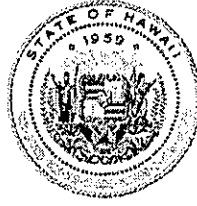
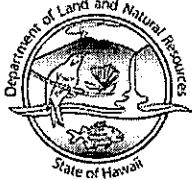


# **HB 1024 HD1**

## **RELATING TO LIABILITY.**

Extends the liability protections for the actions of county lifeguards for an additional three years. Requires the counties to report to the legislature on lawsuits against county lifeguards and the effects of the liability protections. Effective June 29, 2014. (HB1024 HD1)

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

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

JESSE K. SOUKI  
FIRST DEPUTY

WILLIAM M. TAM  
DEPUTY DIRECTOR - WATER

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FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAIIOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

Testimony of  
WILLIAM J. AILA, JR.  
Chairperson

Before the Senate Committee on  
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Tuesday, March 11, 2014  
2:50 PM  
State Capitol, Conference Room 224

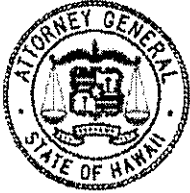
In consideration of  
HOUSE BILL 1024, HOUSE DRAFT 1  
RELATING TO LIABILITY

House Bill 1024, House Draft 1 proposes to extend the sunset date of 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) supports this bill but prefers the original language of House Bill 1024, 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 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.

For the reasons stated in this testimony, the Department supports House Bill 1024, House Draft 1, but prefers the language of the original bill 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. 1024, H.D. 1, RELATING TO LIABILITY.**

**BEFORE THE:**

**SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND  
MILITARY AFFAIRS**

**DATE:** Tuesday, March 11, 2014 **TIME:** 2:50 p.m.

**LOCATION:** State Capitol, Room 224

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Caron M. Inagaki, Deputy Attorney General

---

Chair Espero and Members of the Committee:

The Department of the Attorney General strongly supports this measure but with amendments.

The purpose of this bill is to extend the liability protections for lifeguards, and the counties and the State providing lifeguard services on the beach or in the ocean for an additional three years. The exception from liability does not apply for gross negligence or wanton acts or omissions of the lifeguard. This bill also adds a requirement for the counties to submit yearly reports to the Legislature regarding statistics on lawsuits filed against lifeguards. 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. 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.

However, we request that section 5 of Act 170 be amended to delete the wording that includes a repeal date as set forth in the original bill.

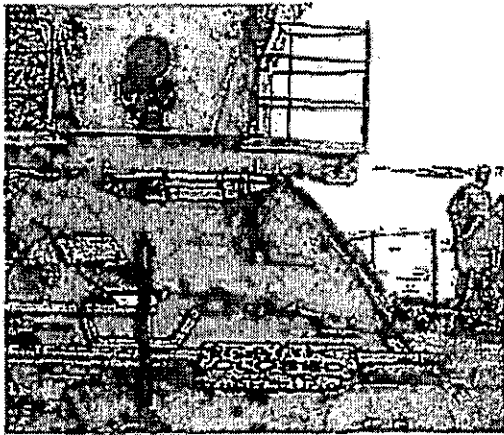
Act 170 was enacted over ten years ago. The legislative task force established by Act 152 determined over five years ago that Act 170 is effective and is a life-saving measure that deserves to be made permanent.

We also request that section 2 of the bill be deleted. This section is neither necessary nor feasible because the very existence of Act 170 would deter or prevent lawsuits from being filed. Thus, there would be no meaningful statistics to include in a report to the Legislature.

Therefore, we respectfully request that the Committee pass this bill in its original form.

## Keeping safety intact

TheGardenIsland.com



kee LIFEWARD.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 Tokloka 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 snorkelling.

"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](mailto:cdangelo@thegardenisland.com)

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#### More about

- **ARTICLE:** Junior Lifeguards celebrate Saturday
- **ARTICLE:** Above the call of duty
- **ARTICLE:** Junior Lifeguards hone ocean safety while eyeing 10th state title
- **ARTICLE:** Fun in the sun

#### More about

- **ARTICLE:** It's high time rescue tube stations are legal
- **ARTICLE:** Junior Lifeguards celebrate Saturday
- **ARTICLE:** 'Family, distressed'
- **ARTICLE:** Lives saved, again

#### More about

- **ARTICLE:** Still perfect
- **ARTICLE:** Happy Camper for Monday, Jan. 27, 2014
- **ARTICLE:** Kapaa girls, Big Island to play for state birth
- **ARTICLE:** County proposes recycling laws

Posted in Local on *Monday, January 27, 2014 1:45 am.* | Tags: First Aid, Surf Lifesaving, Kauai, Lifeguard , Beth Tokloka, 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.
- 5 Be Proactive. Use the 'Report' link on each comment to let us know of abusive posts.
- 6 Share with Us. We'd love to hear eyewitness accounts, the history behind an article.

Welcome to the discussion.

- Current users sign in here.

NEIL ABERCROMBIE  
GOVERNOR



DWIGHT TAKAMINE  
DIRECTOR

JADE BUTAY  
DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

530 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
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March 10, 2014

The Honorable Will Espero, Chair  
Committee on Public Safety, Intergovernmental  
and Military Affairs  
The State Senate  
State Capitol, Room 231  
Honolulu, Hawaii 96813

Dear Chair Espero:

Subject: H.B. 1024, H.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, which proposes to extend the liability protections for county lifeguards and require the counties to submit a report to the legislature on lawsuits against county lifeguards and effects of the liability protection.

The passage of H.B. 1024, H.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 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 Will Espero, Chair  
Page 2  
March 10, 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.

Should you have questions, please contact SFC Administrator Socrates Bratakos at 723-7105 or [sbratakos@honolulu.gov](mailto:sbratakos@honolulu.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Neves', written over a horizontal line.

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

**Senate Committee on Public Safety, Intergovernmental and Military Affairs**

**Sen. Will Espero, Chair**

**Sen. Rosalyn H. Baker, Vice Chair**

**Re: HB 1024 HD1 Relating to Liability**

**March 7, 2014**

Aloha from the Garden Island!

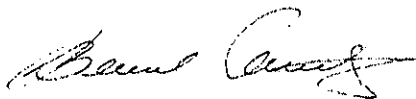
Every day, ocean safety professionals on all of our islands struggle to prevent injury and death in our waters. Ocean safety and drowning prevention is a core mission of the State and the Counties, and we have created a widespread and effective collaboration with each other and numerous private partners 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'e beach as a result of this legislation. Prior to 2008, there were eight drownings at Kē'e beach. Since 2008, there have been zero drownings. Furthermore, our lifeguards have conducted 233 "saves" at Kē'e 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'e since 2008? The only thing we know for sure is that, together, we have saved lives.

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.

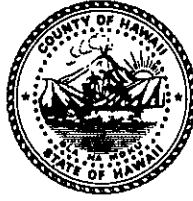
Should Act 170 sunset as of June 30, we may have no choice but to discontinue lifeguard services at Kē'e beach. Hopefully we can all agree that this issue warrants serious consideration through the legislative process and we can come to an agreement as to how this critical partnership can continue.

Respectfully submitted,



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

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

March 11, 2014

The Honorable Will Espero, Chair  
And Members of the Senate Committee on  
Public Safety, Intergovernmental and Military Affairs  
Hawai'i State Capitol, Room, 224  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Re: House Bill 1024, HD 1 RELATING TO LIABILITY

Aloha, Chair Espero and Committee Members:

Mahalo for this opportunity to offer our strong support for House Bill No. 1024, HD 1, which seeks to extend the liability exemptions for state and county governments providing county lifeguard services. The bill extends the sunset date of Act 170, Session Laws of Hawai'i 2002 ("Act 170") that shields county lifeguards from liability, which at present will sunset on June 30, 2014.

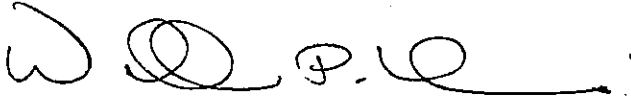
Passage of the bill will increase safety to the beachgoers by allowing the counties to place lifeguards at state beach parks without the threat of costly, unnecessary and unwanted litigation arising from dangerous natural conditions or events, that are outside the control of the counties and their lifeguards, 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 Will Espero  
page 2  
March 11, 2014

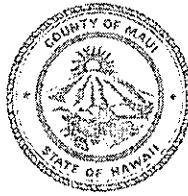
Mahalo for this opportunity to express our strong support for House Bill 1024, HD 1,  
which extends the liability protections for the actions of county lifeguards.

Aloha,

A handwritten signature in black ink, appearing to read 'W. P. Kenoi', with a long horizontal line extending to the right.

William P. Kenoi  
MAYOR

ALAN M. ARAKAWA  
MAYOR



KEITH A. REGAN  
MANAGING DIRECTOR

**DEPARTMENT OF MANAGEMENT**  
COUNTY OF MAUI

**TESTIMONY OF ALAN ARAKAWA, MAYOR**  
COUNTY OF MAUI

BEFORE THE SENATE  
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL & MILITARY AFFAIRS

Tuesday, March 11, 2014, 2:50 p.m., Conference Rm. 224

**HOUSE BILL 1024, HD1**  
RELATING TO LIABILITY

The Honorable Will Espero, Chair  
The Honorable Rosalyn Baker, Vice Chair  
And Members of the Committee on Public Safety, Intergovernmental & Military Affairs

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. The bill extends the sunset date of Act 170, Session Laws of Hawai'i 2002 ("Act 170") that shields county lifeguards from liability. At present, the liability protections provided in Act 170 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 T&T is the world's largest industry contributing \$6.3 trillion in 2011 to the world's Gross Domestic Product (GDP) and exceeding the GDP of all countries other than the United States. Similarly, T&T 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."
- "T&T 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."



Senator Will Espero  
RE: HB 1024 Relating to Liability  
March 11, 2014  
Page 3 of 3

- Going to beaches is not just an American obsession. Expedia.com (2012) found in a survey of 8599 adults in 21 countries ' ... the beach is by far the favorite destination for the majority of the world's travelers.'"

In essence, 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."

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



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
530 SOUTH KING STREET, ROOM 202  
HONOLULU, HAWAII 96813-3065  
TELEPHONE: (808) 768-5010 • FAX: (808) 768-5011

**STANLEY CHANG**  
*Councilmember – District IV*  
Phone: (808) 768-5004  
Fax: (808) 768-5000  
ccldistrict4@honolulu.gov  
www.honolulu.gov/council/d4

March 10, 2014  
TESTIMONY OF STANLEY CHANG  
CONCILMEMBER FOR THE CITY AND COUNTY OF HONOLULU  
On  
H.B. No. 1024, H.D. 1, RELATING TO LIABILITY  
Committee on Public Safety, Intergovernmental and Military Affairs  
Tuesday, March 11, 2014  
2:50 p.m.  
Conference Room 224

Dear Chair Espero and Committee Members:

Thank you for allowing me the opportunity to submit testimony in support of H.B. 1024, HD1 Relating to Liability in my capacity as Councilmember of the City and County of Honolulu.

H.B. 1024, HD1 extends the liability protections for the actions of county lifeguards for an additional three years and requires the counties to report to the legislature on lawsuits against county lifeguards and the effects of the liability protections.

This bill will make beaches more accessible and safer for public use by allowing the counties to continue to place lifeguards at beaches that are outside the counties' control without the threat of litigation. Our county lifeguards provide necessary services for the health and safety of our residents and visitors at beaches, as well as educating the public on beach safety and awareness.

For these reasons, I respectfully ask for your favorable passage of H.B. 1024, HD1 Relating to Liability and thank the Committee for allowing me to provide testimony.

Sincerely,

A handwritten signature in black ink, appearing to read "Stanley Chang".

Stanley Chang  
Councilmember, District IV

Council Chair  
Gladys C. Baisa

Vice-Chair  
Robert Carroll

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



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

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

March 8, 2014

TO: The Honorable Will Espero, Chair  
Senate Committee on Public Safety, Intergovernmental and Military Affairs

FROM: Gladys C. Baisa  
Council Chair *Gladys C. Baisa*

SUBJECT: **HEARING OF MARCH 11, 2014; TESTIMONY IN SUPPORT OF HB 1024 HD 1,  
RELATING TO LIABILITY**

Thank you for the opportunity to testify **in support** of this important measure. The purpose of this measure is to extend the liability protections for actions of county lifeguards up to 2017.

Legislation with a similar purpose is included in the Hawaii State Association of Counties' ("HSAC") 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 and offer the following comments:

1. The law has been in effect for more than a decade. Since its enactment in 2002, the Legislature has twice been convinced of the wisdom of extending its protections. **Any need for a trial period has been exhausted, and the law should be made permanent.**
2. 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 undue fear of liability. Without this protection, lifeguard services at beach parks may be reduced because of the threat of potential liability.

For the foregoing reasons, I **support** this measure and urge the committee to make the law permanent.

ocs:proj:legis:14legis:14testimony:hb1024\_hd1\_paf14-075a\_mkz

**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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Fax (808) 241-6349  
Email [cokcouncil@kauai.gov](mailto:cokcouncil@kauai.gov)

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

March 10, 2014

**TESTIMONY OF JAY FURFARO  
COUNCIL CHAIR, KAUA'I COUNTY COUNCIL  
ON**

**HB 1024, HD 1 RELATING TO LIABILITY**  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Tuesday, March 11, 2014  
2:50 p.m., Conference Room 224

Dear Chair Espero and Committee Members:

Thank you for this opportunity to submit testimony in strong support of HB 1024, HD 1 relating to liability. My testimony is submitted in my capacity as Council Chair of the Kaua'i County Council.

HB 1024, HD 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 governmental agencies and will assist them as they fulfill 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 significant 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 Espero and Committee Members  
RE: HB 1024, HD 1, Relating to Liability  
March 10, 2014  
Page 2

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 that would be placed on the County. Currently, each County around the State is already facing fiscal challenges; should the June 30, 2014 sunset date remain, Counties may need to evaluate the costs associated with additional liability.

For the reasons stated above, I, along with my Council colleagues, strongly encourage the Senate Committee on Public Safety, Intergovernmental and Military Affairs 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 FERRARO  
Council Chair, Kaua'i County Council

SS:lm

**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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Email [cokcouncil@kauai.gov](mailto:cokcouncil@kauai.gov)

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

March 10, 2014

**TESTIMONY OF GARY L. HOOSER  
COUNCILMEMBER, KAUAI COUNTY COUNCIL**

**ON**

**HB 1024, HD 1, RELATING TO LIABILITY**

Senate Committee on Public Safety, Intergovernmental and Military Affairs

Tuesday, March 11, 2014

2:50 p.m.

Conference Room 224

Dear Chair Espero, and Committee Members:

Thank you for this opportunity to submit testimony in strong support of HB 1024, HD 1, relating to liability. My testimony is submitted in my capacity as a Councilmember of the Kaua'i County Council.

HB 1024, HD 1 provides limited liability protection for lifeguards and reduces the exposure of the State and County government from substantial damages. This important measure allows government agencies to keep highly utilized recreational areas open to our citizens and visitors. Without liability protection, lifeguard services at beach parks may be reduced or eliminated due to the fear that potential liability might ensue. 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.

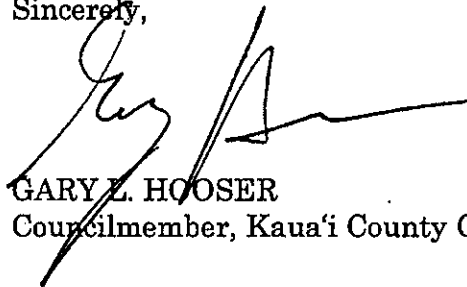
The County of Kaua'i, along with the rest of the State, has recently seen extreme weather conditions which resulted in waves in excess of fifty (50) feet crash on our shores and place our ocean safety professionals at risk as they worked to keep everyone safe. The tremendous amount of rescues our lifeguards 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 providing this liability protection for these ocean safety professionals is a key component to ensuring the continuation of these services at beaches across the State.

Chair Espero, and Committee Members  
RE: HB 1024, HD 1, Relating to Liability  
March 10, 2014  
Page 2

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 costs of potential liability should the June 30, 2014 sunset date remain.

For the reasons stated above, I strongly encourage the Senate Committee on Public Safety, Intergovernmental and Military Affairs 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 'Gary L. Hooser', written over a printed name and title.

GARY L. HOOSER  
Councilmember, Kaua'i County Council

SS:lc

**COUNTY COUNCIL**

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



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

March 10, 2014

**TESTIMONY OF MEL RAPOZO  
COUNCILMEMBER, KAUAI COUNTY COUNCIL  
ON**

**HB 1024, HD 1, RELATING TO LIABILITY**  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Tuesday, March 11, 2014  
2:50 p.m.  
Conference Room 224

Dear Chair Espero and Committee Members:

Thank you for this opportunity to submit testimony in strong support of HB 1024, HD 1, relating to liability. My testimony is submitted in my capacity as a Councilmember of the Kaua'i County Council.

HB 1024, HD 1 provides limited liability protection for lifeguards and reduces the exposure of the State and County government from substantial damages. This important measure allows government agencies to keep highly utilized recreational areas open to our citizens and visitors. Without liability protection, lifeguard services at beach parks may be reduced or eliminated due to the fear of potential liability. 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.

The County of Kaua'i, along with the rest of the State, has recently seen extreme weather conditions which resulted in waves in excess of fifty (50) feet crashing on our shores and placing our ocean safety professionals at risk as they worked tirelessly to keep everyone safe. The significant 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 providing this liability protection for these ocean safety professionals is a key component to ensuring the continuation of these services at beaches across the State.



Chair Espero and Committee Members  
RE: HB 1024, HD 1, Relating to Liability  
March 10, 2014  
Page 2

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For the reasons stated above, I strongly encourage the Senate Committee on Public Safety, Intergovernmental and Military Affairs 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 that reads "Mel Rapozo". The signature is written in a cursive style with a small "FR" or similar mark above the "o" in "Rapozo".

MEL RAPOZO  
Councilmember, Kaua'i County Council

SS:cy

Council Chair  
Gladys C. Baisa

Vice-Chair  
Robert Carroll

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



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

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

March 10, 2014

TO: Honorable Will Espero, Chair  
Senate Committee on Public Safety, Intergovernmental and Military Affairs

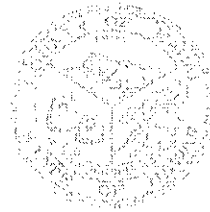
FROM: Robert Carroll  
Council Vice Chair *Robert Carroll*

DATE: Tuesday, March 11, 2014

SUBJECT: **SUPPORT OF HB 1024 H.D. 1, RELATING TO LIABILITY**

I support HB 1024 HD1 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to support this measure.

**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, Lihue, Hawai'i 96766  
TEL (808) 241-4980 FAX (808) 241-6508

March 10, 2014

The Honorable Will Espero, Chair  
Committee on Public Safety, Intergovernmental and Military Affairs  
Hawaii State Senate  
Conference Room 224  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chair Espero:

**Subject: H.B. 1024, HD1 Relating to Tort Liability**

I am Robert Westerman, Fire Chief of the Kauai Fire Department (KFD). The KFD strongly supports H.B. 1024, HD1, which proposes to extend for an additional three years, 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 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 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.

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

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

March 10, 2014

TESTIMONY OF MEL RAPOZO  
PRESIDENT, HAWAII STATE ASSOCIATION OF COUNTIES  
ON  
HB 1024, HD 1, RELATING TO LIABILITY  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
Tuesday, March 11, 2014  
2:50 p.m.  
Conference Room 224

Dear Chair Espero and Committee Members:

Thank you for this opportunity to submit testimony in strong support of HB 1024, HD 1, relating to liability. My testimony is submitted in my capacity as President of the Hawai'i State Association of Counties (HSAC).

HB 1024, HD 1 provides limited liability protection for lifeguards, reduces the exposure of the State and County government from substantial damages, and allows government agencies to keep recreational areas open to the public. Without this protection, lifeguard services at beach parks may be reduced due to the fear of potential liability that might ensue. Currently, the limited liability protection provision sunsets on June 30, 2014. In light of this, this measure is needed as it will provide continuous liability protection for government agencies and their duty to warn the public of dangers on improved public lands.

In recent weeks, the State endured extreme weather conditions with high wind and high surf warnings. Waves as high as fifty (50) feet crashed on our shores, putting our ocean safety professionals at risk as they worked to prevent unintended injuries and deaths. 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 State and the Counties, and we continue to work collaboratively with numerous private partners in this effort.

The Counties recognize the importance of this issue and stand united in their efforts to support this measure. If the sunset date is not removed, the Counties could possibly be faced with discontinuing lifeguard services on State beaches. Each County is facing fiscal challenges and may need to evaluate the costs for potential liability should the June 30, 2014 sunset date remain.

Chair Espero and Committee Members  
RE: HB 1024, HD 1, Relating to Liability  
March 10, 2014  
Page 2

For the reasons stated above, HSAC strongly encourages the Senate Joint Committee on Water and Land / Public Safety, Intergovernmental and Military Affairs to support this measure. Should you have any questions, please feel free to contact the County of Kaua'i, Office of the County Clerk, Council Services Division at (808) 241-4188.

Sincerely,

A handwritten signature in cursive script that reads "Mel Rapozo". There is a small star symbol above the letter "o" in "Rapozo".

MEL RAPOZO  
HSAC President

SS:cy

cc: HSAC Executive Committee Members

# HAWAII COUNCIL OF MAYORS



March 11, 2014

The Honorable Will Espero, Chair  
And Members of the Senate Committee on  
Public Safety, Intergovernmental and Military Affairs  
Hawai'i State Capitol, Room, 224  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Re: House Bill 1024, HD 1 RELATING TO LIABILITY

Aloha, Chair Espero and Committee Members:

The Hawai'i Council of Mayors, which includes the mayors of Hawai'i, Honolulu, Kaua'i and Maui counties, stand united in our strong support for House Bill No. 1024, HD 1, which seeks to extend the liability exemptions for state and county governments providing county lifeguard services. The bill extends the sunset date of Act 170, Session Laws of Hawai'i 2002 ("Act 170") that shields county lifeguards from liability. At present, the liability protections provided in Act 170 will sunset on June 30, 2014.

Thank you for your consideration.

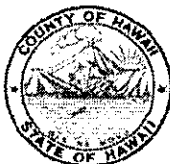
Sincerely,

William Kenoi, Mayor  
County of Hawai'i

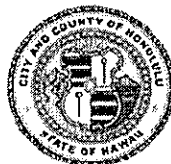
Bernard Carvalho, Jr., Mayor  
County of Kaua'i

Kirk Caldwell, Mayor  
City and County of Honolulu

Alan Arakawa, Mayor  
County of Maui



Mayor William Kenoi  
County of Hawaii  
25 Aupuni Street  
Hilo, Hawaii 96720



Mayor Kirk Caldwell  
City and County of Honolulu  
530 South King Street  
Honolulu, Hawaii 96813



Mayor Bernard Carvalho, Jr.  
County of Kauai  
4444 Rice Street  
Lihue, Hawaii 96766



Mayor Alan Arakawa  
County of Maui  
200 South High Street, 9<sup>th</sup> Floor  
Wailuku, Hawaii 96793

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) REGARDING H.B. NO. 1024, HD 1**

Date: Tuesday, March 11, 2014

Time: 2:50 pm

To: Chairman Will Espero and Members of the Senate Committee on Public Safety, Intergovernmental and Military Affairs:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) Regarding H.B. No. 1024, HD 1, Relating to Liability.

The purpose of the original bill was 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 then set for June 2014 to allow sufficient time to fully implement the program throughout the state beach park system, collect and analyze data, and report to



the legislature with objective information to decide whether the law should be made permanent.

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.

HAJ is in support of the extension as provided in the HD 1 together with the provision that each county submit an annual report with regard to lawsuits against lifeguards. HAJ has testified since the law was enacted in 2002 that we are not aware of a rash of lawsuits against lifeguards before 2002 and since 2002.

Further, 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.

Lastly, there are options such as the State indemnifying the Counties for providing its lifeguards to cover the beaches at State beach parks. Also, because the initial bill was passed because of the need to have Kauai County lifeguards cover state beach parks there was no previous effort to have the counties protected from any acts by lifeguards on County Beach Parks.

Thank you very much for allowing me to testify regarding this measure. Please feel free to contact me should you have any questions or desire additional information.

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

March 8, 2014

The Honorable Will Espero, Chair, and  
The Honorable Rosalyn Baker, Vice Chair, and Members  
Committee on Public Safety, Intergovernmental and Military Affairs  
The Senate  
The Twenty-Seventh Legislature  
Regular Session of 2014

Dear Chair Espero, Vice Chair Baker, and Members:

Re: HB 1024, HD 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, which extends the sunset date for Act 170 (Session Laws 2002) for three years until June 30, 2017. Although the Association would prefer that Act 170 be made permanent without a sunset date, 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." Although the HLA would prefer that Act 170 be made permanent, HB 1024, HD 1 provides a three-year extension of the sunset date. We respectfully urge you to pass the matter through your Committee on Public Safety, Intergovernmental and Military Affairs.

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

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

3/8/14

To: Senator Will Espero, Chair, Senate Committee on Public Safety,  
Intergovernmental and Military Affairs  
Senator Rosalyn H. Baker, Vice-Chair “ “ “ “ “ “ “ “

### TESTIMONY IN SUPPORT OF HB 1024 - Hearing on 3/11/14

Dear Chair Espero, Vice Chair Baker, and Members of the HI Senate PSM 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 guarding Makena Beach on Maui, Hapuna Beach on the Big Island, and Yokohama Bay on Oahu). Please realize that this immunity requests no more immunity to the County's presence at this beach than that which the State enjoys at this and all other State beaches.

What have Ke'e Lifeguards meant to Kauai, our people and our visitors?

Ke'e Beach is packed with people on any day when it isn't raining. There are so many cars that if you get there in mid-morning cars are parked a full ½ mile walk from the Beach Park. On flat calm days it is a snorkeler's paradise. On days, however, where any waves at all are breaking onto the barrier reef, water comes IN over the reef -- and this creates a strong, equilibrating, and unseen rip current that pulls unsuspecting people OUT the western portal of the "sheltered" area and takes them out to sea. In the 2 years before we had a Lifeguard Tower there we had a drowning each year. The last person to ever drown at Ke'e was very high profile - Teddy Teichgraber, 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 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 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 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.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Saturday, March 08, 2014 9:52 AM  
**To:** PSMTestimony  
**Cc:** david@kingdonconsulting.com  
**Subject:** Submitted testimony for HB1024 on Mar 11, 2014 14:50PM

**HB1024**

Submitted on: 3/8/2014

Testimony for PSM on Mar 11, 2014 14:50PM in Conference Room 224

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Kingdon	Individual	Support	No

Comments: Continuing this liability protection for lifeguards is essential to the ongoing prevention and control of injuries on and around Hawaii's beaches. As a Maui County paramedic, I can personally attest to the life-saving difference lifeguards make every day. Thank you for your consideration.

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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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 10, 2014 9:13 AM  
**To:** PSMTestimony  
**Cc:** Don.Couch@mauicounty.us  
**Subject:** \*Submitted testimony for HB1024 on Mar 11, 2014 14:50PM\*

**HB1024**

Submitted on: 3/10/2014

Testimony for PSM on Mar 11, 2014 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Don Couch	Individual	Support	No

Comments:

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