

# SB2116

**Measure Title:** RELATING TO TORT LIABILITY.  
**Report Title:** State and County Tort Liability  
**Description:** Deletes the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.  
**Companion:** [HB1607](#)  
**Package:** HI Council of Mayors  
**Current Referral:** WTL/PSM, JDL  
**Introducer(s):** KIM (Introduced by request of another party)

<a href="#">Sort by Date</a>		<b>Status Text</b>
1/14/2014	S	Pending Introduction.
1/15/2014	S	Introduced.
1/15/2014	S	Passed First Reading.
1/16/2014	S	Referred to WTL/PSM, JDL.
1/30/2014	S	The committee(s) on WTL/PSM has scheduled a public hearing on 02-07-14 1:15PM in conference room 225.
2/3/2014	S	The committee(s) on WTL/PSM has rescheduled its public hearing to 02-07-14 1:00PM in conference room 225.

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
WILLIAM J. AILA, JR.  
Chairperson**

**Before the Senate Committees on  
WATER AND LAND  
and  
PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**Friday, February 7, 2014  
1:00 PM  
State Capitol, Conference Room 225**

**In consideration of  
SENATE BILL 2116  
RELATING TO TORT LIABILITY**

Senate Bill 2116 proposes to amend Act 82, Session Laws of Hawaii (SLH) 2003 and also Act 170, SLH 2002, by deleting the sunset date of June 30, 2014, thus making permanent the liability protections provided by warning signs for outdoor recreation on public lands, and limited liability protection for State and county governments and county lifeguards. **The Department of Land and Natural Resources (Department) strongly supports this measure, but, as it relates to Act 82, asks that this Committee consider the language in Senate Bill 1007, Senate Draft 2, House Draft 1, which was passed by the House Judiciary Committee on Thursday, January 30, 2014.**

Senate Bill 1007, Senate Draft 2, House Draft 1 addresses the sunset date of Act 82, but also includes provisions that would clarify government's duty to warn where recreational activities such as rock climbing occur.

Since the passage of legislation in the form of Act 82, SLH 2003, and in the ensuing 11 years, the Department has initiated a comprehensive sign program that is deployed statewide in public recreational areas associated with parks and wilderness trails. These actions have resulted in a variety of critical outcomes and now institutionalized management practices associated with Act 82:

- The creation of a statewide risk assessment working group that established general design and placement standards for of warning signs and continues to review the placement of these signs and new design as warranted by conditions and exposure.

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

**ESTHER KIA'AINA**  
FIRST DEPUTY

**WILLIAM M. TAM**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

- The promulgation of Chapter 13-8, Hawaii Administrative Rules, for the Design and Placement of Warning Signs
- The approval process through the Board of Land and Natural Resources (Board) on the placement, and as warranted, the design of new warning signs.
- Sign inspection that includes records of the date of each sign location Board approval, installation, and the sign's condition over time.
- Over 400 Act 82 warning signs have been installed and are maintained by the Divisions of State Parks and Forestry and Wildlife, Na Ala Hele Trails and Access Program.

In addition to making Act 82 permanent after 11 years of departmental and county implementation, Senate Bill 1007, Senate Draft 2, House Draft 1 contains language that would allow for liability protection on public land where recreational activities such as rock climbing occur, with the posting of warning signs associated with exposure to hazards associated with this activity.

The public now has become accustomed to seeing the uniform, standard signs warning of potential exposure to hazardous natural conditions at managed trailheads and park entrances -- in addition to at the actual point of exposure -- across the State of Hawaii. This sign program strikes the balance between the government's duty to warn, and the public's responsibility to heed that warning and make an informed choice, before engaging in recreational activity.

**The Department also strongly supports Senate Bill 2116 as it relates to amending Act 170, SLH 2002** 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.

It is time to now make this warning management protocol and limited liability related to lifeguards permanent.

The Department supports both sections of this bill, the part which addresses Act 82 and the part which addresses Act 170; but, as it relates to Act 82, the Department prefers the language in Senate Bill 1007, Senate Draft 2, House Draft 1.



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

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**ON THE FOLLOWING MEASURE:**

**S.B. NO. 2116, RELATING TO TORT LIABILITY.**

**BEFORE THE:**

**SENATE COMMITTEES ON WATER AND LAND AND ON PUBLIC SAFETY,  
INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**DATE:** Friday, February 7, 2014

**TIME:** 1:00 p.m.

**LOCATION:** State Capitol, Room 225

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

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Chairs Solomon and Espero and Members of the Committees:

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

The purpose of this bill is to make permanent the liability protections in lifeguard cases and liability protections for warning signs for outdoor recreation on public lands. At present, the liability protections provided in Act 170, Session Laws of Hawaii (SLH) 2002, and Act 82, SLH 2003, will sunset on June 30, 2014.

There are two other nearly identical bills, S.B. No. 2108 and S.B. No. 2112, being heard by these Committees at the same time.

The limited liability protection provided in Act 170 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, 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 preventative actions and rescues by lifeguards each year on every state beach park on Oahu, Maui, Kauai, and Hawaii Island, preventative actions and rescues 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 preventative actions and rescues each year. At Hawaii Island's Hapuna Beach, from 2009 – 2013, there have been an approximate average of 18,000 preventative actions and rescues each year. At Oahu's Keawaula Beach, from 2008 – 2012, there have been an approximate average of 23,000 preventative actions and rescues each year.

If Act 170 is allowed to sunset, like Kauai, each of the other counties may not be able to keep lifeguard coverage at these beaches putting the safety of the hundreds of thousands of yearly visitors to these beaches at risk. In the past, the Hawaii Association for Justice (HAJ) has opposed this and similar bills and indicated that the State could simply purchase insurance for the lifeguards. However, if the State were required to include the additional cost of purchasing insurance for these beaches, the State would have to pay nearly \$3,000,000 a year in order to keep the lifeguards on its beaches. This yearly cost would not be feasible.

Act 170 is a life-saving measure that deserves to be made permanent.

The bill also seeks to make Act 82 permanent. Act 82 had been successful in improving the safety of public lands for public users by establishing a comprehensive statewide system in which hazards thereon are identified and evaluated for the placement of appropriate warning signs and devices.

The system includes the design of state-of-the-art warning signs, evaluation of placement of those signs, and signage maintenance and monitoring guidelines. If the governmental entity proposes its plan for the warning of a dangerous condition for consideration by the Risk Assessment Working Group, and approval by the Board of Land and Natural Resources, the governmental entity is afforded a conclusive presumption that the hazard-appropriate sign posted provides legally adequate warning of the dangerous condition of which it warns.

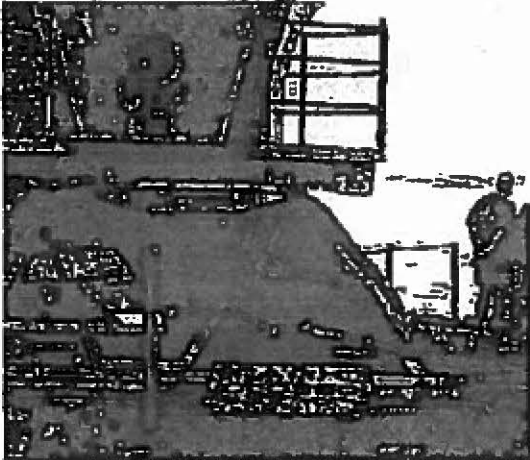
The enactment of Act 82 has spurred the State and counties to be more proactive in their hazard identification and risk assessment. The law has also encouraged the uniformity of signs statewide.

The need to preserve the system that the law established is even more imperative now, as Hawaii continues to maintain its status as, and grow, as a destination for visitors seeking outdoor activities, some of which may be very risky.

If it is allowed to sunset on June 30, 2014, the counties and State may gradually lapse and revert to use of more island specific and idiosyncratic signage and placement. Eventually, the comprehensive statewide hazard evaluation and warning system will dissolve to the detriment of our visitor and residents. Act 82 must be made permanent.

However, another bill that also deals with making Act 82 permanent, S.B. No. 1007, S.D. 2, Proposed H.D. 1, was recently passed by the House Committee on Judiciary. That bill contains a much needed amendment to the law. For your review and consideration, we have attached a copy of S.B. No. 1007, S.D. 2, Proposed H.D. 1, as well as the testimony of the Department of the Attorney General in support of that measure.

We respectfully request that this measure be passed with the amendments relating to Act 82 contained in S.B. No. 1007, S.D. 2, Proposed H.D. 1.



kee LIFEGUARD.jpg

Chris D'Angelo/The Garden Island

A crowd gathers at the Kee Beach lifeguard tower last week to catch a glimpse of a massive winter swell.

| 1 comment

LIHUE — Last week, an 87-year-old Washington man was sitting high above the water's edge at Kee Beach watching the massive winter swell when a powerful wave washed ashore and swept him out to sea.

Thanks to a fast-acting lifeguard, the man narrowly escaped becoming Kauai's first statistic of 2014 — as well as the first drowning victim at Kee since 2008.

Were it not for Act 170, the lifeguard tower at Kee likely wouldn't exist, and the lifeguard who saved the man wouldn't have been in the area.

Act 170 provides the county with legal immunity — except in cases of gross negligence — so that it can provide lifeguard services at state beaches. But a sunset provision built into the law means it is due to expire, once again, on June 30.

A number of bills have been introduced this legislative session that seek to lift the sunset date. County spokeswoman Beth Tokioka said ensuring that happens is a "high priority for all of the counties."

"We will be actively supporting this measure throughout the session," she said.

Senate Bill 2783, its companion House Bill 2234 and others have a simple goal — repeal the sunset date and make permanent the law.

"This limited liability protection was made necessary because some counties would not provide lifeguard services at state beach parks, due to the fear of potential liability 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 snorkeling.

"That day's flight to Phoenix then had to be canceled because of lack of crew, and the U.S. Air incoming flight the next day not only brought in back-up crew, but also the wife and grief-stricken 8-year-old son of

the deceased pilot," Downs wrote in his letter.

"All of us who saw the 8-year-old boy, including our airport personnel, will never forget his suffering — and in fact this tragedy has spurred our Lihue Airport Manager to install an ocean safety video that runs at our baggage claim areas."

• Chris D'Angelo, environmental reporter, can be reached at 245-0441 or [cdangelo@thegardenisland.com](mailto:cdangelo@thegardenisland.com)

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- **ARTICLE:** Above the call of duty
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- **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 Tokioka, Lifeguard Services, Bernard Carvalho Jr.,

- 1 Keep it Clean. Please avoid obscene, vulgar, lewd, racist or sexually-oriented language.
- 2 Don't Threaten or Abuse. Threats of harming another person will not be tolerated. AND PLEASE TURN OFF CAPS LOCK.
- 3 Be Truthful. Don't knowingly lie about anyone or anything.
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- 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.

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# A BILL FOR AN ACT

RELATING TO PUBLIC LAND LIABILITY.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The purpose of this Act is to extend coverage  
2 and make permanent liability protections for warning signs for  
3 outdoor recreation on public lands by amending Act 82, Session  
4 Laws of Hawaii 2003, as amended.

5           Act 82, which will sunset on June 30, 2014, established a  
6 process by which a legally adequate warning system could be  
7 developed for improved public lands. The legislature finds that  
8 Act 82 has increased public safety and protects the State and  
9 counties from unlimited liability arising out of recreational  
10 activities on public lands and, therefore, should be made  
11 permanent.

12           Additionally, this Act extends the conclusive presumption  
13 of signage as legally adequate warning of dangerous conditions  
14 to "non-natural" conditions on unimproved land.

15           SECTION 2. Act 82, Session Laws of Hawaii 2003, as amended  
16 by section 1 of Act 144, Session Laws of Hawaii 2008, is amended  
17 by amending section 2 to read as follows:





1 "SECTION 2. Chapter 663, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4 "PART . LIMITATIONS ON PUBLIC ENTITY LIABILITY IN ACTIONS  
5 BASED UPON DUTY TO WARN OF NATURAL AND NON-NATURAL CONDITIONS

6 §663- Definitions. As used in this part:

7 "Board" means the board of land and natural resources.

8 "Improved public lands" means lands designated as part of  
9 the state park system, parks, and parkways under chapter 184, or  
10 as part of a county's park system, and lands which are part of  
11 the Hawaii statewide trail and access system under chapter 198D,  
12 excluding buildings and structures constructed upon such lands.  
13 For purposes of this part, "improved public lands" excludes  
14 ocean and submerged lands.

15 "Public entity" means "government entity" as defined in  
16 section 663-10.5.

17 §663- Conclusive presumptions relating to duty of  
18 public entities to warn of dangers on ~~improved~~ public lands.

19 (a) A sign or signs warning of dangerous natural conditions on  
20 improved public lands or of dangerous non-natural conditions on  
21 unimproved public lands shall be conclusively presumed to be  
22 legally adequate warning of the dangerous ~~natural~~ conditions





1 of which the sign or signs warn, if the State or a county posts  
2 a sign or signs warning of the dangerous [~~natural~~] conditions  
3 and the design and placement of the warning sign or signs are  
4 approved by the board. The board shall consult the risk  
5 assessment working group established by chapter 171, prior to  
6 approving the design and placement of a warning sign pursuant to  
7 this section.

8 (b) The State or a county may submit to the board a  
9 comprehensive plan for warning of dangerous natural conditions  
10 at a particular area of improved public lands[-] or of dangerous  
11 non-natural conditions on unimproved public lands. The board  
12 shall review [~~the~~] any plan for adequacy of the warning as well  
13 as the design and placement of the warning signs, devices, or  
14 systems. The board shall consult with the risk assessment  
15 working group before approving [~~the~~] a plan. The risk  
16 assessment working group shall seek public comment on [~~the~~] any  
17 plan. In the event that the board after consulting with the  
18 risk assessment working group approves [~~the~~] a plan for a  
19 particular area of improved public lands[-] or unimproved public  
20 lands, and the State or a county posts the warnings provided for  
21 in the approved plan, then the warning signs, devices, or  
22 systems shall be conclusively presumed to be legally adequate



1 warning of [~~all~~] the dangerous [~~natural~~] conditions [~~on the~~  
2 ~~improved public lands.~~] of which the sign or signs warn.

3 (c) The State or a county shall have no duty to warn of  
4 dangerous natural conditions on unimproved public lands.

5 (d) If a warning sign, device, or system is posted or  
6 established in accordance with this section on unimproved public  
7 lands [~~r~~] warning of dangerous natural conditions, the posting or  
8 establishment of the warning sign, device, or system shall not  
9 create a duty on the part of the State or county to warn of  
10 other dangerous natural conditions on unimproved public lands or  
11 to place or establish an additional warning sign, device, or  
12 system in other locations on the unimproved public lands.

13 (e) The State and the counties shall implement and  
14 maintain a sign inspection program in which a park caretaker or  
15 other authorized person conducts documented inspections of all  
16 signs in the park or trail area or particular area of unimproved  
17 public land on a quarterly or more frequent basis.

18 Records shall be kept under the sign inspection program  
19 which document the date of each sign inspection and whether the  
20 particular sign inspected was in place, free of vandalism, and  
21 legible. The State and the counties shall annually provide the



1 board with a copy of the documentation of all sign inspections  
2 under the sign inspection program.

3 The conclusive presumption provided by this section shall  
4 continue for any sign posted pursuant to this section for a  
5 period of one hundred twenty days after the last inspection that  
6 documented that the sign was in place and legible, after which  
7 the presumption shall lapse until the time at which the sign is  
8 subsequently inspected and documented to be in place and in  
9 legible condition.

10 In any circumstance in which the conclusive presumption  
11 lapses because of the lack of a documented inspection, the  
12 presumption shall be reestablished if the State or county, as  
13 the case may be, proves by a preponderance of the evidence that  
14 at the time of the incident at issue, the sign was in place and  
15 in legible condition.

16 (f) The board shall adopt rules pursuant to chapter 91  
17 establishing standards to guide the department of land and  
18 natural resources and the risk assessment working group in the  
19 general design and placement of warning signs; provided that  
20 chapter 91 shall not apply to any other process or action  
21 undertaken pursuant to this part.



1 (g) The State and the counties shall implement an accident  
2 reporting and record keeping program whereby all known accidents  
3 in park and trail areas and particular areas of unimproved  
4 public land where non-natural conditions exist are documented on  
5 an accident report form, and all such accident reports are kept  
6 on a permanent basis. The risk assessment working group shall  
7 review and use accident reports kept as part of this program as  
8 part of its consultation to the board under this section."

9 SECTION 3. Act 82, Session Laws of Hawaii 2003, is amended  
10 by amending section 171- , Hawaii Revised Statutes, in  
11 section 3 to read as follows:

12 "§171- Risk assessment working group. [(+)] There is  
13 established a risk assessment working group that shall be  
14 administratively attached to the department. The risk  
15 assessment working group shall provide consultation to the board  
16 regarding the design and placement of warning signs, devices, or  
17 systems on improved public lands as defined in section 663-  
18 and unimproved public lands, including any comprehensive plan  
19 submitted by the State, a county, or managing entity, to the  
20 board for approval. The risk assessment working group shall  
21 consist of the following members, who shall serve without  
22 compensation:



- 1 (1) The chairperson of the board, or designee;
- 2 (2) The mayor of each county, or designee;
- 3 (3) The administrators of the department's division
- 4 of forestry and wildlife and the division of
- 5 state parks, or their designees;
- 6 (4) The attorney general, or designee; and
- 7 (5) A person appointed by the chairperson of the
- 8 board knowledgeable in warning sign design."

9 SECTION 4. Act 82, Session Laws of Hawaii 2003, as amended  
10 by section 5 of Act 152, Session Laws of Hawaii 2007, as amended  
11 by section 3 of Act 81, Session Laws of Hawaii 2009, is amended  
12 by amending section 8 to read as follows:

13 "SECTION 8. This Act shall take effect on July 1, 2003[  
14 ~~and shall be repealed on June 30, 2014~~]."

15 SECTION 5. Statutory material to be repealed is bracketed  
16 and stricken. New statutory material is underscored.

17 SECTION 6. This Act shall take effect on June 29, 2014.



**S.B. NO.** 1007  
S.D. 2  
H.D. 1  
PROPOSED

**Report Title:**

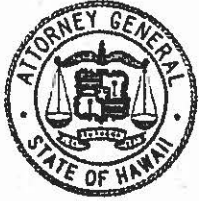
Public Land Liability

**Description:**

Makes permanent liability protections for warning signs for outdoor recreation on public lands. Expands notification requirements to include dangerous non-natural conditions on unimproved public lands. Effective June 29, 2014. (PROPOSED SB1007 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*





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

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**ON THE FOLLOWING MEASURE:**

**S.B. NO. 1007, SD 2, PROPOSED HD 1 RELATING TO PUBLIC LAND LIABILITY.**

**BEFORE THE:**

**HOUSE COMMITTEE ON JUDICIARY**

**DATE:** Thursday, January 30, 2014

**TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Robin M. Kishi, Deputy Attorney General

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**Chair Rhoads and Members of the Committee:**

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is two-fold. First, and most significantly, the bill will make Act 82, Session Laws of Hawaii 2003, permanent. Act 82 had been successful in improving the safety of public lands for public users by establishing a comprehensive statewide system in which hazards thereon are identified and evaluated for the placement of appropriate warning signs and devices.

The system includes the design of state-of-the-art warning signs, evaluation of placement of those signs, and signage maintenance and monitoring guidelines. If the governmental entity proposes its plan for the warning of a dangerous condition for consideration by the Risk Assessment Working Group, and approval by the Board of Land and Natural Resources, the governmental entity is afforded a conclusive presumption that the hazard-appropriate sign posted provides legally adequate warning of the dangerous condition of which it warns.

The enactment of Act 82 has spurred the State and counties to be more proactive in their hazard identification and risk assessment. The law has also encouraged the uniformity of signs statewide.

Act 82 must be made permanent. The need to preserve the system that the law established is even more imperative now, as Hawaii continues to maintain its status as, and grow, as a destination for visitors seeking outdoor activities, some of which may be very risky.

If it is allowed to sunset on June 30, 2014, the counties and State may gradually lapse and revert to use of more island specific and idiosyncratic signage and placement. Eventually, the comprehensive statewide hazard evaluation and warning system will dissolve to the detriment of our visitor and residents.

Second, the proposed amendments to section 2 of Act 82 will extend the conclusive presumption that posted Act 82 signage as legally adequate warning of dangerous conditions to “non-natural” conditions on unimproved lands. The State has already begun to post Act 82 signs on unimproved lands on which both natural and non-natural conditions have been identified. However, at present, the law does not afford the State a conclusive presumption even when appropriate signs are posted.

For example, the Department of Land and Natural Resources (DLNR) posted Act 82, and other, warning signs at the head of and along an unofficial trail that leads to a cliff face in Mokuleia that rock climbers have been using for a number of years. Unfortunately, however, notwithstanding DLNR’s efforts, under the wording contained in the current law, the State is not given a presumption that it has provided adequately warning of the dangers at this site. DLNR also posted similar signs along a path that leads to at a smaller cliff face on unimproved land in Makapuu that is also used by rock climbers.

By amending Act 82 to include the proposed wording, the law will encourage the State and counties to be proactive in identifying and evaluating non-natural dangerous conditions on unimproved lands. The identification and evaluation of non-natural dangerous conditions on unimproved lands may become increasing more important and, therefore, should be encouraged, as both visitors and residents alike expand their recreational activities beyond the park lands and official statewide trail system.

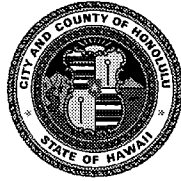
We respectfully and strongly recommend that this bill be passed.



DEPARTMENT OF THE CORPORATION COUNSEL  
**CITY AND COUNTY OF HONOLULU**

530 SOUTH KING STREET, ROOM 110 \* HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



DONNA Y. L. LEONG  
CORPORATION COUNSEL

SHERYL L. NICHOLSON  
FIRST DEPUTY CORPORATION COUNSEL

February 5, 2014

The Honorable Malama Solomon, Chair  
and Members of the Committee on Water and Land  
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 Solomon, Chair Espero, and Committee Members:

Subject: Senate Bill 2116, Relating to Tort Liability

The Department of the Corporation Counsel of the City and County of Honolulu strongly supports S.B. 2116, which would repeal the June 30, 2014 sunset dates of Act 170, Session Laws of Hawaii ("SLH") 2002 ("Act 170") and Act 82, SLH 2003, as amended ("Act 82").

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.

The Honorable Malama Solomon, Chair, and  
Members of the Committee on Water and Land  
The Honorable Will, Espero, Chair, and  
Members of the Committee on Public Safety,  
Intergovernmental and Military Affairs  
February 5, 2014  
Page 2

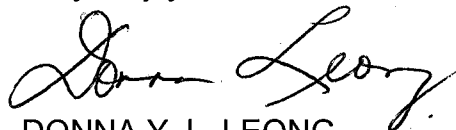
Act 82 provides limited liability protection to the State and counties with regard to dangerous natural conditions on improved public lands, including state and county parks and trails, by creating a conclusive presumption that signs warning of the dangerous condition that are posted in accordance with Act 82 are legally adequate to warn of the dangerous condition. It strikes a rational balance between the interests of recreational users seeking access to public lands and government's need to minimize liability resulting from dangerous conditions that may exist on these land and that are beyond its ability to prevent or control.

Repeal of the sunset dates of Acts 170 and 82 will give the State and the counties the certainty and assurances needed to keep parks open for public use by reducing the threat of unlimited government exposure for conditions on public lands that are outside the State's and counties' ability to prevent or control, and makes 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. Repealing the sunset provisions 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 S.B. 2116.

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

Very truly yours,

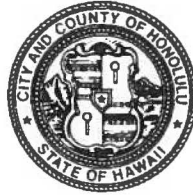


DONNA Y. L. LEONG  
Corporation Counsel

DYLL:ey

HONOLULU EMERGENCY SERVICES DEPARTMENT  
**CITY AND COUNTY OF HONOLULU**

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1869  
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KIRK CALDWELL  
MAYOR

MARK K. RIGG  
DIRECTOR

IAN T.T. SANTEE  
DEPUTY DIRECTOR

February 3, 2014

The Honorable Malama Solomon, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
Committee on Water and Land  
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: SB 2116, Relating to Liability

Dear Chairs Solomon and Espero, Vice-Chairs Galuteria and Baker and Members:

The Honolulu Emergency Services Department, Ocean Safety Division, is in strong support of SB 2116.

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).**"

"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. There are an average of 10,000 people who arrive at Honolulu International

airport everyday, 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.

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.

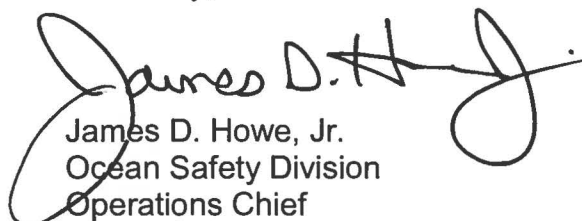
This begs the question of how a beach lifeguard can both ensure the life safety of persons on the beach and in the water and simultaneously meet the legal requirement of *KACZMARCZYK v. CITY AND COUNTY OF HONOLULU*.

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

## 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>

KACZMARCZYK v. CITY AND COUNTY OF HONOLULU NO. 7191.

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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.

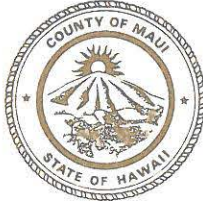
The plaintiffs appeal.

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.



ALAN M. ARAKAWA  
MAYOR



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e-mail: mayors.office@mauicounty.gov

## OFFICE OF THE MAYOR

Ke'ena O Ka Meia

COUNTY OF MAUI – Kalana O Maui

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

BEFORE THE SENATE  
COMMITTEE ON WATER AND LAND  
AND  
COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

Friday, February 7, 2014, 1:15 p.m., Conference Rm. 225

#### SENATE BILL 2116 RELATING TO TORT LIABILITY

The Honorable Malama Solomon, Chair  
The Honorable Brickwood Galuteria, Vice Chair  
And Members of the Senate Committee on Water & Land

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

Thank you for this opportunity to testimony in **strong support** of SB 2116.

The purpose of SB 2116 is to amend Act 170, Session Laws of Hawaii (SLH) 2002, as amended by Act 152, SLH 2007, as amended by Act 81, SLH 2009, by repealing the June 30, 2014 "sunset" date. 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 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.

As Mayor of Maui County, I support SB 2116 for the following reasons:

#### **1. Passing SB 2116 will Save Lives and Reduce Injuries**

Our beaches are a place where local families and visitors from around the world go to 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.

There is no doubt that removal of lifeguards from our beaches would result in an adverse impact to the public's health, safety and welfare. It is reported that about 4,000 people die from drowning in the United States each year. Most drownings are preventable and without lifeguards this figure would be much higher. For instance, many people assume



that a drowning person is easy to spot due to clear signs of distress. However, reports on how people drown show that children and adults often times are unable to wave their arms or call out when in distress in the water and tend to drown quietly and quickly – submerging in as little as 20 to 60 seconds. While such scenarios are disturbing to think about, we must understand that without trained lifeguards on duty many more people would likely drown.

Our lifeguards are also trained in first aid, CPR, and other rescue techniques and *prevent* more drownings simply by understanding the currents, waves, and other dangers and urging people to swim in safer areas. 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 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, I would also ask that you 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 U.S. 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.”
- 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, 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 the reasons stated in this testimony, I join the mayors and councilmembers of our neighboring Counties in support of SB 2116 and urge you support the continued partnership between the state and counties whose common goal is to promote and enhance public safety.

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 Water and Land**  
**Senate Committee on Public Safety, Intergovernmental and Military Affairs**  
**Re: SB 2108, SB 2112 and SB 2116**  
January 28, 2014

Aloha from the Garden Island!

As 50-foot waves crashed upon our north and west side beaches last month, 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 via Act 170 is absolutely essential to the success of our ocean safety program. Since 2008, Kaua'i has stationed lifeguards at Kē'ē beach as a result of this legislation. Prior to 2008, there were eight drownings at Kē'ē beach. Since 2008, there have been zero drownings. Furthermore, our lifeguards have conducted 233 "saves" at Kē'ē since 2008. How many of these individuals might have drowned if it weren't for our lifeguards on duty? And how many drownings or "saves" were prevented via the 84,000 educational interactions our lifeguards have had with beachgoers at Kē'ē since 2008? Just last week during the high surf event a man was rescued by County lifeguards in waters off of Kē'ē – which had officially been closed for the day.

This measure is included in the Kaua'i County legislative package, the Hawai'i Council of Mayor's (HCOM) legislative package, and the Hawai'i State Association of Counties (HSAC) legislative package. The counties are completely united in their support of this important measure.

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

Respectfully submitted,



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

**Bernard P. Carvalho, Jr.**  
Mayor



**Robert F. Westerman**  
Fire Chief

**Nadine K. Nakamura**  
Managing Director

**John T. Blalock**  
Deputy Fire Chief

**KAUA'I FIRE DEPARTMENT**  
**County of Kaua'i, State of Hawai'i**  
4444 Rice Street, Suite 315, Līhu'e, Hawai'i 96766  
TEL (808) 241-4980 FAX (808) 241-6508

February 4, 2014

The Honorable Malama Solomon, Chair  
Committee on Water and Land

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

Hawaii State Senate  
Conference Room 225  
State Capitol  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Solomon and Espero:

**Subject: S.B. 2116 Relating to Tort Liability**

I am Robert Westerman, Fire Chief of the Kauai Fire Department (KFD). The KFD strongly supports S.B. 2116, which proposes to delete the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.

Passage of S.B. 2116 would make our beaches accessible and safer by allowing counties to continue posting lifeguards at state beach parks without the threat of costly litigation for conditions or events that are outside the county's control. Act 170 protects lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. We support removal of the sunset date to ensure benefits of the act can continue.

What is happening on Kauai is devastating, in 2013 in terms of drownings, Kauai suffered through 14 ocean related drownings. Ke'e is one of the most dangerous state beaches under State jurisdiction. Current legislation, which is scheduled to sunset at the end of June, allows the County to provide lifeguard services at State beaches such as Ke'e.

The County has stationed lifeguards at Kē'ē since 2008 with zero drowning's because of the present law, and prior to this between 1970 and 2008 there were eight drowning's at Ke'e. Additionally the lifeguards at Ke'e saved the life of a state employee just after

Honorable Chair Malama Solomon  
Committee on Water and Land

Honorable Chair Will Espero  
Committee on Public Safety, Intergovernmental and Military Affairs  
Page 2

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 S.B. 2116.

Please call me at (808) 241-4980 should you have any questions regarding this matter.

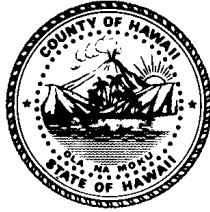
Sincerely,



Robert Westerman  
Fire Chief, County of Kaua'i

RFW/eld

**William P. Kenoi**  
*Mayor*



**Walter K.M. Lau**  
*Managing Director*

**Randall M. Kurohara**  
*Deputy Managing Director*

## County of Hawai'i Office of the Mayor

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KONA: 74-5044 Ane Keohokalole Hwy., Bldg. C • Kailua-Kona, Hawai'i 96740  
(808) 323-4444 • Fax (808) 323-4440

February 7, 2014

The Honorable Malama Solomon, Chair  
And Members of the Senate Committee on  
Water and Land

The Honorable Will Espero, Chair  
And Members of the Senate Committee on  
Public Safety, Intergovernmental and Military Affairs  
Hawai'i State Capitol, Room, 225  
415 South Beretania Street  
Honolulu, Hawai'i 96813

Re: Senate Bill 2116, RELATING TO TORT LIABILITY  
Senate Bill 2108, RELATING TO LIABILITY  
Senate Bill 2112, RELATING TO LIABILITY

Aloha, Chair Solomon, Chair Espero and Committee Members:

Mahalo for this opportunity to offer our strong support for repealing the sunset date and making permanent the law shielding county lifeguards from liability. At present, the liability protections provided in Act 170 will sunset on June 30, 2014.

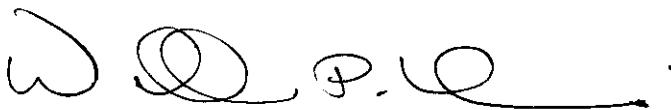
All four counties stand united in support of this issue and it is a priority for the Hawai'i Council of Mayors (HCOM). Safety to beachgoers will be increased by allowing the counties to place lifeguards at state beach parks, without the threat of costly, unnecessary and unwanted litigation arising from 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 Malama Solomon  
The Honorable Will Espero  
page 2  
February 7, 2014

Mahalo for this opportunity to express our strong support to make permanent 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 flourish extending to the right.

William P. Kenoi  
MAYOR

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. NO. 2116**

Date: Friday, February 7, 2014  
Time: 1:00 pm

To: Chairperson Malama Solomon and Chairman Will Espero and Members of the Senate Committee on Water and Land and 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) in OPPOSITION to S.B. No. 2116, Relating to Liability.

This bill is similar to SB 2108. The purpose of this bill is to make Act 82, Session Laws of Hawaii, 2003, as amended, permanent. Currently, Act 82 regarding certain protections for the state and counties on improved and unimproved lands is scheduled to sunset on June 30, 2014, and this was enacted by the legislature with the knowledge of all of the parties concerned, including the state and counties. The sunset provision in the original bill passed in 2003 was included to allow DLNR to work with various user groups regarding the design and placement of warning signs and the time for an evaluation of this measure after sufficient experience has been obtained. The sunset date was extended several times and during the 2009 legislative session, the conference committee, in a bill pertaining to several prior Acts pertaining to lifeguards and public recreational lands, determined that it would be best to extend the sunset date to 2014 for Act 82.

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. Further, Act 82 required that the state and counties implement an accident reporting and record keeping program and HAJ feels that the legislature should determine whether this has been done and is working properly. There are also duties imposed on the risk assessment working group created by Act 82. During the 2013 session there were attempts to amend Act 82 and there are efforts to do so this session as well. In light of these attempts HAJ feels that the legislature should not pass this bill.

We feel that the legislature should consider extending the sunset date to fully assess the impact of this law to a time when the legislature can make it permanent or modify it according to the information presented.

The other purpose of this bill is to make Act 170, Session Laws of Hawaii, 2002, as amended, permanent. Act 170 (2002) provides immunity for negligent acts of lifeguards. It is one of the few instances where negligent conduct by government employees is sanctioned and allowed, and where members of the public harmed by such negligence is denied any right of redress whatsoever. Accordingly, Act 170 contained a sunset provision to provide an adequate demonstration period to study and provide data on its effectiveness and value. The legislature would then have sufficient objective data to decide whether to make this extraordinary exception for negligent conduct permanent.

The sunset provision was extended in 2007 because the program to place lifeguards at state beach parks was slow in developing. It was pointed out that the

legislature was being asked to make the program permanent before any lifeguards were stationed at the particular state beach park on Kauai. The sunset was again extended in 2009 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 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.

When the law was passed in 2002 the State and counties were concerned about the high cost of insurance to protect them in the event of any negligent acts by lifeguards. Since that time the situation with the availability and cost of insurance has changed and HAJ feels that it is now a viable option for the state and counties to pursue.

No reason has been given why the June 2014 sunset date should not be honored and HAJ questions where sufficient data has not been gathered and presented to justify abandoning the current sunset date.

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

**William P. Kenoi**  
Mayor



**Darren J. Rosario**  
Fire Chief

**Renwick J. Victorino**  
Deputy Fire Chief

**County of Hawai'i**  
**HAWAII FIRE DEPARTMENT**  
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720  
(808) 932-2900 • Fax (808) 932-2928

February 4, 2014

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

The Honorable Malama Solomon, Chair  
Committee on Water and Land  
The State Senate  
State Capitol, Room 210  
Honolulu, Hawai'i 96813

Dear Chairs Espero and Solomon:

**Subject: S.B. 2116 Relating to Tort Liability**

I am Darren J. Rosario, Fire Chief of the Hawai'i Fire Department of the County of Hawai'i (HCFD). The HCFD supports S.B. 2116, which proposes to delete the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.

S.B. 2116 provides the residents and visitors to the state beach parks with a safe environment to take in the beauty of Hawai'i. S.B. 2116 allows the county governments, such as the County of Hawai'i, to provide lifeguards on state beaches without the threat of litigation for natural conditions beyond reasonable county control. Act 170 protects the lifeguard services provided to the residents and visitors of our State.

During the time period of 2009-2012, it was noted that 5% of fatal resident injuries were due to drowning. 80% of those were drowning occurring in the ocean. 15% of fatal visitor injuries were due to drowning. 86% of those occurred in the ocean. During this same period, 33% of spinal cord injuries were related to three ocean activities (body surfing, body boarding, and being struck by a wave). There were a total of 151 documented spinal cord injuries in the State of Hawai'i. Of this total, 13 spinal cord injuries occurred at the Hāpuna Beach State Park on Hawai'i Island.

During a 10 year study from 2003-2012, a total of 538 drowning incidents were reported statewide. 100 total drawings occurred on Hawai'i Island. 56% of those drowning incidents were residents.



The Honorable Will Espero  
The Honorable Malama Solomon, Chair  
February 4, 2014  
Page 2

The role of a Water Safety Officer (lifeguard) is an arduous task. Our personnel at the Hāpuna State Beach Park work very hard at protecting our visitors and residents. It is imperative that these individuals are protected against any liability occurring in providing optimum services within the scope of their work. The following chart outlines the work provided at the Hāpuna State Beach Park on the Island of Hawai'i;

<u>YEAR</u>	<u>TOTAL BEACH ATTENDANCE</u>	<u>PREVENTATIVE ACTIONS</u>	<u>RESCUES</u>
2009-2010	593,943	27,744	134
2010-2011	641,039	26,479	146
2011-2012	587,339	12,813	46
2012-2013	602,277	22,151	63
2013-present	310,909	22,657	29

During the 2011 Legislative Session, the Act 152 Task Force Report concluded that we have been successful in increasing public safety with programs developed under Acts 82, 170, and 190. This includes having the county agencies provide lifeguard services at state beach parks. This same report provided testimony that county lifeguards on state beaches save lives. This included a uniform signage program designed out of the requirements of Act 82. The Task Force recommended that the sunset dates for Acts 82 and 170 be repealed. Please take this report into consideration. It would be difficult for the HCFD to continue staffing of county lifeguards at the Hāpuna State Beach Park should this measure fail.

The HCFD strongly urges and request your committee's support on the passage of S.B. 2116.

I am available at (808) 640-2439 should you or your committee members have any questions for me regarding S.B. 2116.

Sincerely,



DARREN J. ROSARIO  
Fire Chief  
SFC Member

February 4, 2014

The Honorable Malama Solomon, Chairman  
Committee on Water and Land  
Senate  
State Capitol, Room 225  
Honolulu, Hawai'i 96813

Dear Chair Solomon;

Subject: SB 2116 Relating to Liability

My name is Gerald Kosaki and I work as a Battalion Chief for the Hawaii Fire Department on the Big Island of Hawaii. As part of my duties, I oversee the Ocean Safety division. I am also a member of the state Hawaiian Lifeguard Association.

I am in support of SB 2116 in continuing to protect our lifeguards who work at the Hapuna Beach. We currently have six full time lifeguards assigned there providing coverage seven day a week, including every holiday.

Hapuna beach is one of the most popular beaches in Hawaii averaging over 600,000 people who visit there annually. Our lifeguards currently cover three towers there and perform preventative actions for approximately 22 thousand patrons annually. In spite of these preventative actions, they still perform an average of 100 rescues annually. As a result, we only had 2 drowning cases reported, one in 2009 and one in 2011.

From 2001 to 2006, Hapuna beach was the number one location for spinal injuries in the state, yes even more than Sandy beach or Waimea Bay. Since 2006, Hapuna still remained in the top 10 beaches where spinal injuries occurred. This is a major concern because if someone with a spinal injury is not attended to immediately or handled improperly, they could become partially or completely disabled, or in the worse case scenario, become a fatality.

As we all know, every county is financially challenged, so if this measure should fail, lifeguard services and ultimately public safety may be jeopardized. Thank you for your consideration.

Sincerely,

Gerald Kosaki  
Battalion Chief, Hawaii Fire Department



**STATE OF HAWAII**  
**DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8842 / Fax: (808) 586-9099  
Email: [dhir.director@hawaii.gov](mailto:dhir.director@hawaii.gov)

February 4, 2014

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

The Honorable Malama Solomon, Chair  
Committee on Water and Land  
The State Senate  
State Capitol, Room 210  
Honolulu, Hawaii 96813

Dear Chairs Espero and Solomon:

Subject: S.B. 2116 Relating to Tort 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 S.B. 2116, which proposes to delete the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted. We also support the intentions of S.B. 2108 and S.B. 2112, which are similar to S.B. 2116.

The passage of S.B. 2116 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 Honorable Will Espero, Chair  
The Honorable Malama Solomon, Chair  
Page 2  
February 4, 2014

The benefits of the act were documented in the Report of the Task Force Established by A 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 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 S.B. 2116.

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

Sincerely,



MANUEL P. NEVES  
Chair

MPN/LR:clc



**KAUAI**

*Chamber  
of  
Commerce*

February 4, 2014

Honorable Senator Malama Solomon, Chair, Brickwood Galuteria, Vice Chair & Members  
Committee on Water & Land and  
Honorable Senator Will Espero, Rosalyn H. Baker, Vice Chair & Members  
Committee on Public Safety, Intergovernmental and Military Affairs  
The Senate  
Honolulu Hawaii 96813

Dear Chair Solomon, Vice Chair Galuteria, Chair Espero and Vice Chair Baker, and Members:

RE: SB 2116 Relating to Tort Liability

Aloha! My name is Randy Francisco, President/CEO, Kauai Chamber of Commerce. The Chamber represents ~450+ members, 600 representatives and over 6,000 employees. The Chamber is writing in **Support of SB 2116** which deletes the sunset date for the liability exception shielding county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.

The recent high waves in Hawaii which were covered in the news worldwide once again remind us of the importance of the ocean and ocean recreation industry as an important part of our economy and the need to be vigilant in saving lives and saving families from despair and a loss of life and or limb. This industry contributes nearly \$1 billion to our economy in direct and in-direct economic multiplier effects. Thus, it is equally imperative that we do everything we can as stakeholders, taxpayers, residents, and, even on behalf of our sometimes naive visitors to insure that not one life or limb is lost as a result of the ocean and, sometimes, ill-preparedness of water users.

The County of Kauai has taken many, many positive and proactive steps in order to address the increase in drownings and other dangerous situations which occur as a result of both residents and visitors sometimes unknowingly being in or near the waters' edge. Programs initiated by public-private partnerships such as the Kauai Lifeguard Association & KONG Radio Group and Hawaii Tourism & Lodging Association – Kauai Chapter have provided much-needed funds in order to support our county's lifeguards in their proactive efforts to save, prevent and educate ocean recreation users. The Kapaa Rotary Club provided educational videotapes for arriving passengers at the Lihue airport in order to inform them about being responsible visitors both on land and in the water. The highly successful Junior Lifeguard and Keiki Junior Lifeguard programs under the auspices of the Kauai Fire Department-Ocean Safety Bureau are great examples of teaching youth at an early age of the importance of ocean safety and awareness. For 9 years since 2004, the Junior Lifeguard program has garnered first place in the Hawaii Junior Lifeguard Championships.

Our request on behalf of the members and people of Kauai, both residents and visitors alike is for you to continue this shared partnership and *kuleana* in supporting the counties of Hawaii in making permanent and into law the liability protections for the actions of the lifeguards --- statewide. The guards are both lifeguards and lifesavers and we need your support to insure that all of us at a statewide level can enjoy the benefits of these important public safety officials and the waters which we are renowned for which supports our state's number one industry.

Should I be of any further assistance, please do not hesitate to contact me directly at 245-7363. Mahalo Nui Loa and Aloha,

Randall Francisco  
President/CEO

P.O. Box 1969, Lihue, HI 96766 • Ph: (808) 245-7363 • Fax: (808) 245-8815  
email: [info@kauaichamber.org](mailto:info@kauaichamber.org) • [www.kauaichamber.org](http://www.kauaichamber.org)



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WTLTestimony](#)  
**Cc:** [gotor005@hawaii.rr.com](mailto:gotor005@hawaii.rr.com)  
**Subject:** Submitted testimony for SB2116 on Feb 7, 2014 13:00PM  
**Date:** Thursday, February 06, 2014 10:14:49 AM  
**Attachments:** [Act 170 Testimony](#)

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**SB2116**

Submitted on: 2/6/2014

Testimony for WTL/PSM on Feb 7, 2014 13:00PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Ralph Goto	Hawaiian Lifeguard Association	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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

2/4/14

To: Malama Solomon, Chair, Senate committee on Water and Land  
Brickwook Galuteria, Vice-Chair, “ “ “ “ “ “

AND

Will Espero, Chair, Senate Committee on Public Safety, Intergovernmental and  
Military Affairs  
Rosaly H.Baker, Vice-Chair “ “ “ “ “ “ “

**TESTIMONY IN SUPPORT OF SB 2116, SB 2108, and SB 2112**  
Hearing on 2/7/14

Dear Senators, Committee Chairs, Vice-Chairs, and Members:

Thank you for this opportunity to testify in support of the above Bills, portions of which will do away with the sunset of Act 170, the sunset which is scheduled for June 30, 2014. The Act 170 aspect of these Bills will be what my testimony is addressing, since I am not familiar with the other aspects of these Bills.

Act 170 is a huge part 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, Yokohama Bay on Oahu, and Hapuna Beach on the Big Island). **Please realize that this immunity requests no more immunity to the County for its expert Lifeguard 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. Prior to that we'd suffer a drowning every there 3 or 4 years, back in the days before the Beach was as packed with beachgoers and snorkelers as it currently is. The last person to ever drown at Ke'e was Ted 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. Ted's wife and son were also flown in as part of the funeral arrangements, and those of us who saw the boy's anguish never want to see this kind of circumstance again. This tragedy took place in 2007, the year before Ke'e gained a Lifeguard Tower.

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 25 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 State Parks workers, collapsed just as he was coming off the Kalalau 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. He is back at work with State Parks.

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, please God, be continued. Act 170 helps allow for this, and I ask that as you address the 3 Bills under consideration, you will ensure that the Sunset of Act 170 be eliminated once and for all.

Respectfully Submitted,

Monty Downs, M.D.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

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

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

Testimony by  
Hawaii Government Employees Association  
February 7, 2014

S.B. 2116 – RELATING TO TORT LIABILITY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2116, which proposes to repeal the sunset date and makes permanent the law shielding county lifeguards from liability.

Thank you for the opportunity to express our support.

Respectfully submitted,

Randy Perreira  
Executive Director

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

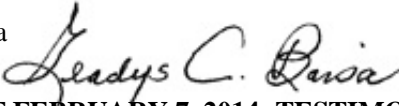


Director of Council Services  
David M. Raatz, Jr., Esq.

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

February 5, 2014

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

FROM: Gladys C. Baisa  
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 7, 2014; TESTIMONY IN SUPPORT OF SB 2116,  
RELATING TO TORT LIABILITY**

Thank you for the opportunity to testify **in support** of this important measure. The purpose of this measure is to delete the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.

Legislation with a similar purpose is included in the Hawaii State Association of Counties' 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 for the following reasons:

1. 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 fear of liability. Without this protection, lifeguard services at beach parks may be reduced because of the threat of potential liability.
2. The law has been in effect for more than a decade. Since the enactment of Act 170 (2002), the Legislature has twice been convinced of the wisdom of maintaining the law's protections, as seen in Act 152 (2007) and Act 81 (2009). Any need for a trial period has been exhausted, and the law should be made permanent. As reported by the Task Force created by Act 152 (2007), "there is no reason to delay legislative action to continue the benefits" of the liability protections for county lifeguards. The Task Force's report is available at:

<http://ag.hawaii.gov/wp-content/uploads/2013/01/Report-of-the-Task-Force-Established-by-Act-152-Session-Laws-of-Hawaii-2007.pdf>

For the foregoing reasons, I **support** this measure.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WTLTestimony](#)  
**Cc:** [Don.Couch@mauicounty.us](mailto:Don.Couch@mauicounty.us)  
**Subject:** \*Submitted testimony for SB2116 on Feb 7, 2014 13:00PM\*  
**Date:** Tuesday, February 04, 2014 2:20:50 PM

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**SB2116**

Submitted on: 2/4/2014

Testimony for WTL/PSM on Feb 7, 2014 13:00PM in Conference Room 225

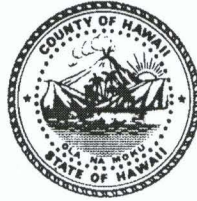
<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Councilmember Don Couch	Individual	Support	No

Comments:

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DENNIS "FRESH" ONISHI  
Council Member  
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**HAWAI'I COUNTY COUNCIL**  
25 Aupuni Street, Hilo, Hawai'i 96720

February 5, 2014

The Honorable Malama Solomon, Chair  
and Members of the Committee on Water and Land

The Honorable Will Espero, Chair  
and Members of the Committee on Public Safety,  
Intergovernmental and Military Affairs.

Dear Senator Solomon, Senator Espero and Members of the Joint Committee,

Thank you for the opportunity to submit testimony in strong support of Senate Bill 2116.

The four county councils, acting through the Hawai'i State Association of Counties, stand together with the four mayors in asking that your committee recommends approval of this bill to extend limited beach liability protection for lifeguards. This is an extremely high priority for all counties across the State.

Our lifeguards put their own lives on the line every day to keep our beaches safe, and they have saved countless lives over the years. Unfortunately, despite their best efforts, some who get into trouble cannot be saved.

This is a reasonable extension of a law works and that is already saving lives. Without the approval of this bill, liability protection will expire on June 30, 2014, and the counties cannot guarantee that they will be able to maintain lifeguard services.

Please recommend approval of this bill.

Sincerely,

A handwritten signature in black ink, appearing to read "Dennis Onishi".

Dennis "Fresh" Onishi  
Hawai'i County Council Member  
Vice President, Hawai'i State Association of Counties



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WTLTestimony](#)  
**Cc:** [michael.victorino@mauicounty.us](mailto:michael.victorino@mauicounty.us)  
**Subject:** \*Submitted testimony for SB2116 on Feb 7, 2014 13:00PM\*  
**Date:** Wednesday, February 05, 2014 10:19:56 AM

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**SB2116**

Submitted on: 2/5/2014

Testimony for WTL/PSM on Feb 7, 2014 13:00PM in Conference Room 225

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Michael Victorino	Individual	Support	No

Comments:

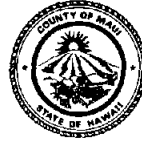
Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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Council Chair  
Gladys C. Baisa

Vice-Chair  
Robert Carroll

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



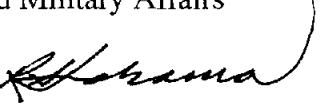
Director of Council Services  
David M. Raatz, Jr., Esq.

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

February 6, 2014

TO: The Honorable Malama Soloman, Chair  
Senate Committee on Water and Land

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

FROM: G. Riki Hokama, Maui County Councilmember/Lanai seat 

**SUBJECT: Testimony in Support of SB 2116 relating to State and County Tort Liability (Public Hearing: Friday, February 07, 2014 at 1:15 PM in Senate Conference Room 225)**

As the Lanai member on the Maui County Council, I offer testimony in support of SB 2116 relating to State and County Tort Liability. The proposed bill deletes the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted.

I support the proposed bill. It is similar to the purpose of legislation in the Hawaii State Association of Counties (HSAC) legislative package and makes permanent the liability protection afforded to county lifeguards. This protection has been in place on a trial basis for over ten years and should be made permanent in the interest of public safety.

Also, I concur with testimony in support submitted by Maui County Council Chair Gladys C. Baisa.

Thank you for the opportunity to offer this testimony.

cc: Gladys C. Baisa, Chair, Maui County Council

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**  
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200 S. HIGH STREET  
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[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

January 30, 2014

TO: Honorable Malama Solomon, Chair  
Committee on Water and Land

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

FROM: Robert Carroll *Robert Carroll*  
Council Vice Chair

DATE: Friday, February 07, 2014

SUBJECT: **SUPPORT OF SB 2116, RELATING TO TORT LIABILITY**

I support SB 2116 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to support this measure.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [WTLTestimony](#)  
**Cc:** [stacy.crivello@mauicounty.us](mailto:stacy.crivello@mauicounty.us)  
**Subject:** Submitted testimony for SB2116 on Feb 7, 2014 13:00PM  
**Date:** Wednesday, February 05, 2014 8:19:44 AM

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**SB2116**

Submitted on: 2/5/2014

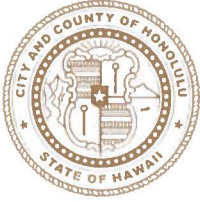
Testimony for WTL/PSM on Feb 7, 2014 13:00PM in Conference Room 225

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

Comments: I support Maui County Council Chair Gladys Baisa who submitted testimony earlier 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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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
530 SOUTH KING STREET, ROOM 202  
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**STANLEY CHANG**

*Councilmember – District IV*

Phone: (808) 768-5004

Fax: (808) 768-5000

ccldistrict4@honolulu.gov

www.honolulu.gov/council/d4

February 5, 2014

TESTIMONY OF STANLEY CHANG  
CONCILMEMBER FOR THE CITY AND COUNTY OF HONOLULU

On

S.B. No. 2116, RELATING TO TORT LIABILITY

Committee on Water and Land/Committee on Public Safety, Intergovernmental and Military  
Affairs

Friday, February 7, 2014

1:00 p.m.

Conference Room 225

Dear Chairs Soloman and Espero and Committee Members:

Thank you for allowing me the opportunity to submit testimony in support of S.B. 2116 Relating to Tort Liability in my capacity as Councilmember of the City and County of Honolulu.

S.B. 2116 deletes sunset provisions for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted. This bill would make these liability exceptions permanent.

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 S.B. 2116 Relating to Tort Liability, and thank the Committees for allowing me to provide testimony.

Sincerely,

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

Stanley Chang  
Councilmember – District IV

ALAN M. ARAKAWA  
MAYOR



JEFFREY A. MURRAY  
CHIEF

ROBERT M. SHIMADA  
DEPUTY CHIEF

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

200 DAIRY ROAD  
KAHULUI, MAUI, HAWAII 96732  
(808) 270-7561  
FAX (808) 270-7919  
EMAIL: fire.dept@mauicounty.gov

February 4, 2014

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

The Honorable Malama Solomon, Chair  
Committee on Water and Land  
The State Senate  
State Capitol, Room 210  
Honolulu, Hawaii 96813

Dear Chairs Espero and Solomon:

Subject: S.B. 2116 Relating to Tort Liability

I am Jeffrey A. Murray, Member of the Hawaii State Fire Council (SFC) and Fire Chief of the County of Maui, Department of Fire & Public Safety (MFD). The SFC and the MFD support S.B. 2116, which proposes to delete the sunset provision for the liability exception for county lifeguards and damages caused by dangerous natural conditions when certain warning signs are posted. We also support the intentions of S.B. 2108 and S.B. 2112, which are similar to S.B. 2116.

The passage of S.B. 2116 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 Honorable Will Espero, Chair  
The Honorable Malama Solomon, Chair  
Page 2  
February 4, 2014


The benefits of the act were documented in the Report of the Task Force Established by A 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 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 S.B. 2116.

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  
Fire Chief