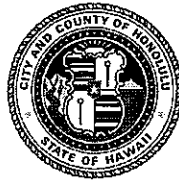


DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

KIRK CALDWELL
MAYOR



DIANE T. KAWAUCHI
ACTING CORPORATION COUNSEL

January 24, 2013

The Honorable Cindy Evans, Chair
and Members of the Committee on Water and Land
State House of Representatives
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Evans 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 to collect sufficient data relating to, and to provide the Legislature with information concerning the effectiveness of Act 82, Act 170 and Act 190, SLH 1996 (grants immunity for dangerous natural conditions in the ocean). 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.

The Honorable Cindy Evans, Chair, and
Members of the Committee on Water and Land
January 24, 2013
Page 2

In its report to the 2009 Legislature, the Task Force concluded that the various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety, and that the procedures 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, counties have stationed lifeguards at certain State beach parks. The Task Force report further discussed the benefits of posting Act 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 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 have nothing to do with 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.

For these reasons, we respectfully request your support in passing H.B. 215.

The Honorable Cindy Evans, Chair, and
Members of the Committee on Water and Land
January 24, 2013
Page 3

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

Very truly yours,

A handwritten signature in black ink, appearing to read 'Diane T. Kawauchi', with a long horizontal flourish extending to the right.

In DIANE T. KAWAUCHI
Acting Corporation Counsel

DTK:ey

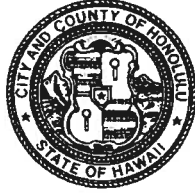
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HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1869
Phone: (808) 723-7800 • Fax: (808) 833-3934

KIRK CALDWELL
MAYOR

MARK K. RIGG
ACTING DIRECTOR



January 24, 2013

The Honorable Cindy Evans, Chair
The Honorable Nicole E. Lowen, Vice Chair
Committee on Water and Land
House of Representatives
Twenty-Fifth Legislature
State of Hawaii
415 South Beretania Street
Honolulu, HI 96813

Re: HB215, Relating to Liability

Dear Chair Evans, Vice-Chair Lowen, and Committee Members:

The Honolulu Emergency Services Department, City and County of Honolulu, 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, performed hundreds of rescues and emergency medical responses, and saved hundreds of lives during this time.

The Honorable Cindy Evans, Chair
The Honorable Nicole E. Lowen, Vice-Chair
January 24, 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,

A handwritten signature in black ink, appearing to read "Mark Rigg". The signature is fluid and cursive, with the first name "Mark" being more prominent than the last name "Rigg".

Mark K. Rigg, Director Designate
Honolulu Emergency Services Department

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

January 23, 2013

TESTIMONY OF MEL RAPOZO
PRESIDENT, HAWAII STATE ASSOCIATION OF COUNTIES

On

H.B. No. 215, RELATING TO LIABILITY

Committee on Water & Land

Friday, January 25, 2013

8:30 a.m.

Conference Room 325

Dear Chair Evans 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 provide continued liability protection for State and County governments regarding 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, State and County wide.

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.

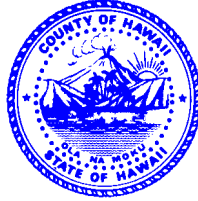
Again, thank you for this opportunity to submit testimony.

Sincerely,



MEL RAPOZO
President, HSAC

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

January 23, 2013

The Honorable Cindy Evans, Chair
Members of the House Committee on Water and Land

Dear Representative Evans,

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 course of their duties.

This would place an unacceptable burden on the counties. Please pass this bill to remove the sunset clause. I sincerely appreciate your assistance in this matter.

Sincerely,

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

DO:ps

Council Chair
Gladys C. Baisa

Vice-Chair
Robert Carroll

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

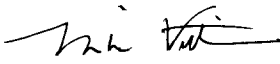


Director of Council Services
David M. Raatz, Jr., Esq.

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

January 23, 2013

TO: The Honorable Cindy Evans, Chair
House Committee on Water & Land

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

SUBJECT: **HEARING OF JANUARY 25, 2013; TESTIMONY IN SUPPORT 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.

ocs:proj:legis:13legis:13testimony:hb215_paf13-021a_kmh

William P. Kenoi
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

January 24, 2013

The Honorable Cindy Evans, Chair
Committee on Water and Land
House of Representatives
State Capitol, Room 425
Honolulu, Hawaii 96813

Dear Chair Evans:

Subject: H.B. 215 Relating to Liability

I am Darren J. Rosario, Member of the State Fire Council (SFC) and Fire Chief of the Hawai'i Fire Department of the County of Hawai'i (HFD). The SFC and the HFD 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 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.



H.B. 215 Relating to Liability
January 24, 2013
Page 2

The SFC and the HFD 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.

Respectively,

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

DARREN J. ROSARIO
Fire Chief

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

Date: Friday, January 25, 2013
Time: 8:30 am

To: Chairperson Cindy Evans and Members of the House Committee on Water and Land:

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.

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 HAJ feels that it is now a viable option for the state and counties to pursue.

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.

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.

lowen1-Kyli

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 23, 2013 5:00 PM
To: waltestimony
Cc: Don.Couch@mauicounty.us
Subject: *Submitted testimony for HB215 on Jan 25, 2013 08:30AM*

HB215

Submitted on: 1/23/2013

Testimony for WAL on Jan 25, 2013 08:30AM 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

1/23/13

To: Rep. Cindy Evans, Chair, House Committee on Water and Land
Rep. Nicole E. Lowen, Vice Chair

TESTIMONY IN SUPPORT OF HB 215 – Hearing on 2/25/13

Dear Chair Evans, , Vice Chair Lowen and Members of House Committee on Water
and Land:

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.

Act 170 is what allows our Ke'e Beach, a State Beach Park, to be guarded by our
Kauai County Lifeguards. It basically grants immunity, except in the case of gross
negligence, when County Lifeguards formally guard a beach that is not under the
County jurisdiction. (This Act similarly is the underpinning for guarding Makena
Beach on Maui and Yokohama Bay on Oahu). Please realize that this immunity
requests no more immunity to the County's presence 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 the barrier reef, water comes IN
over the reef -- and this creates a strong, equilibrating, and 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 | Final numbers not tabulated yet except for | | | 0 |

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

I work in the Wilcox Hospital ER and in the last 18 months I have received 2 men who would have been dead were it not for the fast and skillful action of our Ke'e Lifeguards. 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 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.

A second man, one of our State Parks workers, collapsed just as he finished hiking 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 25 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' safety and for our visitors' safety (and indeed for our Visitor Industry's very credibility), then the Lifeguard service at Ke'e Beach MUST be continued. Act 170 allows for this, and I ask that you pass HB 215.

Respectfully Submitted,

Monty Downs, M.D.

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

January 23, 2013
TESTIMONY OF STANLEY CHANG
SECRETARY, HAWAII STATE ASSOCIATION OF COUNTIES
On
HB. No. 215, RELATING TO LIABILITY
Committee on Water & Land
Friday, January 25, 2013
8:30 a.m.
Conference Room 325

Dear Chair Evans 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



January 23, 2013

The Honorable Cindy Evans, Chair, and
The Honorable Nicole E. Lowen, Vice-Chair, and Members
Committee on Water and Land
House of Representatives
The Twenty Fifth Legislature
Regular Session of 2013
State Capitol
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Evans, Vice-Chair Lowen, and Members:

Re: HB 215, 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,

Ralph S. Goto
For the Board of Directors



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

January 24, 2013

The Honorable Cindy Evans, Chair
Committee on Water and Land
House of Representatives
State Capitol, Room 425
Honolulu, Hawaii 96813

Dear Chair Evans:

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 Cindy Evans, Chair
Page 2
January 24, 2013

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,

 Administrator

 ROBERT WESTERMAN
Vice Chair

RW/LR:

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.
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
WATER AND LAND**

**Friday, January 25, 2013
8:30 AM
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 and county lifeguards exception from liability while carrying out their duties and responsibilities. The Department of Land and Natural Resources (Department) strongly supports this bill. The Department notes that the Administration has submitted similar proposals in the form of House Bill 779 and Senate Bill 1009.

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 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.

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 that we are blessed with. The sunset provisions in Act 170 need to be removed.