

LATE TESTIMONY

TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 1009

Date: Monday, February 11, 2013

Time: 10:00 o'clock am

To: Chairmen Wil Espero and Clayton Hee and Members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs and the Committee on Judiciary and Labor:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. No. 1009, 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 because the program was just beginning with that one state beach park staffed with life guards beginning in the summer of 2008 and sufficient data was not 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 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.