

HB1024

HD1 SD1

LATE

TESTIMONY

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 Senate Committee on
JUDICIARY AND LABOR

Tuesday, April 01, 2014
10:30 AM
State Capitol, Conference Room 016

In consideration of
HOUSE BILL 1024, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO LIABILITY

House Bill 1024, House Draft 1, Senate Draft 1, proposes to permanently provide county lifeguards with liability protections while carrying out their duties and responsibilities. **The Department of Land and Natural Resources (Department) strongly supports this bill which makes the law permanent.** The Department notes that the Administration has submitted similar proposals in the form of House Bill 2234 and Senate Bill 2783.

House Bill 1024, House Draft 1, Senate Draft 1, 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

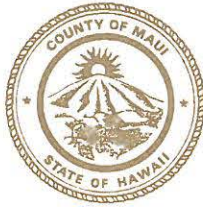
JESSE K. SOUKI
FIRST DEPUTY

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 1024, House Draft 1, Senate Draft 1 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.

ALAN M. ARAKAWA
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OFFICE OF THE MAYOR

Ke'ena O Ka Meia

COUNTY OF MAUI – Kalana O Maui

TESTIMONY OF ALAN ARAKAWA, MAYOR COUNTY OF MAUI

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR

Tuesday, April 1, 2014, 10:30 a.m., Conference Rm. 016

HOUSE BILL 1024, HD1, SD1 RELATING TO LIABILITY

The Honorable Clayton Hee, Chair
The Honorable Maile S.L. Shimabukuro, Vice Chair
And Members of the Committee on Judiciary and Labor

As Mayor of Maui County I stand united with the Hawaii Council of Mayors, which includes the mayors of Hawaii, Honolulu, Kauai, and Maui, in our **strong support** for House Bill 1023, HD1, SD1. The bill extends the sunset date of Act 170, Session Laws of Hawai'i 2002 ("Act 170") that shields county lifeguards from liability. Currently, the liability protections provided will sunset on June 30, 2014.

Since its enactment in 2002, the legislature has twice taken the time to extend the liability protection for the counties when providing lifeguard services at our beaches. The legislature has considered all the testimony and agreed with the benefits of reducing the exposure of the state and county government from substantial damages and allowing us to keep recreational areas open to the public. After being in effect for over a decade, I urge this legislature to make the law permanent for the following reasons:

1. Passing HB 1024 will Save Lives and Reduces Injuries

Our beaches are a place where local families and visitors from around the world go to picnic, swim, snorkel, fish, surf, body board, and simply relax. The state does not have lifeguards, and without the existing liability protection, we would be forced to discontinue lifeguard services at our most popular beaches.

The removal of lifeguards from our beaches would jeopardize the public's safety and welfare. It is reported that about 4,000 people die from drowning in the U.S. each year. Most drownings are preventable and without lifeguards this figure would be much higher. Our lifeguards are trained in first aid, CPR, and other rescue techniques and *prevent* drownings simply by understanding the currents, waves, and other dangers. Since the liability protections were put in place, there have been hundreds of lifeguard rescues every year at beaches on Oahu, Maui, Kauai, and the Island of Hawaii. These rescues, including the savings of lives, would not have occurred if our lifeguards were not there.

2. Lifeguards and Economic Value of Beaches

The saving of a single life is enough to justify the need for lifeguards at our beaches. However, please consider how important our beaches, staffed with lifeguards, are to our national, state, and counties' economies. In a manuscript entitled "The economic value of beaches – a 2013 update," James R. Houston states:

- "The travel and tourism industry (T&T) is becoming increasingly dominant in economies throughout the world. However, few realize that T&T is among America's largest industries, employers, and earners of foreign exchange; and beaches are its leading tourist destination."
- "The travel and tourism industry is the world's largest industry contributing \$6.3 trillion in 2011 to the world's Gross Domestic Product and exceeding the GDP of all countries other than the United States. Similarly, industry contributes \$1.3 trillion to America's GDP.... [and] also produces \$124 billion in annual tax revenue for all levels of government in the United States, without this revenue, each U.S. household would pay \$1,055 more in taxes."
- "The travel and tourism industry is both the worlds and America's largest employer providing 255 million jobs throughout the world (8.7% of jobs) and 14.3 million jobs in the U.S. (10.2% of total employment)."
- "The U.S. ran a trade deficit of \$727 billion in 2011 but, in contrast, T&T was one of the few bright spots of trade with international tourists spending more in the U.S. than U.S. tourists spend abroad, resulting in a trade surplus of \$43 billion (U.S. Department of Commerce 2011)."
- "International tourists visiting the U.S. produced estimated tax revenues in 2011 of \$17 billion (U.S. Travel Association 2009; U.S. Department of Commerce 2011). The federal government receives 5% of tax revenues from domestic T&T, and state and local governments receive 28% and 17% respectively...." (U.S. Travel Association 2009).

Houston further determined that beaches are the key element of U.S. travel and tourism, stating:

- "Beaches are the key element of U.S. T&T, since they are the leading tourist destination. A survey by Trip-Advisor (2011) of planned 2012 travel found that beaches are the leading U.S. tourist destination with 44% of survey respondents planning beach vacations. An ABC/Washington Post poll (ABC/*Washington Post* 2012) found beaches the most popular summer vacation destination with 72% of Americans expressing a favorable opinion of going to the beach for summer vacation. Further, they found Americans spend a full 40% of their allotted vacation days at the beach and 52% of respondents planned to holiday at the beach in the next 12 months."

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April 1, 2014
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Houston concludes by saying that there is a world economy in tourism that gives consumers ample choices and produces stiff worldwide competition for tourists. He also states the need for “a paradigm shift in attitudes toward the economic significance of travel and tourism and necessary infrastructure investment to maintain and restore beaches.”

Accordingly, we believe that it would be a monumental mistake to allow the liability protection for our lifeguards and counties to “sunset” when, instead, we should be supporting our lifeguards and doing everything necessary to give Hawaii’s beaches their competitive edge over other destinations. If we don’t, tourists may go elsewhere.

Finally, please also consider that pursuant to the reporting requirements of Act 82, Session Laws of Hawaii (SLH) 2003 (Act 82), and Act 190, SLH 1996, the state Task Force on Beach and Water Safety provided a report to the legislature in 2013 with a single recommendation:

“Due to the an increasing amount of interest by the resident and visiting public in recreational pursuits in the natural environment and the proliferation of information being posted on the Internet and other social medium, there continues to be a need to inform the public on exposure to natural hazards and as such – notification is a priority with the Department and the Counties.

Therefore, it is recommended that the 2014 “sunset” date on Act 82 (as amended by Act 81, SLH 2009), be repealed and that Act 82 be codified into the Hawaii Revised Statutes as permanent law.” (Emphasis added.)

For these reasons, I join the mayors and councilmembers of our neighboring Counties in support of HB 1024, HD1, SD1, and urge you to support the continued partnership between the state and counties whose common goal is to promote and enhance public safety.

ALAN M. ARAKAWA
MAYOR



JEFFREY A. MURRAY
CHIEF

ROBERT M. SHIMADA
DEPUTY CHIEF

COUNTY OF MAUI
DEPARTMENT OF FIRE AND PUBLIC SAFETY

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KAHULUI, MAUI, HAWAII 96732
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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 Jeffrey A. Murray, Member of the Hawaii State Fire Council (SFC) and Fire Chief of the Maui Fire Department (MFD). The SFC and the MFD 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
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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 MFD 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,

A handwritten signature in black ink, appearing to read "Jeffrey A. Murray".

JEFFREY A. MURRAY
Fire Chief

COUNTY COUNCIL

Jay Furfaro, Chair
Mason K. Chock, Sr., Vice Chair
Tim Bynum
Gary L. Hooser
Ross Kagawa
Mel Rapozo
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Ricky Watanabe, County Clerk
Jade K. Fountain-Tanigawa, Deputy County Clerk

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Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

March 31, 2014

Senator Clayton Hee
Chair, Committee on Judiciary and Labor
Hawai'i State Legislature
State Capitol, Room 407
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chair Hee and Committee Members:

SUBJECT: HB 1024, HD1, SD1, RELATING TO LIABILITY

I would like to take this opportunity to express my strong support for HB 1024, HD1, SD1 relating to liability. My testimony is submitted in my capacity as Council Chair of the Kaua'i County Council.

HB 1024, HD 1, SD 1 provides limited liability protection for lifeguards and reduces the exposure of the State and County government from substantial damages. This important measure also allows government agencies to keep highly utilized recreational areas open to the public without interruption. Without this liability protection, lifeguard services at beach parks may be reduced or eliminated due to the fear of potential liability that might ensue. As it currently stands, the limited liability protection provision sunsets on June 30, 2014. This measure which would eliminate the sunset date is much needed, as it will provide continuous liability protection for government agencies and their duty to warn the public of dangers on improved public lands.

As we have experienced this past winter season, the County of Kaua'i, along with the rest of the State, has had to endure extreme weather conditions with high wind and high surf warnings. Ocean safety professionals across the State put their lives on the line each day to protect our citizens and visitors from the high surf and extreme weather conditions. The tremendous amount of rescues that our lifeguards respond to, compared to the occasional drowning announcements, often goes unnoticed. Ocean safety and drowning prevention is a high priority for the County of Kaua'i, and we continue to work collaboratively with numerous private partners in this effort.

Chair Hee and Committee Members
RE: HB 1024, HD 1, SD 1 Relating to Liability
March 31, 2014
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If the sunset date is not removed, the County of Kaua'i could possibly be faced with discontinuing lifeguard services at various beaches due to the increased liability and financial burden placed on the County. Each County around the State is already facing fiscal challenges and may need to evaluate the cost of potential liability should the June 30, 2014 sunset date remain.

For the reasons stated above, I, along with my Council colleagues, strongly encourage the Senate Committee on Judiciary and Labor to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,



JAY FURFARO
Council Chair, Kaua'i County Council

AB:lc

COUNTY COUNCIL

Jay Furfaro, Chair
Mason K. Chock, Sr., Vice Chair
Tim Bynum
Gary L. Hooser
Ross Kagawa
Mel Rapozo
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OFFICE OF THE COUNTY CLERK

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March 31, 2014

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Chair, Committee on Judiciary and Labor
Hawai'i State Legislature
State Capitol, Room 407
415 South Beretania Street
Honolulu, Hawai'i 96813

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HB 1024, HD 1, SD 1 provides limited liability protection for lifeguards and reduces the exposure of the State and County government from substantial damages. This important measure also allows government agencies to keep highly utilized recreational areas open to the public without interruption. Without this liability protection, lifeguard services at beach parks may be reduced or eliminated due to the fear of potential liability that might ensue. As it currently stands, the limited liability protection provision sunsets on June 30, 2014. This measure to eliminate the sunset date is much needed, as it will provide continuous liability protection for government agencies and their duty to warn the public of dangers on improved public lands.

As we have experienced this past winter season, the County of Kaua'i, along with the rest of the State, has had to endure extreme weather conditions with high wind and high surf warnings. Ocean safety professional across the State put their lives on the line each day to protect our citizens and visitors from the high surf and extreme weather conditions. The tremendous amount of rescues our lifeguards respond to, compared to the occasional drowning announcements, often goes unnoticed. Ocean safety and drowning prevention is a high priority for the County of Kaua'i, and we continue to work collaboratively with numerous private partners in this effort.

Chair Hee and Committee Members
RE: HB 1024, HD 1, SD 1 Relating to Liability
March 31, 2014
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For the reasons stated above, I encourage the Senate Committee on Judiciary and Labor to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

A handwritten signature in black ink, appearing to read 'Tim Bynum', with a long horizontal flourish extending to the right.

TIM BYNUM
Councilmember, Kaua'i County Council

AB:lc



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Seventh Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
April 1, 2014

H.B. 1024, H.D. 1, S.D. 1 – RELATING TO LIABILITY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 1024, H.D. 1, S.D. 1. This legislation provides state and county governments with an exemption from liability for the acts of county lifeguards while acting within the scope of their duties and responsibilities, except for gross negligence or wanton acts of omissions. At present, the liability protections afforded to lifeguards under Act 81, SLH 2009 will expire on June 30, 2014.

This liability protection enables lifeguard services to be provided by the counties at beach parks without fear of liability. This ensures that the protection of our beaches will continue as a priority of our state.

Thank you for the opportunity to testify in support of H.B. 1024, H.D. 1, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

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

March 31, 2014

The Honorable Clayton Hee, Chair, and
The Honorable Maile Shimabukuro, Vice Chair, and Members
Committee on Judiciary
The Senate
The Twenty-Seventh Legislature
Regular Session of 2014

Dear Chair Hee, Vice Chair Shimabukuro, and Members:

Re: HB 1024, HD 1, SD 1, 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 1024, HD 1, SD 1, which removes the sunset date for Act 170 (Session Laws 2002), and makes the Act permanent. 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. Both Maui Mayor Alan Arakawa and Kauai Mayor Bernard Carvalho have testified that without the protection afforded by Act 170, their respective counties could no longer provide lifeguard services at Makena Beach and Ke'e Beach.

The necessity of providing trained lifeguards at Hawaii's beaches is obvious, a "no brainer." We respectfully urge you to pass the matter through your committee.

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