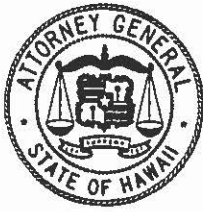


HB1024

HD1 SD1



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

ON THE FOLLOWING MEASURE:

H.B. NO. 1024, H.D. 1, S.D. 1, RELATING TO LIABILITY.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Tuesday, April 1, 2014

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): **WRITTEN TESTIMONY ONLY** (For more information contact
Caron M. Inagaki, Deputy Attorney General, at 586-1300)

Chair Hee 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

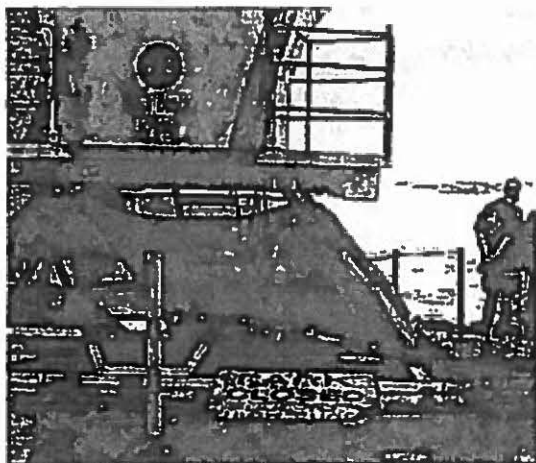
each year. At Oahu's Keawaula Beach, from 2008 – 2012, there have been an approximate average of 23,000 rescues and preventative actions each year.

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.

Keeping safety intact

TheGardenIsland.com



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 that 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.,

- 1 Keep it Clean. Please avoid obscene, vulgar, lewd, racist or sexually-oriented language.
- 2 Don't Threaten or Abuse. Threats of harming another person will not be tolerated. AND PLEASE TURN OFF CAPS LOCK.
- 3 Be Truthful. Don't knowingly lie about anyone or anything.
- 4 Be Nice. No racism, sexism or any sort of -ism that is degrading to another person.
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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

March 31, 2014

The Honorable Clayton Hee, Chair
Committee on Judiciary and Labor
The State Senate
State Capitol, Room 407
Honolulu, Hawaii 96813

Dear Chair Hee:

Subject: H.B. 1024, H.D. 1, S.D. 1 Relating to Liability

I am Manuel P. Neves, Chair of the Hawaii State Fire Council (SFC) and Fire Chief of the Honolulu Fire Department (HFD). The SFC and the HFD support H.B. 1024, H.D. 1, S.D. 1, which proposes to permanently provide county lifeguards with liability protections.

The passage of H.B. 1024, H.D. 1, S.D. 1, 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 the removal of the sunset date to ensure that benefits of the act can continue.

The benefits of the act were documented in 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. Counties have stationed lifeguards at certain state beach parks where funding has been appropriated.

The Honorable Clayton Hee, Chair
Page 2
March 31, 2014

The report further discusses the benefits of posting signage 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 SFC and the HFD urge your committee's passage of H.B. 1024, H.D. 1, S.D. 1.

Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or sbratakos@honolulu.gov.

Sincerely,



MANUEL P. NEVES
Chair

MPN/LR:clc

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

Re: HB1024 HD1 SD1
Before a Hearing of the
Senate Committee on Judiciary and Labor
March 31, 2014

Aloha from the Garden Island!

Please accept my strong support of HB 1024 HD1 SD1. As you know, protecting the lives of residents and visitors in our ocean waters 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 Act 170. 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?

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

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

March 31, 2014

The Honorable Clayton Hee, Chair
Committee on Judiciary and Labor
Senate
Conference Room 016
State Capitol
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Hee:

Subject: H.B. 1024, HD1, SD1 Relating to Liability

I am Robert Westerman, Fire Chief of the Kauai Fire Department (KFD). The KFD strongly supports H.B. 1024, HD1, SD1, 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. 1024, HD1, SD1 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'ē since 2008 with zero drowning's because of the present law, and prior to this between 1970 and 2008 there were eight drowning's 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. 1024, HD1, SD1.

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

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

3/29/14

To: Senator Clayton Hee, Chair, Senate Committee on Judiciary and Labor
Senator Maile S.L. Shimabukuro Vice-Chair “ “ “ “ “ “

TESTIMONY IN SUPPORT OF HB 1024 – Hearing on 4/1/14

Dear Chair Hee, Vice Chair Shimabukuro, and Members of the HI Senate J&L Committee:

Thank you for this opportunity to testify in support of HB 1024, which will do away with the sunset of Act 170, the sunset which is scheduled for June 30, 2014.

Act 170 is a huge component 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 lifeguarding Makena Beach on Maui, Hapuna Beach on the Big Island, and Yokohama Bay on Oahu).** Please realize that, to the best of my non-attorney’s understanding, this immunity grants no more immunity to the County’s presence at these beaches than that which the State enjoys at these 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, and we suffered a total of 8 drownings in preceding years. The last person to drown at Ke’e, in 2007, was (as is often the case) a very respected man named Ted Teichgraber, a U.S. Air airline pilot from Phoenix who left behind a wife and an 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. Ted’s wife and son were also flown in as part of the mortuary arrangements, and those of us who saw the boy’s anguish never want to see this again.

I am really happy to say that there has not been another drowning 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 20 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 own State Parks workers, collapsed just as he was coming off the Kalalau Trail after doing some work on the 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. 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 therefore ask that you pass HB 1024.

Respectfully Submitted,
 Monty Downs, M.D.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: randy@kauaichamber.org
Subject: *Submitted testimony for HB1024 on Apr 1, 2014 10:30AM*
Date: Monday, March 31, 2014 9:41:57 AM

HB1024

Submitted on: 3/31/2014

Testimony for JDL on Apr 1, 2014 10:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Randall Francisco	Kauai Chamber of Commerce	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.

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