARK K. RIGG
DIRECTOR DESIGNATE

February 6, 2013

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice-Chair, and Members
Committee on Judiciary
House of Representatives
State of Hawaii
415 South Beretania Street
Honolulu, HI 96813

Re: HB 215 (HSCR2), Relating to Liability

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

The Honolulu Emergency Services Department, City and County of Honolulu, strongly supports the intent of HB 215, and urges your favorable consideration and passage.

HB 215 will make permanent certain liability protections provided in Act 170, Session Laws of Hawaii 2002, and Act 82, Session Laws of Hawaii 2003.


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

The Honorable Karl Rhoads, Chair
The Honorable Sharon E. Har, Vice-Chair
February 6, 2013
Page 2

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

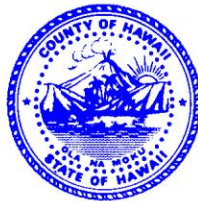
Thank you for the opportunity to testify on this bill.

Sincerely,



Mark K. Rigg, Director Designate
Honolulu Emergency Services Department

DENNIS "FRESH" ONISHI
Council Member
District 3



PHONE: (808) 961-8396
FAX: (808) 961-8912
EMAIL: donishi@co.hawaii.hi.us

HAWAI'I COUNTY COUNCIL

25 Aupuni Street, Hilo, Hawai'i 96720

February 5, 2013

The Honorable Karl Rhoads, Chair
and Members of the House
Committee on Judiciary

Dear Representative Rhoads,

I join the Hawai'i State Association of Counties in urging the passage of House Bill 215 as a critical and essential component of the counties' mandate to provide for public safety.

Failure of this bill to pass would result in the expiration of protection from liability for county lifeguards, counties and the state for damages resulting from lifeguards acting in the regular course of their duties.

We ask your committee to pass this bill to remove the sunset clause and remove a potentially unreasonable burden on the counties. I sincerely appreciate your assistance in this matter.

Sincerely,

Dennis "Fresh" Onishi
Vice President, Hawai'i State Association of Counties

DO:ps

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

February 5, 2013

TESTIMONY OF MEL RAPOZO
PRESIDENT, HAWAII STATE ASSOCIATION OF COUNTIES
ON

H.B. No. 215, RELATING TO LIABILITY

Committee on Judiciary

Thursday, February 7, 2013

2:02 p.m.

Conference Room 325

Dear Chair Rhoads and Committee Members:

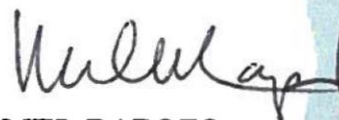
Thank you for this opportunity to submit testimony in strong support of H.B. No. 215, Relating to Liability. My testimony is submitted in my capacity as President of the Hawai'i State Association of Counties (HSAC).

HSAC is in full support of H.B. No. 215, which amends the definition of "improved public lands" to include "public beach parks," and also repeals the sunset date of June 30, 2014. This Bill will continue to provide liability protection for State and County governments with regard to the duty to warn the public of dangers on "improved public lands," and will also protect the actions of County lifeguards who provide needed services on the beach and in the ocean, throughout the State and each County.

As the sunset date is June 30, 2014, HSAC sees the urgency in continuing liability protection in the interest of safety, and asks for your favorable support this legislative session.

Again, thank you for this opportunity to submit testimony in support of H.B. No. 215.

Sincerely,



MEL RAPOZO
President, HSAC

AB:aa

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

February 5, 2013
TESTIMONY OF STANLEY CHANG
SECRETARY, HAWAII STATE ASSOCIATION OF COUNTIES

On
H.B. No. 215, RELATING TO LIABILITY
Committee on Judiciary
Thursday, February 7, 2013
2:02 p.m.
Conference Room 325

Dear Chair Rhoads and Committee Members:

Thank you for allowing me the opportunity to submit testimony in support of H.B. 215 Relating to Liability in my capacity as Secretary for the Hawaii State Association of Counties (HSAC) Executive Committee.

H.B. 215, which repeals the sunset provision for the current legislation, will provide the State and the counties with continued liability protection, and make our beaches more accessible and safer for public use by allowing the counties to place lifeguards at State-owned beaches without the threat of litigation that are outside the counties' control.

Our county lifeguards provide necessary services for the health and safety of our residents and visitors at our beaches, as well as educating the public on beach safety and awareness.

For these reasons, we respectfully ask for your favorable passage of H.B. 215 Relating to Liability and thank the Committee for allowing me to provide testimony.

Sincerely,



Stanley Chang
Secretary, HSAC

Council Chair
Gladys C. Baisa

Vice-Chair
Robert Carroll

Council Members
Elle Cochran
Donald G. Couch, Jr.
Stacy Crivello
Don S. Guzman
G. Riki Hokama
Michael P. Victorino
Mike White




Director of Council Services
David M. Raatz, Jr., Esq.

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

February 6, 2013

TO: The Honorable Karl Rhoads, Chair
House Committee on Judiciary

FROM: Michael P. Victorino, Treasurer
Hawaii State Association of Counties 

SUBJECT: **HEARING OF FEBRUARY 7, 2013; TESTIMONY IN SUPPORT OF HB 215,
RELATING TO LIABILITY**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to 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.

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.

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HAWAIIAN LIFEGUARD ASSOCIATION

February 6, 2013

The Honorable Karl Rhoads, Chair, and
The Honorable Sharon E. Har, Vice-Chair, and Members
Committee on Judiciary
House of Representatives
The Twenty Fifth Legislature
Regular Session of 2013
State Capitol
415 South Beretania Street
Honolulu, HI 96813

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

Re: HB 215, (HSCR2), Relating to Liability

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

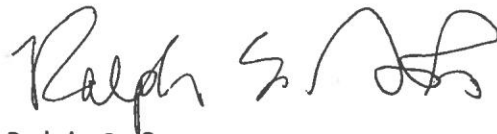
The HLA strongly supports HB 215, which seeks to make permanent the protection from liability provided by Act 170 (2002) and Act 82 (2003). The protection in Act 170 is necessary for individual lifeguards as well as their employing counties to be able to provide services for the State of Hawaii at Kaena Point State Park on Oahu, Hapuna Beach on Hawaii Island, Makena Beach on Maui, and Ke'e Beach on Kauai. These four beaches are popularly used by the public and would be where drownings and serious injuries occur if lifeguard services were not provided.

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

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Ralph S. Goto". The signature is fluid and cursive, with a large initial "R" and "S".

Ralph S. Goto

For the Board of Directors

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 215**

Date: Thursday, February 7, 2013

Time: 2:02 pm

To: Chairman Karl Rhoads 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. 215, Relating to Liability.

The purpose of this bill is to make Act 82, Session Laws of Hawaii, 2003, as amended, permanent. Currently, Act 82 regarding certain protections for the state and counties on improved and unimproved lands 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 2003 was included to allow DLNR to work with various user groups regarding the design and placement of warning signs and the time for an evaluation of this measure after sufficient experience has been obtained. 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 and public recreational lands, determined that it would be best to extend the sunset date to 2014 for Act 82.

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

Because this Act has a major impact on consumer rights, HAJ feels it is more prudent to first obtain sufficient information on how the law has worked. Further, Act 82 required that the state and counties implement an accident reporting and record keeping program and HAJ feels that the legislature should determine whether this has been done and is working properly. There are also duties imposed on the risk assessment working group created by Act 82. 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.

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 the particular state beach park on Kauai. The sunset was again extended in 2009 and because the program was just beginning with that one state beach park 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.

No reason has been given why the June 2014 sunset date should not be honored and HAJ questions where sufficient data has not been gathered and presented to justify abandoning the current sunset date.

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.

When the law was passed in 2002 the State and counties were concerned about the high cost of insurance to protect them in the event of any negligent acts by lifeguards. Since that time the situation with the availability and cost of insurance has changed and HAI feels that it is now a viable option for the state and counties to pursue.

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.

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 05, 2013 9:49 AM
To: JUDtestimony
Cc: Don.Couch@mauicounty.us
Subject: *Submitted testimony for HB215 on Feb 7, 2013 14:02PM*

HB215

Submitted on: 2/5/2013

Testimony for JUD on Feb 7, 2013 14:02PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Don Couch	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

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

2/4/13

To: Rep. Karl Rhoads, Chair, House Committee on Judiciary
Rep. Sharon E. Har, Vice Chair

TESTIMONY IN SUPPORT OF HB 215 - HEARING ON 2/7/13

Dear Chair Rhoads, Vice Chair Har and Members of House Committee on Judiciary

Thank you for this opportunity to testify in support of HB 215, which will do away with the Sunset of Act 170, the Sunset scheduled for 2014. I have testified in favor of Act 170 -- both in writing and in person -- on numerous occasions, and I very much regret that I am unable to testify in person at your Committee's Hearing this Thursday.

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 State beach, i.e. a beach that is not under the County own jurisdiction. (This Act similarly is the underpinning for guarding Makena Beach on Maui and Yokohama Bay on Oahu). Please realize that this Act grants, as I understand it, no more immunity to the County for their work at this beach than that which the State enjoys at this and all other State beaches.

What have Ke'e Lifeguards meant to Kauai, our people and our visitors?

Ke'e Beach is packed with people on any day when it isn't raining. There are so many cars that if you get there in mid-morning cars are parked a full ½ mile walk from the Beach Park. On flat calm days it is a snorkeler's paradise. On days, however, where any waves at all are breaking onto and over the barrier reef, water comes IN over the reef -- and this creates an unseen rip current that pulls unsuspecting people OUT the western portal of the "sheltered" area and takes them 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 airline 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 say 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	33	13,861	107,988	0
2012	33	17,222	120,648	0
2013	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.

On the chance that you have another few moments I'd like to share a couple of recent anecdotes about our Ke'e Lifeguards. In my work at the Wilcox Hospital ER I have received 2 men in the last 18 months who would have been dead were it not for their fast and skillful action. One man slipped on the rocks and suffered a compound fracture of his humerus, and he was experiencing “massive exsanguinating hemorrhage” since the bone fragment lacerated his axillary artery. The Lifeguard clamped his hands on the artery and stopped the geyser of blood. Please understand that the nearest Paramedics are a full 25 lights-and-sirens minutes away from Ke'e Beach. By the time support arrived his hands were cramp-locked in their position on the victim's upper arm and had to be pried off before the next rescuer could intervene. The patient arrived in our ER alive and immediately underwent life-and-limb saving surgery.

A second man, one of our own State Parks workers, collapsed just as he finished coming down from work he was doing on the Kalalau Trail. Our Lifeguards heard the commotion at the trailhead, rushed to the man, found him pulseless and not breathing (i.e. dead), 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 the man was awake and talking -- and certainly a bit dazed, having just had a face-to-face encounter with The Void.

Neither case qualifies as a Lifeguard ocean rescue -- but WOW!

If you believe that Lifeguards at busy and dangerous beaches are essential for our citizens' and visitors' safety (and indeed for our Visitor Industry's very credibility), then the Lifeguard service at Ke'e Beach needs to be continued. Act 170 allows for this, and I ask that you pass HB 215.

Respectfully Submitted,
Monty Downs, M.D.

To Chair Representative Karl Rhoads and the House Judiciary (JUD) Committee
JUD hearing on Thursday, 02-07-13 2:02PM in House conference room 325.

Michael Bishop, individual citizen and Haleiwa resident
Testifying in SUPPORT of HB 215

Aloha Chair Rhoads and members of the Judiciary committee. Thank you for the opportunity to present this testimony in SUPPORT of HB 215. As an avid waterman and outdoor recreationist, I strongly believe that the sunset dates for Act 82 and Act 170 should be repealed, making them permanent.

These acts have served their intended purpose of protecting the state from liability resulting from dangerous ocean conditions, as well as protecting the public by allowing lifeguards to be present at areas such as Ke'e Beach on Kauai, and Yokohama Beach on Oahu. The Task Force established to evaluate these Acts has provided the Legislature with such evidence, as recently as 2011. These bills are working – the sunset provision was included to allow time to determine this fact; now that we have the facts, please pass this bill to reduce the future burden on the legislature to continually oversee these acts.

Wouldn't it be more prudent to reduce the future workload of the Judiciary committee now that the requisite evidence has been gathered to support the effectiveness of these measures? Passage of HB 215 wouldn't mean these Acts are untouchable from revision, rather it would show that the legislature is taking an optimistic “glass half full” stance toward these Acts by stating, through policy, that it believes they will continue to function as they have been. If, in the future, they cease to function, according to evidence of the overseeing Task Force, then would be the time for these acts to come under your scrutiny. With the passage of HB 215, hopefully this will be the last time you have to reevaluate the merits of Acts 82 and 170.

Please act to continue to protect liability reducing legislation which will allow the people of Hawaii to continue to enjoy the natural environment without extensive government regulation or area closures due to fears of litigation against the state. Please pass HB 215.

Thank you for your consideration,
Michael Bishop
Haleiwa resident

har2-Vincent

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 06, 2013 1:46 PM
To: JUDtestimony
Cc: bugman@climbaloha.com
Subject: Submitted testimony for HB215 on Feb 7, 2013 14:02PM

HB215

Submitted on: 2/6/2013

Testimony for JUD on Feb 7, 2013 14:02PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michael Richardson	Individual	Support	Yes

Comments: February 6, 2012 Testimony in Support of HB215 submitted by: Michael Richardson, resident of Honolulu 2241 Noah St. Honolulu, HI 96816 (808) 387-7825 bugman@climbaloha.com As a registered voter, small business employer, and legal resident of Honolulu since 1995, I am urging strong support for HB215. My perspective is that of an active recreational enthusiast passionate about hiking, mountain biking, and rock climbing in Hawaii's beautiful mountains. I am in support of HB215 because it is my hope that sensible legislation like this bill will address concerns of DLNR over fear of liability that could occur as a result of someone getting injured while rock climbing or through some similarly hazardous recreational activity such as hiking, biking, or hunting on State lands. In 2012, DLNR closed all rock climbing areas on Oahu out of fear of liability. Besides my desire to be able to rock climb again on Oahu and share my love of this sport with friends and my two young sons, I am alarmed about the possibility of DLNR closing additional public trails or other recreation sites because our liability laws are not up to date with other States, and in fact have not been updated since 1969. Concerning this Bill: Act 82 needs to be made permanent. As I see it, the purpose of HB215 partially addresses a great need to amend State of Hawaii laws and regulations concerning State liability for those that engaged in recreational activities on State of Hawaii and other public lands. Before we begin, I would like to request that everyone to ask the following questions of themselves: 1. How many of you have in the past or do presently appreciate the opportunity to engage in activities including hiking, climbing, biking, and hunting on public lands? 2. How many of you have in the past or do presently pursue and engage in outdoor activities on 'voluntary trails' on public lands? Concerning failed attempts on the part of certain Hawaii legislators to revise State laws affecting State liability on State and public lands each of the ten years between 2002 through and 2012: 1. Why is it that only trial attorneys representing the interests of the Hawaii Association of Justice (www.clh.org) (formerly the Consumer Lawyers Hawaii), oppose these measures? 2. Do trial attorneys in Hawaii oppose attempts to revise our State liability laws because they better understand the dangers of hazardous recreational activities than anyone else? 3. Do trial attorneys in Hawaii oppose attempts to revise our State liability laws because they are more concerned about public safety than anyone else? Regarding the immunity granted to the State of Hawaii by Act 190 (in effect since 1996) for liability from ocean and beach related injuries and deaths: 1. Why did Hawaii enact Act 190, protecting itself from ocean and beach liability? 2. Is it because ocean activities and open beaches (as opposed to closed beaches) are so essential to Hawaii's tourism and tourism image? 3. Is it because the importance of unrestricted beach access and opportunity to enjoy ocean activities outweigh and are greater than the interests of Hawaii's trial attorneys? 4. Is it because ocean and beach activities are so closely tied to notions of past Hawaiian and present day Hawaii culture? 5. Does anyone believe that the opportunity to engage in and enjoy activities such as hiking, biking,

paragliding, and ecosystem tourism in general are unimportant to Hawaii's tourism and the well-being of its residents? 6. Are the activities such as hiking, biking, paragliding, and ecosystem tourism in general becoming increasingly important to Hawaii's tourism and tourism image? 7. Why, again, do we not have legislation similar to Act 190 to protect the State against liability for those that assume responsibility for engaging in non-ocean-related hazardous sports? Hawaii has essentially no hazardous recreational use statute (except for Chapter 520 which only applies to private landowners and has remained unchanged since 1969). In comparison, approximately 16 States have fairly comprehensive recreational use statutes protecting their taxpayers from the excessive liability surrounding lawsuits involving hazardous recreational activities.

1. Is there something extra complicated or special about the situation in Hawaii that precludes us from passing similar legislation which would protect Hawaii's taxpayers and keep public areas open to the public? 2. Are the taxpayers and recreational enthusiasts of Hawaii being held hostage by the special interests of Hawaii's trial attorneys? Consider the March 20, 2012, \$15.4 million State settlement with the families of two women who tragically fell to their deaths in 2006 from the trail leading to Opaekaa Falls. According to the 44 page findings on the case, the attorneys for the women's families provided compelling evidence that prior to the accident DLNR was apparently aware of the dangers at the site and could possibly have done more to warn the public of the dangers involved in visiting the falls. Conversely, we should ask ourselves to consider the following questions:

1. Can we think of better ways to have spent \$15.4 million in the State of Hawaii? Could \$15.4 million have benefitted for example, watershed protection, education, or simple maintenance and upkeep of park facilities and restrooms? 2. Is it possible for DLNR or other public agencies to protect from and warn the public of every possible danger that can be encountered on non-beach and ocean public lands? 3. Consider the vast number of hiking and related sports injuries, deaths, and rescues that occur with alarming frequency in Hawaii's mountains every month of every year. Are the existing laws preventing these incidents from occurring? 4. Even if it were financially and logistically feasible for DLNR to accomplish, would we want to see warning signs along the entire length of every trail, on every scenic overlook, and within every valley? 5. Where do we draw the line for assumption of risk to engage in hazardous recreational activities? For example, consider that hiking blogs as of February 2013 indicate that people are still hiking down to Opaekaa Falls. Is DLNR to monitor this site 24/7 to keep people from entering the area? 6. Lastly, to counter some of the arguments of Consumer Lawyers Hawaii in their opposition for sensible liability legislation: -Many voluntary trails and recreational sites are not remote; indeed many voluntary trails are located within the boundaries of State parks and with Honolulu's urban core and they are constantly changing. -In evaluating whether to ride an elevator or cross a highway bridge in one's car, one would need to be a structural and or mechanical engineer to properly assess their safety. Furthermore, we (the people) must rely on the safety of our everyday infrastructure and we often have no choice in the matter whether to use or not use this infrastructure. In deciding to hike down to a waterfall, it is a personal choice and not a requirement, and it does not require an engineering degree to gauge the safety of such an endeavor. Why would we require that DLNR be responsible for making that decision for us? What is the incentive for DLNR to keep any park or any public land open if they are also responsible for telling everyone what is safe and what is not? Lastly, in response to Bob Toyofuku's opposition to making Act 82 permanent: What more obvious reason could there be for not honoring the June 2014 sunset date?? Because making Act 82 permanent helps to protect the State from frivolous liability and protects the rights of the vast population majority which would rather recreate than sue the State. Furthermore, what would the Consumer Lawyers Hawaii suggest for further data collection to validate the effectiveness of Act 82? Take a poll along the beach or any trail and ask residents and visitors if the millions of warning signs everywhere make them feel safer? In summary I urge Hawaii's legislators to take action in 2013 and bring this hostage crisis to an end. There is no better time than now to say no to Hawaii's trial attorneys, and amend our State liability laws to protect Hawaii's taxpayers and the visitors and residents of Hawaii who require open trails and public places to engage in recreational pursuits. I am an active, registered voter and I will carefully note and share information with my vast network of

friends regarding those legislators that do and do not support HB215 and related bills.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov

February 6, 2013

To: Committee Members

From: Sayar Kuchenski, Resident Group Leader

Sub: HB215

Dear Committee Members,

I am writing in SUPPORT of HB215. Act 82 provides critical State liability mitigation, which helps to keep public lands open for recreational use. Act 82 has been in place for years. Continuously renewing provisions in Act 82 is a waste of congressional resources. If ever the State believes Act 82 is no longer applicable or appropriate, the State can always strike provisions from the act.

With Deepest Respects,

Sayar Kuchenski

To: Committee Members

From: Eva Bosch RN, Individual Rock Climber

Hearing: February 7, 2013, 2:00 pm Conference Room 325

RE: HB215

Dear Committee Members,

As an avid rock climber and outdoor adventurer, I am writing this letter in support of the passage of HB215 which limits liability for state of Hawaii. I had climbed weekly at Mokuleia for the last five years, until its closure. The state's actions directly impact my life and well being in Hawaii. I work as an RN in the neonatal intensive care unit and am a homeowner in Hawaii, however I would consider moving out of state if Mokuleia continues to be closed. My entire family climbs regularly and internationally, and it is an essential part of our lives. It is central component of my life here on Oahu. The climbing community on Oahu has deeply enriched my experience here, as do all the hikes into the mountains that are possible. As a result, I am deeply affected by the closure and write to express how important it is that the area remains open for climbing and that any future rules protect access to the climbing and hiking trails on the Islands.

I believe that it is important for outdoor enthusiasts to understand the risks nature present and not hold the state accountable for activities they choose to engage in. A trail that is maintained regularly may still fail. Rocks and dirt move as does the ocean. The state should not be responsible for paying out settlements to people that choose to venture outdoors. Our state just paid a 15.4 million dollar settlement to the families of two hikers that have died on a Kauai trail. Unfortunately this is not an isolated incident. The money that the state pays out eventually filters back to the taxpayers. I believe the lawyers group in opposition of amending chapter HB520 at the last session on January 28th, has a fair bit or interest in keeping it written as is due to monetary incentives. In a post published on Bostwick&Peterson, LLP it reads, "oftentimes warning and closures happen too late – after someone has been seriously injured or dies while hiking an unsafe trail. If you or a loved one has been injured – or if you have lost a loved one in a hiking accident - it is important to seek the advice of an experienced Hawaii personal injury attorney right away."

Such legislation is needed because despite virtually no injuries in the 22 years residents and visitors have climbed at Mokuleia and other areas on Oahu, a single injury in June of 2012 has led the DLNR to ban all climbing on the North Shore, impose harsh financial and criminal penalties, and confiscate community-owned safety equipment that had been donated and in-place at our climbing areas for community use. As a climber, I understand that we assume risk for our welfare when engaging in hazardous recreational activity. Across the nation, rock climbers rarely if ever sue for injuries sustained by rock climbing or mountaineering.

However, given that not all people who try rock climbing are avid climbers, I also recognize the state's need to explicitly limit liability. Thus, I am in full support of this legislation and the DLNR's efforts to avoid unnecessary regulation of unencumbered state lands.

While climbing is not risk-free, climbing is at least as safe as other State-approved outdoor activities such as surfing, kiteboarding, or paragliding. Indeed, our climbing areas have been voluntarily maintained and we have self-imposed safety measures not seen in any other climbing area in the world. Certainly, accidents do happen, yet when compared to the accidental death and injury rate occurring in the oceans almost daily, there is no significant threat from rock climbing in Hawaii. Hawaii has the second highest drowning rate in the nation and yet the beaches remain open to water activities. It is unclear why a different approach would be taken with a far less dangerous activity in the mountains. Imagine the uproar of the surfing community if the State closed Sunset Beach and Pipeline - Oahu's climbers feel no less passionately about access to Mokuleia and our other Northshore climbing sites. The unilateral closure of all of our Oahu climbing sites has been devastating to our climbing community.

Since the early 1990s, Oahu's climbing community has carefully stewarded our few climbing sites, emplaced world-renown safety measures at these sites, coordinated with the local fire department and external experts on review of our safety measures, and coordinated with DLNR regarding our activities while seeking approval. Climbers in Hawaii and around the world are an avid and dedicated community – it is as much a lifestyle as it is a sport. To be in the mountains and to climb is more than a physical exercise - it is a spiritual awakening to the flow of mind and body. To be deprived of access does direct and personal harm to those of us who depend upon climbing to free our minds and bodies amid the wonder that is our natural world.

I urge you to pass this legislation, along with the other bills introduced to achieve these goals and make the state safer from overly litigious residents and visitors who should understand that they assume risk for their personal safety when leaving the confines of their homes.

Sincerely,

Eva Bosch