

**COUNTY OF MAUI**  
DEPARTMENT OF FIRE AND PUBLIC SAFETY

100 SOUTH BAY  
HONOLULU, HAWAII 96813  
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March 10, 2014

LATE TESTIMONY

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 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, 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 110 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.

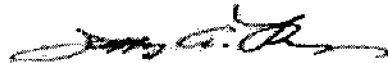
The Honorable Will Espero, Chair  
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The report further discusses the benefits of posting signage and the lives saved as a result of posting county lifeguards at state beach parks. The state and counties adopted and installed a uniform signage design 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.

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

Sincerely,



JEFFREY A. MURRAY  
Chief



*Maui Hotel & Lodging*  
ASSOCIATION

Testimony of  
**Lisa H. Paulson**  
Executive Director  
Maui Hotel & Lodging Association  
on  
**HB1024 HD1**  
**Relating To Liability**

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

**Tuesday, March 11, 2014, 2:50pm**  
**Room 224**

Dear Chair Espero, Vice Chair Baker and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 150 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA's membership employs over 20,000 local residents. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is in strong support of HB1024, HD 1 which 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.

Lifeguards provide a critical service to both residents and visitors. This liability protection enables lifeguard services to be provided by the counties without the threat of costly litigation. Furthermore, placing county lifeguards at State-owned beaches will help reduce the number of deaths and injuries at these beaches.

We do ask that consideration be made to make this extension permanent rather than for just an additional three years. Making the extension permanent would further encourage counties to expand recreational safety education and public awareness programs, rather than expending time and monies on defending costly litigation.

Thank you for the opportunity to testify.

HONOLULU EMERGENCY SERVICES DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**  
3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1869  
Phone: (808) 723-7800 • Fax: (808) 833-3934

LATE TESTIMONY

KIRK CALDWELL  
MAYOR



MARK K. RIGG  
DIRECTOR

IAN T.T. SANTEE  
DEPUTY DIRECTOR

March 11, 2014

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

Re: HB 1024, HD 1 Relating to Liability

Dear Chair Espero, Vice-Chair Baker, and Members:

The Honolulu Emergency Services Department, Ocean Safety Division, is in support of HB 1024, HD 1.

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

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

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

"We begin with the well established principle that a municipality is not an insurer of the safety of those who make use of its park, playground, and recreational facilities. It is equally settled, however, that a municipality must exercise reasonable care in the maintenance of these facilities and in the supervision of their use by the public. For an occupier of land is under a duty to exercise all reasonable care for the safety of all persons known to be, or reasonably anticipated to be, upon its premises. *Pickard v. City & County of Honolulu*, 51 Haw. 134, 452 P.2d 445

(1969). Where the premises front upon the ocean, this responsibility extends to those swimming in the waters along the property's beach frontage. *Tarshis v. Lahaina Investment Corp.*, 480 F.2d 1019 (9th Cir.1973)."

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

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

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

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

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

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

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

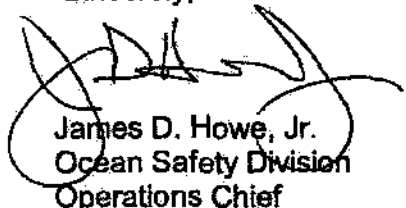
This begs the question of how a beach lifeguard can both ensure the life safety of persons on the beach and in the water and simultaneously meet the legal requirement of *KACZMARCZYK v. CITY AND COUNTY OF HONOLULU*.

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

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

Thank you in advance for your favorable consideration.

Sincerely,



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

656 P.2d 89 (1982)

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

v.

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

*Supreme Court of Hawaii.*

*December 28, 1982.*

Excerpts from the appeal

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

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

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

The plaintiffs appeal.

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

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

## WHY DO BEACH LIFEGUARDS NEED LIABILITY IMMUNITY



<b>RESPONDER</b>	<b>Legal duty to warn of environmental hazards at scene</b>	<b>Ability to restrict access to response scene</b>
<b>Pool lifeguard</b>	<b>NO</b>	<b>YES</b>
<b>Beach lifeguard</b>	<b>YES</b>	<b>NO</b>
<b>Police officer</b>	<b>NO</b>	<b>YES</b>
<b>Firefighter</b>	<b>NO</b>	<b>NO</b>
<b>Paramedic</b>	<b>NO</b>	<b>NO</b>



DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**  
530 SOUTH KING STREET, ROOM 110 \* HONOLULU, HAWAII 96813  
PHONE: (808) 768-5193 \* FAX: (808) 768-5105 \* INTERNET: [www.honolulu.gov](http://www.honolulu.gov)

**LATE TESTIMONY**

KIRK CALDWELL  
MAYOR



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

March 10, 2014

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

Dear Chair Espero and Committee Members:

Subject: House Bill 1024, H. D. 1, Relating to Liability

The Department of the Corporation Counsel of the City and County of Honolulu supports the intent of H.B. 1024, H.D. 1 to extend the liability protection for actions involving negligence of county lifeguards. HB 1024, H.D. 1 repeals the sunset date of Act 170, Session Laws of Hawaii 2002. The bill further imposes a duty upon the counties to submit an annual report to the legislature identifying (1) the number of lawsuits filed against the county lifeguards and counties for claims based upon rescue, resuscitation, or other lifeguard services; (2) the amount of funds the counties expended in litigation, damages, or settlement costs in defending the lawsuits; and (3) whether the county was absolved from liability as a result of Act 170, and the estimate of costs saved.

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

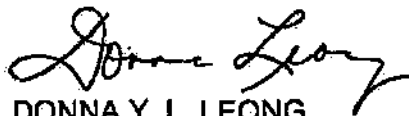
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Members of the Committee on Public Safety,  
Intergovernmental and Military Affairs  
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Although we support the intent of H.B. 1024, H.D. 1, we believe the sunset date of Act 170 should be repealed. Since its adoption in 2002, Act 170 has been in effect for eleven years. Allowing Act 170 to become permanent will give the State and the counties the certainty and assurances needed to keep beach parks open for public use and make beaches more accessible to, and safer for, the general public by allowing the counties to place lifeguards at beaches without the threat of costly litigation for conditions or events that are outside the counties' control. These services help to reduce the number of deaths and injuries at these beaches. Repealing the sunset provision would further encourage counties to expand recreational safety education and public awareness programs, rather than expending time and monies on defending costly litigation.

For these reasons, we respectfully request your support in passing H.B. 1024, H.D. 1.

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

Very truly yours,



DONNA Y. L. LEONG  
Corporation Counsel

DYLL:ey

Council Chair  
Gladys C. Baisa

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Michael P. Victorino

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



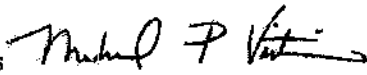
**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
www.mauicounty.gov/council

March 10, 2014

**LATE TESTIMONY**

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

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

**FROM:** Michael P. Victorino, Treasurer  
Hawaii State Association of Counties 

**SUBJECT: HEARING OF TUESDAY, MARCH 11 2014; TESTIMONY IN SUPPORT OF HB 1024, HD1, RELATING TO LIABILITY**

Thank you for the opportunity to testify in **SUPPORT OF** this important measure. The purpose of this measure is to extend for three years the liability protections for the actions of county lifeguards.

I am aware that the President of the Hawaii State Association of Counties ("HSAC") has submitted testimony, on behalf of HSAC, in support of this measure. Legislation with a similar purpose is included in the HSAC Legislative Package; however, the Maui County Council has not had the opportunity to take a formal position on this matter. Therefore, as the Treasurer of HSAC and as Maui County's representative to HSAC, I concur with the testimony submitted by the President, and urge you to support this measure.

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**LATE TESTIMONY**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, March 10, 2014 3:18 PM  
**To:** PSMTestimony  
**Cc:** stacy.crivello@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

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Councilmember Stacy Helm Crivello	Individual	Support	No

Comments: I support testimony submitted in by Maui County Chair Gladys Baisa in support of the measure.

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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# LATE TESTIMONY

March 11, 2014

The Honorable Senator Will Espero, Chair,  
The Honorable Senator Rosalyn H. Baker, Vice Chair  
Senate Committee on Public Safety, Intergovernmental and Military Affairs  
State Capitol  
415 South Beretania Street  
Honolulu, HI 96813

Dear Chair Espero, Vice-Chair Baker, and Members of the Committee:

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

The IPAC strongly supports HB 1024 - HD1, which seeks to extend the protection from liability provided by Act 170 (2002) for another three years. Established in 1990, the Injury Prevention Advisory Committee (IPAC) is an advocacy group committed to preventing and reducing injuries in Hawai'i. IPAC members include representatives from public and private agencies, physicians and professionals working together to address the eight leading areas of injury, including drowning prevention.

The protection in Act 170 is necessary for individual lifeguards as well as counties to ensure prevention and rescues services for the State of Hawaii. Current beaches that would be impacted are Kaena Point State Park on Oahu, Hapuna Beach on Hawaii Island, Makena Beach on Maui, and Ke'e Beach on Kauai. If Act 170 sunsets, these four, extremely popular beaches would no longer be protected by lifeguards.

Lifeguards provide prevention and early intervention services on our beaches reducing the number of drownings and serious injuries that occur. According to the State Department of Health's Injury Prevention and Control Program, more drownings occur at unguarded beaches in the State of Hawaii than guarded beaches at a rate of more than 10 to one.

Our beaches and ocean are Hawaii's most precious resources. To fully enjoy them, we need the security and reassurance of safety that lifeguards provide. We urge you to support HB 1024, HD1 to ensure the extension of Act 170.

Thank you for the opportunity to present this testimony.

Sincerely

Deborah Goebert  
Chair  
Injury Prevention Advisory Committee



HAWAII LODGING & TOURISM  
ASSOCIATION

LATE TESTIMONY

Testimony of George Szigeti  
President & CEO  
HAWAII LODGING & TOURISM ASSOCIATION  
Committee on Public Safety, Intergovernmental and Military Affairs  
Hearing on March 11, 2014, 2:50 p.m.  
House Bill 1024 HD1 Relating to Liability

Dear Chair Espero, Vice Chair Baker and Members of the Committee. My name is George Szigeti and I am the President and CEO of the Hawai'i Lodging & Tourism Association.

The Hawai'i Lodging & Tourism Association (HLTA) is a statewide association of hotels, condominiums, timeshare companies, management firms, suppliers, and other related firms that benefit from and strengthen Hawai'i's visitor industry. Our membership includes over 150 lodging properties, representing over 48,000 rooms, and approximately 470 other Allied members. The lodging industry alone employs over 38,000 workers across the state of Hawai'i. As part of the broader visitor industry – which employs 1/6 of all workers and 1/5 of those in the private sector, and generated \$14.5 billion in visitor spending in 2013 – we represent one of Hawai'i's largest industries and a critical sector of the economy.

On behalf of HLTA, permit me to offer this testimony regarding House Bill 1024 HD1 Relating to Liability, which extends the liability protections for government agencies and county lifeguards included in Act 170, Session Laws of Hawaii 2002 for another three (3) years.

The Hawai'i Lodging & Tourism Association supports this measure. Lifeguards provide a critical service to both residents and visitors, who often visit the beautiful beaches of Hawai'i for fun in the sun and sea. The presence of lifeguards on these beaches makes for a safer environment and a better overall experience for visitors.

Act 170 provided for legal protection of our county lifeguards when operating at State of Hawai'i beach parks. House Bill 1024 HD1 ensures that these protections are extended and we urge its favorable consideration.

Thank you for this opportunity to testify.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION  
AFSCME Local 152, AFL-CIO

# LATE TESTIMONY

RANDY PERREIRA, Executive Director • Tel: 808.542.0571 • Fax: 808.528.0522

The Twenty-Seventh Legislature, State of Hawaii  
The Senate  
Committee on Public Safety, Intergovernmental and Military Affairs

Testimony by  
HGEA/AFSCME, Local 152, AFL-CIO  
March 11, 2014

## H.B. 1024, H.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, however we prefer that this be restored to its original intent in making the liability protection for the county lifeguards permanent and request that the language be amended. This legislation provides state and county governments with an exception 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 with requested amendments of H.B. 1024, H.D. 1.

Respectfully submitted,

Wilbert Holck, Jr.  
Deputy Executive Director