

Testimony of the
County of Kaua'i
Bernard P. Carvalho, Jr., Mayor
4444 Rice Street, Suite 235
Līhu'e, Hawai'i 96766
Tel: (808) 241-4900; Fax (808) 241-6877

House Committee on Water and Land
House Committee on Ocean, Marine Resources and Hawaiian Affairs
Re: HB 2234 Relating to Tort Liability
January 29, 2014

Aloha from the Garden Island!

As 50-foot waves crashed upon our north and west side beaches last week, ocean safety professionals on all of our islands struggle to prevent injury and death in our waters. Ocean safety and drowning prevention is a core mission of the State and the Counties, and we have created a widespread and effective collaboration with each other and numerous private partners in this effort.

Extending the liability protection that is currently provided for county lifeguards on State beaches is absolutely essential to the success of our ocean safety program. Since 2008, Kaua'i has stationed lifeguards at Kē'ē beach as a result of this legislation. Prior to 2008, there were eight drownings at Kē'ē beach. Since 2008, there have been zero drownings. Furthermore, our lifeguards have conducted 233 "saves" at Kē'ē since 2008. How many of these individuals might have drowned if it weren't for our lifeguards on duty? And how many drownings or "saves" were prevented via the 84,000 educational interactions our lifeguards have had with beachgoers at Kē'ē since 2008? Just last week during the high surf event a man was rescued by County lifeguards in waters off of Kē'ē – which had officially been closed for the day.

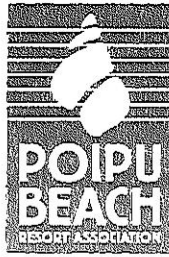
This measure is included in the Kaua'i County legislative package, the Hawai'i Council of Mayor's (HCOM) legislative package, and the Hawai'i State Association of Counties (HSAC) legislative package. The counties are completely united in their support of this important measure.

Should Act 170 sunset as of June 30, we may have no choice but to discontinue lifeguard services at Kē'ē beach. Hopefully we can all agree that this issue warrants serious consideration through the legislative process and we can come to an agreement as to how this critical partnership can continue.

Respectfully submitted,



Bernard P. Carvalho, Jr.
Mayor, County of Kaua'i



January 29, 2014

House of Representatives
Committee on Water and Land
Honorable Representative Cindy Evans
Representative Nicole Lowen
Members of the Committee
Honolulu Hawaii 96813

RE: HB2234 Relating to Tort Liability

Dear Chair Evans, Vice Chair Lowens and Member of the Committee:

The Poipu Beach Resort Association (PBRA) is a member-based organization of over 100 businesses primarily located on the South Shore of Kauai. Our membership includes hotels, condominiums, management firms, activity operators, shopping and dining establishments, services and other related firms and individuals, ranging from small, owner-operated businesses to some of the largest employers on the island. We are a 501(c)6 organization whose primary mission is to the market the Poipu area as a world-class destination and to provide for the future of Poipu as a great place to live, work, visit and do business.

We are contacting you today in support of HB2234. Extending the liability protection that is currently provided for county lifeguards on State beaches is absolutely critical to the success of Kauai's ocean safety program and for the continued protection of our resident and visitor communities. Since 2008, Kauai has stationed lifeguards at Ke`e Beach as a result of this legislation. Prior to 2008, there were eight drownings at Ke`e Beach alone. Since 2008, there have been no drownings at this location.

Ocean recreation is an important part of our island economy and community. It is imperative that we continue to protect our visitors and residents from the potential dangers that the ocean environment provides.

Thank you for your time and consideration and for allowing us the opportunity to testify in support of HB 2234 Relating to Tort Liability. We encourage you to continue a partnership with the Counties of Hawaii in making permanent the liability protections for the actions of lifeguards statewide.

Sincerely,


Judy Kjeldsen
Executive Director



KAUA'I

*Chamber
of
Commerce*

January 29, 2014

Honorable Representatives Cindy Evans, Chair & Nicole E. Lowen, Vice Chair & Members
Committee on Water & Land and
Honorable Representatives Faye P. Hanohano, Chair & Ty J.K. Cullen, Vice Chair & Members
Committee on Marine Resources & Hawaiian Affairs
House of Representatives
Honolulu Hawaii 96813

Dear Chair Evans, Vice Chair Lowen, Chair Hanohano and Vice Chair Cullen, and Members:

RE: HB2234 Relating to Tort Liability

Aloha! My name is Randy Francisco, President/CEO, Kauai Chamber of Commerce. The Chamber represents ~450+ members, 600 representatives and over 6,000 employees. The Chamber is writing in **Support of HB2234** which repeals the sunset date and makes permanent the law shielding county lifeguards from liability.

The recent high waves in Hawaii which were covered in the news worldwide once again remind us of the importance of the ocean and ocean recreation industry as an important part of our economy and the need to be vigilant in saving lives and saving families from despair and a loss of life and or limb. This industry contributes nearly \$1billion to our economy in direct and in-direct economic multiplier effects. Thus, it is equally imperative that we do everything we can as stakeholders, taxpayers, residents, and, even on behalf of our sometimes naïve visitors to insure that not one life or limb is lost as a result of the ocean and, sometimes, ill-preparedness of water users.

The County of Kauai has taken many, many positive and proactive steps in order to address the increase in drowning and other dangerous situations which occur as a result of both residents and visitors sometimes unknowingly being in or near the waters' edge. Programs initiated by public-private partnerships such as the Kauai Lifeguard Association & KONG Radio Group and Hawaii Tourism & Lodging Association – Kauai Chapter have provided much-needed funds in order to support our county's lifeguards in their proactive efforts to save, prevent and educate ocean recreation users. The Kapaa Rotary Club provided educational videotapes for arriving passengers at the Lihue airport in order to inform them about being responsible visitors both on land and in the water. The highly successful Junior Lifeguard and Keiki Junior Lifeguard programs under the auspices of the Kauai Fire Department-Ocean Safety Bureau are great examples of teaching youth at an early age of the importance of ocean safety and awareness. For 9 years since 2004, the Junior Lifeguard program has garnered first place in the Hawaii Junior Lifeguard Championships.

Our request on behalf of the members and people of Kauai, both residents and visitors alike is for you to continue this shared partnership and responsibility in supporting the counties of Hawaii in making permanent and into law the liability protections for the actions of the lifeguards – statewide. The guards are both lifeguards and lifesavers and we need your support to insure that all of us at a statewide level can enjoy the benefits of these important public safety officials and the waters which we are renowned for which supports our state's number one industry.

Should I be of any further assistance, please do not hesitate to contact me directly at 245-7363. Mahalo Nui Loa and Aloha,

Randall Francisco
President/CEO

lowen2-Lanaly

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, January 29, 2014 3:18 PM
To: waltestimony
Cc: alan.arakawa@mauicounty.gov
Subject: *Submitted testimony for HB2234 on Jan 31, 2014 09:15AM*

HB2234

Submitted on: 1/29/2014

Testimony for WAL on Jan 31, 2014 09:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Mayor Alan M. Arakawa	Mayor's Office, Maui County	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

KAUAI

HAWAII'S ISLAND OF DISCOVERY

Testimony of the
Kaua'i Visitors Bureau

Committee on Water & Land
Rep. Cindy Evans, Chair
Rep. Nicole E. Lowen, Vice Chair

Re: HB 2234 Relating to Tort Liability

To be heard: Friday, January 31, 2014 9:15 p.m. in House conference room 325

Aloha from the Kaua'i Visitors Bureau ~

Last year CY 2013 Kaua'i saw 17 drownings with many of those drownings being visitors. Fortunately, none of the drownings occurred at Ke'e Beach on the North Shore of Kaua'i. In fact, last week during the unusually high surf, there was a video of an elderly man (87 yrs. old) getting knocked down at Ke'e Beach and swept out. If it was not for Ke'e Beach lifeguard, Makana Weiss who was there on the scene and rescued the man, he may not be alive today.

During the time the County of Kaua'i has placed a lifeguard at Ke'e Beach, the drowning rate has dropped to zero. Prior to having a lifeguard there, Ke'e Beach was one of the more dangerous areas for drownings.

Extending the liability protection that is currently provided for County lifeguards on State beaches is critical to the improvements for water safety on Kaua'i.

This measure is included in the Kaua'i County legislative package, as well as all other Neighbor Island legislative packages. The Counties are completely unified in their support of this important measure.

Should Act 170 sunset on June 30, 2014, the County of Kaua'i may be forced to eliminate the lifeguard tower at Ke'e Beach. We request your support of continuing the arrangement that exists today with the County of Kaua'i and the State of Hawai'i.

Mahalo nui loa,

Sincerely,



Susan A. Kanoho
Executive Director
Kaua'i Visitors Bureau

**Testimony of John R. Foster
Class of '15
William S. Richardson School of Law
University of Hawaii Manoa**

TESTIMONY IN STRONG SUPPORT OF HB 2234

House Committee on Water and Land
Rep. Cindy Evans, Chair
Rep. Nicole Lowen, Vice-Chair
Friday, January 31, 2014

Aloha Committee Members,

I write in strong support of House bill 2234. As a lifelong resident of coastal Oahu and a second year law student at the William S. Richardson School of Law, I urge you to make permanent the limited tort liability provisions in Act 170 for lifeguards in Hawaii.

Hawaii's counties employ many of its finest watermen (and women) as lifeguards. Statewide, these public servants save an unquantifiable number of lives each year, whether through preventative measure or active rescue and resuscitation. Despite their valiant efforts, many people each year are injured or perish in our treacherous ocean conditions.

Hawaii's state and county agencies and its first responders go above and beyond the call of duty in attempting to warn visitors and residents of our islands to exercise due caution and care when recreating upon our shorelines. Under the previous legal standard, counties were reluctant to staff certain shoreline areas with lifeguards for fear of liability through the legal doctrine of *respondeat superior*. This led to the absurd result that some of our most dangerous shoreline areas were bereft of lifeguard services; a situation that inured the counties from certain tort actions, but had a deleterious effect upon public safety.

By providing lifeguards with liability limited to "gross negligence, wanton acts, or omissions", the Legislature removed this disincentive to public safety. Given that individuals continue to frequently need assistance or rescue from the myriad nautical dangers in our state, encouraging counties to maintain or increase lifeguard staffing along Hawaii's shorelines is a worthy objective of the 27th Legislature. Mahalo.

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO H.B. NO. 2234

Date: Friday, January 31, 2014

Time: 9:15 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. 12234 Relating to Tort Liability.

The purpose of this bill is to make Act 170, Session Laws of Hawaii, 2002, as amended, permanent. 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

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.

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 passing this bill 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.

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Nadine K. Nakamura
Managing Director

John T. Blalock
Deputy Fire Chief

KAUA'I FIRE DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 315, Līhu'e, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

January 29, 2014

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

Dear Chair Evans:

Subject: H.B. 2234 Relating to Liability

I am Robert Westerman, Fire Chief of the Kauai Fire Department (KFD). The KFD strongly supports H.B. 2234, 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. 2234 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.

What is happening on Kauai is devastating, in 2013 in terms of drownings, Kauai suffered through 14 ocean related drownings. Ke'e is one of the most dangerous state beaches under State jurisdiction. Current legislation, which is scheduled to sunset at the end of June, allows the County to provide lifeguard services at State beaches such as Ke'e.

The County has stationed lifeguards at Kē'e since 2008 with zero drownings because of the present law, and prior to this between 1970 and 2008 there were eight drownings at Ke'e. Additionally the lifeguards at Ke'e saved the life of a state employee just after he started on the Hanakapiai Falls trail. This person would surely have passed away had they not been there.

The Lifeguards at Ke'e have rescued 233 swimmers in distress at Ke'e since 2008, each one of these rescues could have been life lost. The Lifeguards at Ke'e have had

84,000 preventive interactions with beachgoers since 2008 these are all possible rescue avoidance. Nothing can replace the physical bodies on the beach providing these services. This partnership continues to address ocean safety on a number of fronts like liability protection for the County – the same protection that the State affords for itself – is critical in order for us to continue this effort.

If this sunsets that is all lost.

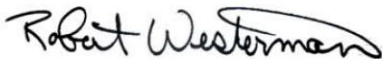
Additionally, there is documented in the findings of the Report of the Task Force Established by Act 152 (Task Force Report), which was submitted during the 2011 Legislative Session. The task force concluded that various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety. The procedures contained therein have been and continue to be implemented by the state. Where funding has been appropriated, counties have stationed lifeguards at certain state beach parks.

The report further discusses the benefits of posting signage to the public and the lives saved as a result of posting county lifeguards at state beach parks. The state and counties adopted and installed a uniform signage design that complies with the requirements of Act 82. Based upon its review of various county programs for the implementation of Acts 82 and 170, the task force recommended that the sunset dates of Acts 82 and 170 be repealed.

The KFD urge your committee's support on the passage of H.B. 2234.

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

Sincerely,



Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld

William P. Kenoi
Mayor



Walter K.M. Lau
Managing Director

Randall M. Kurohara
Deputy Managing Director

County of Hawai'i Office of the Mayor

25 Aupuni Street, Suite 2603 • Hilo, Hawai'i 96720 • (808) 961-8211 • Fax (808) 961-6553
KONA: 74-5044 Ane Keohokalole Hwy., Bldg. C • Kailua-Kona, Hawai'i 96740
(808) 323-4444 • Fax (808) 323-4440

January 31, 2014

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

The Honorable Faye P. Hanohano, Chair
And Members of the House Committee on
Ocean, Marine Resources, and Hawaiian Affairs
Hawai'i State Capitol, Room 325
415 South Beretania Street
Honolulu, Hawai'i 96813

Re: House Bill 2234, RELATING TO LIABILITY

Aloha, Chair Evans, Chair Hanohano and Committee Members:

Mahalo for this opportunity to offer our strong support for House Bill No. 2234, which repeals the sunset date and makes permanent the law shielding county lifeguards from liability. At present, the liability protections provided in Act 170 will sunset on June 30, 2014.

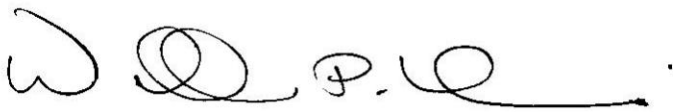
All four counties stand united in support of this bill. It is a priority for the Hawai'i Council of Mayors (HCOM). Passage of the bill will increase safety to the beachgoers by allowing the counties to place lifeguards at state beach parks, without the threat of costly, unnecessary and unwanted litigation arising from dangerous natural conditions or events, that are outside the control of the counties and their lifeguards, in the beach parks and ocean.

In FY 2013, over 600,000 residents and visitors enjoyed the sun, surf and sand at Hapuna Beach Park. In that time county lifeguards made 63 rescues, which is an actual rescue of a victim from the water. In addition they performed over 22,000 preventative actions, where a beach patron is prevented from entering or continuing to a dangerous surf area, thereby curbing the amount of rescues needed. This data clearly highlights the great service that our county lifeguards perform in ensuring the safety of all who enjoy ocean activities at state and county beaches across our island.

The Honorable Cindy Evans
The Honorable Faye P. Hanohano
page 2
January 31, 2014

Mahalo for this opportunity to express our strong support for House Bill 2234, which makes permanent the liability protections for the actions of county lifeguards.

Aloha,

A handwritten signature in black ink, appearing to read 'W. P. Kenoi'. The signature is fluid and cursive, with a long horizontal stroke at the end.

William P. Kenoi
MAYOR

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

**Before the House Committee on
WATER & LAND**

**Friday, January 31, 2014
9:15 AM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2234
RELATING TO LIABILITY**

House Bill 2234 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 Administration proposal.** The Department notes that the Administration has submitted a companion bill in the form of Senate Bill 2783.

House Bill 2234 proposes to amend 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. If Act 170 is allowed to sunset, we run the risk of counties pulling out of the program.

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.

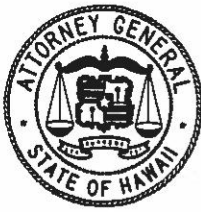
WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

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

For the reasons stated in this testimony, the Department strongly supports House Bill 2234 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.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

**ON THE FOLLOWING MEASURE:
H.B. NO. 2234, RELATING TO TORT LIABILITY.**

**BEFORE THE:
HOUSE COMMITTEE ON WATER AND LAND**

DATE: Friday, January 31, 2014 **TIME:** 9:15 a.m.
LOCATION: State Capitol, Room 325
TESTIFIER(S): David M. Louie, Attorney General, or
Caron M. Inagaki, Deputy Attorney General

Chair Evans 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 for lifeguards, and the counties and the State providing lifeguard services on the beach or in the ocean. The exception from liability does not apply for gross negligence or wanton acts or omissions of the lifeguard. At present, the liability protections provided in Act 170, Session Laws of Hawaii (SLH) 2002, will sunset on June 30, 2014.

This limited liability protection was necessary because some counties would not provide lifeguard services at state beach parks, due to fear of potential liability that might arise from the public's use and enjoyment of the beach and ocean. Thus, Act 170 remedied this problem by protecting the state and counties, under certain circumstances, from liability, thereby allowing them to provide lifeguard services with less fear of liability.

Under Act 81, SLH 2007, the Legislature found that Act 170 created a climate in which lifeguard services could be provided without fear of liability and was, therefore, a life-saving measure that should be extended.

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, Act 82, SLH 2003 (recreational activities on public lands), and Act 190, SLH 1996 (public beach parks), 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. This justified making the current liability exemptions that state and county governments enjoy under Act 82, Act 190, and Act 170 permanent, or extending their protections.

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 promotes and increases public safety. The task force, again, with near unanimity recommended that Act 170 be made permanent. The lone dissenter was the representative of Consumer Lawyers of Hawaii (now known as Hawaii Association for Justice), who believed that lifeguards had not been on the beaches, specifically on Kauai, long enough to determine the efficacy of Act 170. Lifeguards have now been in place on Kauai since 2008.

Prior to Act 170, Kee Beach, the state beach on Kauai, has had eight drownings between 1970 and 2008. Since Act 170, Kee Beach has had zero drownings. At Kee Beach, from 2008 – 2013, there have been an approximate average of 13,000 rescues and preventative actions performed by lifeguards in each of those years. In a recent article in *The Garden Island*, it was reported that Kauai's Mayor, Bernard Carvalho, emphasized the vital importance of ocean safety and that a critical component of the county's ongoing effort is to be able to continue to provide lifeguard services on both state and county beaches. If Act 170 is allowed to sunset, a spokesperson for the county recognized that Kauai may not be able to keep lifeguard coverage at Kee Beach. *The Garden Island* article is attached.

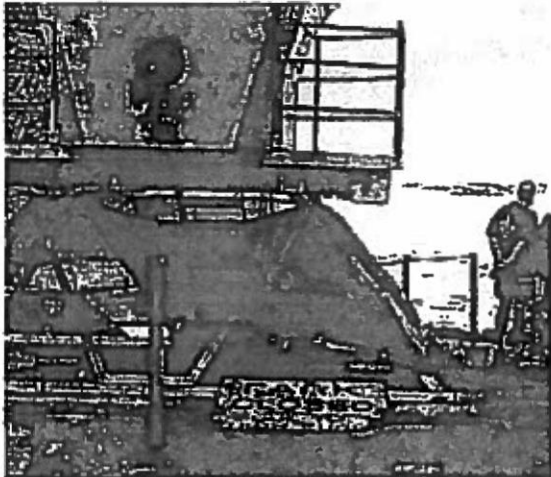
Following the enactment of Act 170, there have been tens of thousands of rescues and preventative actions by lifeguards each year on every state beach park on Oahu, Maui, Kauai, and Hawaii Island, rescues and preventative actions that would not have occurred if Act 170 had not been in effect and lifeguards had not been assigned to those beach parks.

At Maui's Makena Beach, from 2009 – 2013, there have been an approximate average of 72,000 rescues and preventative actions each year. At Hawaii Island's Hapuna Beach, from 2009 – 2013, there have been an approximate average of 18,000 rescues and preventative actions

each year. At Oahu's Keawaula Beach, from 2008 – 2012, there have been an approximate average of 23,000 rescues and preventative actions each year.

If Act 170 is allowed to sunset, like Kauai, each of the other counties may not be able to keep lifeguard coverage at these beaches putting the safety of the hundreds of thousands of yearly visitors to these beaches at risk. In the past, the Hawaii Association for Justice (HAJ) has opposed this and similar bills and indicated that the State could simply purchase insurance for the lifeguards. However, if the State were required to include the additional cost of purchasing insurance for these beaches, the State would have to pay nearly \$3,000,000 a year in order to keep the lifeguards on its beaches. This yearly cost would not be feasible.

Act 170 is a life-saving measure that deserves to be made permanent. We therefore respectfully request that the Committee pass this bill.



kee LIFEGUARD.jpg

Chris D'Angelo/The Garden Island

A crowd gathers at the Kee Beach lifeguard tower last week to catch a glimpse of a massive winter swell.

| 1 comment

LIHUE — Last week, an 87-year-old Washington man was sitting high above the water's edge at Kee Beach watching the massive winter swell when a powerful wave washed ashore and swept him out to sea.

Thanks to a fast-acting lifeguard, the man narrowly escaped becoming Kauai's first statistic of 2014 — as well as the first drowning victim at Kee since 2008.

Were it not for Act 170, the lifeguard tower at Kee likely wouldn't exist, and the lifeguard who saved the man wouldn't have been in the area.

Act 170 provides the county with legal immunity — except in cases of gross negligence — so that it can provide lifeguard services at state beaches. But a sunset provision built into the law means it is due to expire, once again, on June 30.

A number of bills have been introduced this legislative session that seek to lift the sunset date. County spokeswoman Beth Tokioka said ensuring that happens is a "high priority for all of the counties."

"We will be actively supporting this measure throughout the session," she said.

Senate Bill 2783, its companion House Bill 2234 and others have a simple goal — repeal the sunset date and make permanent the law.

"This limited liability protection was made necessary because some counties would not provide lifeguard services at state beach parks, due to the fear of potential liability the might ensue," read the bills.

"The legislature finds that Act 170 created a climate in which lifeguard services could be provided by the counties without fear of liability and, therefore, is a life-saving measure that should be made permanent."

On Jan. 15, Kauai Mayor Bernard Carvalho Jr. delivered a legislative message to the House and Senate money committees. In it, he spoke to the issue a number of times.

"Ocean safety is of vital importance to all of us," Carvalho said. "While Kauai has much success over the years in drowning prevention, 2013 was a particularly tough year for us. Despite monumental efforts over the past two decades to build an ocean safety public-private partnership that rivals any in the world, Kauai still experienced 17 drownings in 2013."

In comparison, Kauai waters claimed four lives — two ocean and two freshwater drownings — in 2012.

Carvalho said one "critical" component of the county's ongoing effort is to be able to continue to provide lifeguard services on both state and county beaches.

Act 170 has allowed the county to station lifeguards at Kee since 2008. Between 1970 and 2008, there were eight drownings at the North Shore beach.

Since the lifeguard tower went in, there have been zero drownings.

"Furthermore, our lifeguards have rescued 233 swimmers in distress at Kee since 2008, and they have had 84,000 preventative interactions with beachgoers — which have no doubt saved numerous lives," Carvalho said in his legislative message. "We implore you to lift the sunset date from (Act 170) and make this highly successful effort permanent in the interest of public safety."

Although many of the bills have been referred to various legislative committees, no hearing dates have been set. Once that happens, Tokioka said ocean safety advocates on all islands are poised to testify in an effort to move the bill forward.

The looming question is: What would happen if Act 170 does in fact expire at the end of June?

In that case, Tokioka said the county would have to consider whether it could afford to keep lifeguard coverage at Kee.

Right now, the state provides funding for the county for its services and liability protection. The county could choose to continue the services, however it would do so at considerable cost and risk to county taxpayers, according to Tokioka.

"No decision has been made and we are hopeful it will never come to that," she said. "It's been a successful partnership up to this point and we have great hope that at the end of the day it will continue."

Monty Downs, president of the Kauai Lifeguard Association, said this is his third "rodeo" with Act 170, which comes up for sunset every few years.

"That will just be horrible if we lose the lifeguard stand at Kee," he said. "That's just beyond, beyond my comprehension."

On Friday, Downs, also an emergency room doctor at Wilcox Memorial Hospital, sent letters to a number of state representatives and senators asking for their support.

On a hazardous scale of 1 to 10, Downs ranks Kee as a 3 or 4.

"But, it's packed," he said. "So that's what makes it unsafe."

The most recent drowning at Kee occurred in 2007, when a 37-year-old pilot for U.S. Airways died while snorkeling.

"That day's flight to Phoenix then had to be canceled because of lack of crew, and the U.S. Air incoming flight the next day not only brought in back-up crew, but also the wife and grief-stricken 8-year-old son of

the deceased pilot," Downs wrote in his letter.

"All of us who saw the 8-year-old boy, including our airport personnel, will never forget his suffering — and in fact this tragedy has spurred our Lihue Airport Manager to install an ocean safety video that runs at our baggage claim areas."

• Chris D'Angelo, environmental reporter, can be reached at 245-0441 or cdangelo@thegardenisland.com

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Posted in Local on *Monday, January 27, 2014 1:45 am.* | Tags: First Aid, Surf Lifesaving, Kauai, Lifeguard , Beth Tokioka, Lifeguard Services, Bernard Carvalho Jr.,

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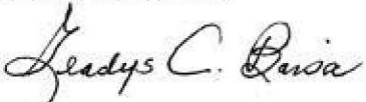


Director of Council Services
David M. Raatz, Jr., Esq.

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

January 30, 2014

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

FROM: Gladys C. Baisa
Council Chair 

SUBJECT: **HEARING OF JANUARY 31, 2014; TESTIMONY IN SUPPORT OF HB 2234,
RELATING TO TORT LIABILITY**

Thank you for the opportunity to testify **in support** of this important measure. The purpose of this measure is repeal the sunset date and make permanent the law shielding county lifeguards from liability.

Legislation with a similar purpose is included in the Hawaii State Association of Counties' Legislative Package; however, the Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Making permanent the liability protections afforded to county lifeguards will enhance public safety by fostering a climate in which lifeguard services can be provided without fear of liability. Without this protection, lifeguard services at beach parks may be reduced because of the threat of potential liability.
2. The law has been in effect for more than a decade. Since the enactment of Act 170 (2002), the Legislature has twice been convinced of the wisdom of maintaining the law's protections, as seen in Act 152 (2007) and Act 81 (2009). Any need for a trial period has been exhausted, and the law should be made permanent. As reported by the Task Force created by Act 152 (2007), "there is no reason to delay legislative action to continue the benefits" of the liability protections for county lifeguards. The Task Force's report is available at:

<http://ag.hawaii.gov/wp-content/uploads/2013/01/Report-of-the-Task-Force-Established-by-Act-152-Session-Laws-of-Hawaii-2007.pdf>

3. Enacting this measure will help to protect the financial assets and reputation of county lifeguards who otherwise jeopardize both, in addition to their own health and safety, through their valiant rescue efforts.

For the foregoing reasons, I **support** this measure.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

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

KIRK CALDWELL
MAYOR



DONNA Y. L. LEONG
CORPORATION COUNSEL
SHERYL L. NICHOLSON
FIRST DEPUTY CORPORATION COUNSEL

January 30, 2014

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

Dear Chair Evans and Committee Members:

Subject: House Bill 2234, Relating to Tort Liability

The Department of the Corporation Counsel of the City and County of Honolulu strongly supports H.B. 2234, which repeals the sunset date of Act 170, Session Laws of Hawaii ("SLH") 2002.

Act 170 was originally enacted in 2002 to provide liability protection for the State and counties arising out of lifeguard services provided by the counties on the beach and in the ocean, except for acts of gross negligence or wanton acts or omissions. By reducing their civil liability exposure, Act 170 enables state and county governments to keep recreational areas with potentially dangerous conditions open to the public. It also facilitates the counties' provision of lifeguard services to State park beaches, which might otherwise be curtailed if the counties were required to shoulder the financial burden of unlimited liability arising from lifeguard services, which are typically provided in conditions in which the risk of injury is present.

Passage of H.B. 2234 will give the State and the counties the certainty and assurances needed to keep beach parks open for public use and makes beaches more accessible to, and safer for, the general public by allowing the counties to place lifeguards at beaches without the threat of costly litigation for conditions or events that are outside the counties' control. These services help to reduce the number of deaths and injuries at these beaches. Repealing the sunset provision would further encourage counties to expand recreational safety

The Honorable Cindy Evans, Chair, and
Members of the Committee on Water & Land
January 30, 2014
Page 2

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. 2234.

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

Very truly yours,

A handwritten signature in black ink, appearing to read "Donna Leong". The signature is written in a cursive, flowing style.

DONNA Y. L. LEONG
Corporation Counsel

DYLL:ey

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

1/30/14

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

TESTIMONY IN SUPPORT OF HB 2234 – Hearing on 1/31/14

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 2234, which will do away with the sunset of Act 170, the sunset which is scheduled for June 30, 2014.

Act 170 is a huge part of 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’s jurisdiction. (This Act similarly is the underpinning for guarding Makena Beach on Maui, Yokohama Bay on Oahu, and Hapuna Beach on the Big Island). **Please realize that this immunity requests no more immunity to the County for its expert Lifeguard 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. The last person to ever drown at Ke’e was very high profile – a U.S. Air airline pilot from Phoenix who left behind a wife and 8 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 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
2008	44	6,809		0
2009	52	17,006	132,740	0
2010	34	13,488	120,712	0
2011	33	13,385	107,988	0
2012	28	16,572	120,648	0
2013	42	16,423		0
2014	DATA NOT IN 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 relative safety we've -- knock on wood -- enjoyed on the State Park's very dangerous NaPali beaches (Hanakapiai and Kalalau) for the last few years (since the Ke'e Tower opened.)

I work in the Wilcox Hospital ER and in the last 2 years 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 Greg's 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 was coming off 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 minutes later the man was awake and talking – and certainly a bit dazed, having just had a face-to-face encounter with The Void. He is back at work with State Parks.

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, please God, be continued. Act 170 helps allow for this, and I ask that you pass HB 2234.

Respectfully Submitted,
Monty Downs, M.D.

HAWAIIAN LIFEGUARD ASSOCIATION
P.O. BOX 283324
HONOLULU, HAWAII 96828

January 30, 2014

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-Seventh Legislature
Regular Session of 2014

Dear Chair Evans, Vice Chair Lowen, and Members:

Re: HB 2234, Relating to Liability

The Hawaiian Lifeguard Association (HLA) is the non-profit organization that represents the 400 professional lifeguards who protect the residents and visitors who use our State's primary resource, its beaches and surrounding ocean waters. The mission of the HLA is to promote the advancement of professional lifeguarding and to reduce the incidence of drowning and serious injury in the ocean environment. The HLA attempts to accomplish this mission by supporting Hawaii's lifeguards through fundraising and educational programs, and by partnering with county agencies in delivering the statewide Junior Lifeguard program.

The HLA strongly supports HB 2234 that seeks to make permanent the protection from liability as provided by Act 170 (Session Laws 2002). The protection provided in Act 170 is necessary for individual lifeguards as well as their employers to be able to provide lifeguard services at four State beach parks: 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 residents and visitors and were identified as beaches at high risk for drownings and injuries by ocean safety experts at a statewide conference held in 1991. Since lifeguards were assigned to these beaches, the number of drownings has been significantly reduced because of their presence. This fact has been documented in a publication of the United States Department of Health and Human Services Centers for Disease Control and Prevention (CDC) titled "Lifeguard Effectiveness: A Report of the Working Group."

The United States Lifesaving Association (USLA), the national organization of 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 of Hawaii Department of Health's Injury Prevention and Control Program, drownings occur 10 times more often at beaches in Hawaii that are not manned by lifeguards compared to those with lifeguard protection.

The HLA believes that properly trained, properly equipped lifeguards are the front line of defense in any drowning prevention program. The highly publicized drownings that occurred last year on the Garden Island of Kauai occurred at beaches and areas not patrolled by lifeguards.

The necessity of providing trained lifeguards at Hawaii's beaches is obvious, a "no brainer." We urge you to acknowledge this fact by removing the sunset provision from Act 170 and make the law permanent.

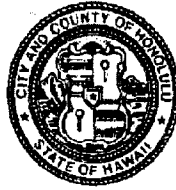
Thank you for the opportunity to present this testimony. I am available to answer any questions you may have. Aloha nui loa.

Sincerely,

Ralph S. Goto
For the Board of Directors
Hawaiian Lifeguard Association

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



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January 30, 2014

The Honorable Cindy Evans, Chair
 The Honorable Nicole E. Lowen, Vice Chair
 Committee on Water and Land
 The Honorable Faye P. Hanohano, Chair
 The Honorable Ty J.K. Cullen, Vice Chair
 Committee on Ocean, Marine Resources, and Hawaiian Affairs
 House of Representatives
 Twenty-Seventh Legislature
 Regular Session of 2014

Re: HB 2234, Relating to Liability

Dear Chairs Evans and Hanohano, Vice-Chairs Lowen and Cullen and Members:

The Honolulu Emergency Services Department, Ocean Safety Division, is in strong support of HB 2234.

The Division acts as the primary responder to emergencies that arise on the beaches and in the near shore waters of Oahu. The Division also is charged with delivering ocean safety education and prevention programs, and services for the community.

The focus of the Division's efforts is to minimize the number of emergency responses and ocean rescue situations that occur on our beaches and in our waters thru the use of intervention efforts by ocean safety lifeguards stationed at the beaches. These efforts also meet the legal duty incurred by the City and County of Honolulu by allowing the public to access the State beaches and waters via the City's beach parks.

The legal requirement for preventive actions is clearly enunciated in *KACZMARCZYK v. CITY AND COUNTY OF HONOLULU* (excerpted)

"We begin with the well established principle that a municipality is not an insurer of the safety of those who make use of its park, playground, and recreational facilities. It is equally settled, however, that a municipality must exercise reasonable care in the maintenance of these facilities and in the supervision of their use by the public. For an occupier of land is under a duty to exercise all reasonable care for the safety of all persons known to be, or reasonably anticipated to be, upon its premises. *Pickard v. City & County of Honolulu*, 51 Haw. 134, 452 P.2d 445 (1969). Where the premises front upon the ocean, this responsibility extends to those swimming in the waters along the property's beach frontage. *Tarhis v. Lahaina Investment Corp.*, 480 F.2d 1019 (9th Cir.1973)."

The Honorable Cindy Evans and Faye Hanohano, Chairs
The Honorable Nicole E. Lowen and Ty J.K. Cullen, Vice Chairs
January 30, 2014
Page 2

"Undoubtedly, the City would have had a duty to warn users of Ehukai Beach Park of extremely dangerous conditions in the ocean along its beach frontage which were not known or obvious to persons of ordinary intelligence, and which were known or in the exercise of reasonable care ought to have been known to the City. *Tarshis v. Lahaina Investment Corp.*, *supra*; *Friedrich v. Department of Transportation*, 60 Haw. 32, 586 P.2d 1037 (1978). See *Gonzales v. City of San Diego*, 130 Cal.App.3d 882, 182 Cal.Rptr. 73 (1982); *Herman v. State*, 109 Misc.2d 455, 439 N.Y.S.2d 1018 (1981).

Preventive actions by beach lifeguards, in addition to meeting the legal duty, are highly effective in reducing the need for "911" responses which are dangerous for both victim and rescuer. Due to the very short time that a person in distress in the ocean has for responders to arrive and save them from drowning once they are submerged (5 minutes), any response effort that is not on scene very quickly often leads to a body recovery situation.

Preventive actions prevent many things including emergency vehicles on the road ways with lights and sirens, harm to the public, harm to public safety responders, and deaths in the ocean. These actions include direct personal contact with beach patron to inform them of the hazards at the area, public address announcements, placement of hazard signage on the beaches, and recommendations to close access to the beach and the ocean waters thru beach park areas when ocean conditions become so severe that lifeguards stationed at the beach can no longer ensure they would be able to make an ocean rescue if it were to occur.

Preventive actions by beach lifeguards are taken based on their observation of ocean conditions and the contingent hazards which increase in severity with any increase in wave, and/or wind energy at their assigned beach area. These conditions can and do change significantly from day to day or even hour to hour, and beach lifeguards are trained to recognize these changes and adjust their preventive action strategies in response to these changing environmental conditions.

Beach lifeguards must also adjust their preventive strategies according to the number and type of patrons in their area of responsibility. At beaches with very high attendance, the use of public address systems is necessary. There are limitations to this method in ensuring that every person is advised or warned of the hazard due to the fact that so many people who use our beaches do not speak English as their primary language or at all.

The type of patrons must also be taken into consideration. Oahu had 8.4 million visitors in 2013, 80% of them used the beaches and waters while here on their vacation. There are an average of 10,000 people who arrive at Honolulu International airport everyday, and many of them have very limited experience or understanding of the hazards involved at a tropical beach with very strong wave and ocean conditions. They do not have the ability to recognize ocean hazards, and without the intervention of beach lifeguards or other members of the community they often perish. Drowning in the ocean continues to be the leading cause of death for visitors to our State. Most of these deaths occur at beaches where there is no lifeguard service.

The Honorable Cindy Evans and Faye Hanohano, Chairs
The Honorable Nicole E. Lowen and Ty J.K. Cullen, Vice Chairs
January 30, 2014
Page 3

Beach lifeguards must identify the patrons at risk of injury or death, and attempt to either redirect them to less hazardous beach areas or convince them to not enter the ocean. These efforts are not always successful. In these cases, the beach lifeguard must then rescue these visitors, and in many cases provide lifesaving emergency medical care.

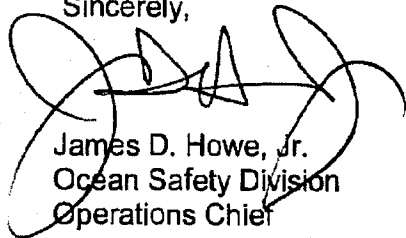
This begs the question of how a beach lifeguard can both ensure the life safety of persons on the beach and in the water and simultaneously meet the legal requirement of *KACZMARCZYK v. CITY AND COUNTY OF HONOLULU*.

It is understandable that there would be a concern about beach lifeguards receiving liability immunity when other public safety responders and other non ocean lifeguards do not have similar legal protection. It is important to note that none of these other responder has a legal duty to warn in the State of Hawaii. It must be taken into account that beach lifeguards are not able to ensure that they can contact each and every beach patron and communicate effectively with them regarding the ocean hazards. Beach patrons are not required to check in with the lifeguards, they can access the beach from many locations. Beach lifeguards have to watch the people already in the water, and then try to ensure they contact new arrivals all the time. Signs work for some but not for most. This is when the beach lifeguard has to set priorities in which job function is most important. Or the situation when the lifeguard is making a rescue or providing medical care, and is unable to contact the next 50 or 100 patrons who arrive while this situation is occurring.

These situations have and continue to occur. There are no standards as to how many beach patrons a beach lifeguard can manage. They are out there on the beach doing their best to avoid tragedy for their customers and for themselves.

Thank you in advance for your favorable consideration.

Sincerely,



James D. Howe, Jr.
Ocean Safety Division
Operations Chief

KACZMARCZYK v. CITY AND COUNTY OF HONOLULU NO. 7191.

656 P.2d 89 (1982)

***Stanley KACZMARCZYK, Dolores Kaczmarczyk, and Stephen K. Yamashiro,
Temporary Administrator of the Estate of Tom Kaczmarczyk, deceased, Plaintiffs-
Appellants,***

v.

***CITY AND COUNTY OF HONOLULU, State of Hawaii, John Does 1 Through 10,
Doe Corporations 1 Through 10 and Doe Governmental Agencies 1 Through 9,
Defendants-Appellees.***

Supreme Court of Hawaii.

December 28, 1982.

Excerpts from the appeal

On December 4, 1974, Tom Kaczmarczyk arrived in Hawaii from the mainland for a vacation. Three days later, on December 7, he and a friend, Lee McCarthy, started on a bus trip around the island. At or near Ehukai Beach Park they got off the bus, walked across a strip of land between the highway and the beach, and went swimming. They became caught in a current which swept them along the beach and then out to sea. McCarthy managed to make it back to shore. But Kaczmarczyk disappeared in sizeable surf despite the rescue efforts of a lifeguard employed at the beach by the City.

On June 6, 1978, the State moved for summary judgment on two grounds. First, the State argued that the plaintiffs' claims against it were barred by the two-year statute of limitations on tort claims against the State.² Second, the State argued that if there was any duty owed the deceased, it was owed by the City as operator, manager and controller of Ehukai Beach Park and the waters adjacent thereto, and not by the State as owner. The motion was granted.

On August 14, 1978, the City moved for summary judgment on four grounds: (1) that since Kaczmarczyk drowned in the ocean, the State if anyone was liable as owner; (2) that no duty to warn of dangerous conditions was owed the deceased because such danger was known and/or obvious; (3) that recovery was precluded because the deceased assumed the risk and/or was contributorily negligent; and (4) that "the City owed only a general duty to users of Ehukai Beach Park and not a specific duty to individuals using adjacent beaches." The motion was granted.

The plaintiffs appeal.

On the questions, therefore, of whether the City was negligent in failing to properly equip and train its lifeguards and in failing to adequately staff its lifeguard station at the park, we find that the trial court did not err in granting summary judgment for the City on these issues. On the question of duty to warn, however, we hold that summary judgment in favor of the City was improvidently granted.

We reverse and remand as to the City. We affirm as to the State.

WHY DO BEACH LIFEGUARDS NEED LIABILITY IMMUNITY

