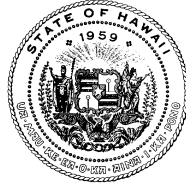


DAVID Y. IGE
GOVERNOR OF HAWAII



VIRGINIA PRESSLER, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
DEPARTMENT OF HEALTH
P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

LATE

**Testimony COMMENTING on S.B. 0562 SD1
RELATING TO TORT LIABILITY**

REPRESENTATIVE SCOTT Y. NISHIMOTO, CHAIR
HOUSE COMMITTEE ON JUDICIARY

Hearing Date: April 5, 2017 2:00pm

Room Number: 325

1 **Fiscal Implications:** None.

2 **Department Testimony:** S.B. 562 SD 1 extends the protections afforded by Act 170, SLH
3 2002, to maintain lifeguard services at beaches.

4 The Department recognizes the public health importance of reducing the incidence of
5 serious injuries, including spinal cord, at beaches. Beaches with lifeguards are safer for residents
6 and visitors than beaches without lifeguards.

7 In its 2001 National Lifeguard Effectiveness report, the Centers for Disease Control and
8 Prevention's Injury Center documented that most drownings occurred at unguarded sites. These
9 findings underscore the importance of having trained lifeguards stationed at all beaches where
10 people swim.

11 Thank you for the opportunity to testify.

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Wallace G. Rezentes, Jr.
Managing Director

Kilipaki K. F. Vaughan
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

April 5, 2017

The Honorable Scott y. Nishimoto, Chair
Committee on Judiciary
The House of Representatives
State Capitol, Room 421
415 South Beretania St.
Honolulu, Hawaii 96813

Dear Chair Nishimoto:

Subject: SB 562, SD 1 Relating to Tort Liability

I am Robert Westerman, Fire Chief of the Kauai Fire Department (KFD). The KFD supports SB 562, SD 1, 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 SB 562 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.

In 2016 in terms of drownings, Kauai suffered twelve (12) ocean related drownings, all at unguarded beaches. The County has stationed lifeguards at Kē'ē since 2008 with zero drownings because of the present law, and prior to this between 1970 and 2008 there were eight drownings at Kē'ē. Additionally the lifeguards at Kē'ē saved the life of a state employee just after he started on the Hanakāpī'ai Falls trail. This person would surely have passed away had the lifeguards not been there.

Kē'ē is one of the most dangerous State beaches under State jurisdiction. Current legislation which is scheduled to sunset at the end of June 2017 allows the County to provide lifeguard services at State beaches such as Kē'ē.

The Honorable Scott Y. Nishimoto, Chair

April 5, 2017

Page 2

The Lifeguards/ocean safety officers at Kē'ē have rescued 28 swimmers in distress at Ke'e in 2016, 11 swimmers in 2015, and 22 in 2014, each one of these rescues could have been a life lost. In 2016 the Lifeguards/ocean safety officers at Kē'ē have had 24,936 preventive interactions with beachgoers, 15,533 in 2015 and 10,649 preventative interactions in 2014, 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.

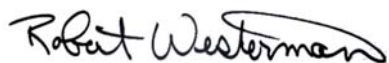
Additionally there is the documented findings of the Report of the Task Force Established by Act 152 (Task Force Report), which was submitted during the 2011 Legislative Session. The task force concluded that various programs developed under Acts 82, 170, and 190 have been effective in increasing public 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 urges your committee's support on the passage of SB 562, SD 1.

Please contact me at (808) 241-4975 or rwesterman@kauai.gov should you have any questions or require additional information regarding this matter.

Sincerely,



Robert Westerman
Fire Chief, County of Kaua'i

RFW/eld

Hawai`i State Association of Counties (HSAC)

Counties of Kaua`i, Maui, Hawai`i and City & County of Honolulu

200 S. High Street, Wailuku, Hawaii 96793 (808) 270-7665

www.hicounties.com



April 5, 2017

TO:  The Honorable Scott Y. Nishimoto, Chair
House Committee on Judiciary

FROM: Stacy Crivello 
HSAC President 

SUBJECT: **HEARING OF APRIL 5, 2017; TESTIMONY IN SUPPORT OF SB 562, SD 1, RELATING TO TORT LIABILITY**

Thank you for the opportunity to testify on behalf of the Hawaii State Association of Counties in **support** of this measure. The purpose of this measure is to extend the limited liability protection found in Act 170 (2002) for county lifeguards and counties that provide lifeguard services on beaches or in the ocean until June 30, 2021.

This measure is similar to SB 451 in the 2017 Hawaii State Association of Counties Legislative Package, which would instead make the protection permanent. Therefore, I submit this testimony on HSAC's behalf.

HSAC **supports** this measure for the following reasons:

1. The current grant of immunity for county lifeguards will expire on June 30 of this year unless the Legislature extends the sunset date or makes the protection permanent, which is the original intent of the bill. Protecting lifeguards from liability encourages the counties to provide more safety personnel at beaches, which protects visitors and local residents.
2. This measure allows the counties to be protected at the same level as the state against frivolous lawsuits. Lifeguards already risk their lives to save others, and exposing them to further liability is unjust.

Mahalo for your consideration.

HSAC:FY2017:17Testimony:SB562_SD1_mkz

JUDtestimony

From: Mike White <Mike.White@mauicounty.us>
Sent: Wednesday, April 5, 2017 1:35 PM
To: JUDtestimony
Subject: Support of SB 562 SD 1 Relating to Tort Liability

Dear Chair Nishimoto and Members of the Judiciary Committee:

Thank you for the opportunity to **support** SB 562, SD 1, relating to tort liability. The purpose of this measure is to make permanent the limited liability protection found in Act 170 (2002) for county lifeguards and counties that provide lifeguard services on beaches or in the ocean.

This measure is identical to SB 451 in the 2017 Hawaii State Association of Counties Legislative Package. Therefore, I submit this testimony on behalf of the Maui County Council.

I support this measure for the following reasons:

1. The current grant of immunity for county lifeguards will expire on June 30 of this year unless the Legislature makes the protection permanent. Protecting lifeguards from liability encourages the counties to provide more safety personnel at beaches, which protects visitors and local residents.
2. This measure allows the counties to be protected at the same level as the state against frivolous lawsuits. Lifeguards already risk their lives to save others, and exposing them to further liability is unjust.
3. If this measure does not pass, it would make the liability of lifeguards at State beaches such as Makena State Park unclear as the County provides lifeguard services on behalf of the State.

Mahalo for your consideration and I urge you to **support** this measure.

Mahalo,

Mike White
Council Chair
County of Maui

200 S. High St., 7th Floor
Wailuku, HI 96793
Ph: 808-270-5507 | Fax: 808-270-5508
E-mail: mike.white@mauicounty.us

Visit me on the Web:
www.mauicouncil.org

Bernard P. Carvalho, Jr.
Mayor



Wallace Rezentes, Jr.
Managing Director

OFFICE OF THE MAYOR
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 235, Līhu'e, Hawai'i 96766
TEL (808) 241-4900 FAX (808) 241-6877

Testimony of Mayor Bernard P. Carvalho Jr.

Before the House Judiciary Committee

Wednesday, April 5, 2017
State Capitol

Senate Bill 562 Relating to Tort Liability

Honorable Chair Nishimoto and Members,

I am writing in support of the original version of Senate Bill 562 which makes permanent county protections from liability on improved lands, and makes permanent the protection from liability for county lifeguards, counties, and the State for damages resulting from rescue, resuscitative, or other lifeguard services.

In the past years, legislative bills have extended the sunset provisions of this law but have failed to make this law permanent. I believe that it is of great importance to make these liability protections permanent not only to protect the County and its lifeguards but also to ensure that there is a continued governmental presence at these areas to provide essential public safety services to ensure the safety and well being of our residents and visitors alike.

I support the passage of SB562 which removes the sunset date of June 30, 2017 and would like to thank the committee for the opportunity to present testimony on this important measure.

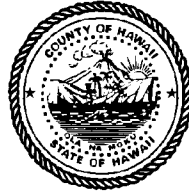
Sincerely yours,

A handwritten signature in black ink, appearing to read "Bernard Carvalho", written in a cursive style.

Bernard P. Carvalho Jr.
Mayor

An Equal Opportunity Employer

Harry Kim
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

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

April 5, 2017

The Honorable Representative Scott Y. Nishimoto, Chair
Committee on Judiciary
State Capitol, Room 325
Honolulu, Hawai'i 96813

Dear Chair Agaran:

Subject: S.B. 562 S.D. 1 Relating to Liability
Hearing Date: Wednesday, April 5, 2017
Time/Place of Hearing: 2:00 p.m.

I am Darren J. Rosario, Fire Chief of the Hawai'i Fire Department (HFD). I am respectfully presenting testimony related to SB 562, SD 1.

The Hawai'i Fire Department is in support of SB 562, SD 1 in continuing to protect our lifeguards who work at all state beaches that includes the Hāpuna Beach Park on the Island of Hawai'i. We currently have nine full-time lifeguards assigned there providing coverage seven days a week, including holidays.

Hāpuna Beach is one of the most popular beaches in Hawai'i averaging over 600,000 people who visit annually. Our lifeguards currently staff three towers there and perform preventative actions for approximately 90 thousand patrons annually. In spite of these preventative actions, they also perform an average of 80 rescues annually.

From 2009 to 2016, Hāpuna Beach was second in the state for spinal injuries, more than Sandy Beach or Waimea Bay. Makena Beach on Maui was the only beach that spinal injuries surpassed Hāpuna. This is a major concern due to not having the proper trained personnel to assist in case of a spinal injury. A person who fail to get proper treatment due to an injury such as this, could become permanently disabled, or in a worse-case scenario, become a fatality, as we have seen in many other unguarded beaches.

Please do not hesitate to call me at 932-2903 or darren.rosario@hawaiiicounty.gov should you have any questions. Thank you for the opportunity to provide testimony for this very important piece of legislation.

Respectfully,

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

DARREN J. ROSARIO
Fire Chief





HAWAII COUNCIL OF MAYORS
BEFORE THE COMMITTEE ON JUDICIARY
WEDNESDAY, APRIL 5, 2017; 2:00 PM

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members of the Committee:

The Hawaii Council of Mayors (HCOM) strongly supports SB562, SD1, which extends for four years the provisions of Act 170, Session Laws of Hawaii 2002. This measure provides limited liability protection for county lifeguards and counties providing lifeguard services on beaches or in the ocean. Providing immunity for county lifeguards encourages the counties to provide more safety personnel at our beaches. This protects visitors and local residents. This measure also allows the counties to be protected from frivolous lawsuits at the same level as the State. Lifeguards already risk their lives to save others. Exposing them to figure liability is unjust.

Thank you for your consideration in strong support of SB562, SD1.

Sincerely,

Harry Kim, Mayor
County of Hawai'i

Kirk Caldwell, Mayor
City and County of Honolulu

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

Alan Arakawa, Mayor
County of Maui



Mayor Harry Kim
County of Hawaii
25 Aupuni Street
Hilo, Hawaii 96720



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



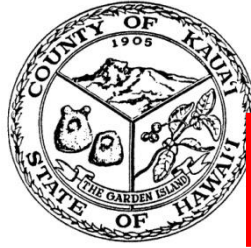
Mayor Bernard Carvalho, Jr.
County of Kauai
4444 Rice Street
Lihue, Hawaii 96766



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

COUNTY COUNCIL

Mel Rapozo, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Arryl Kaneshiro
Derek S.K. Kawakami
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

LATE

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

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

April 5, 2017

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

**SB 562, SD1, Relating to Tort Liability
House Committee on Judiciary
Wednesday, April 5, 2017
2:00 p.m.
Conference Room 325**

Dear Chair Nishihara and Members of the Committee:

Thank you for this opportunity to provide testimony in strong support of SB 562, SD1, Relating to Tort Liability. My testimony is submitted in my individual capacity as Council Chair of the Kaua'i County Council and as Secretary of the Hawai'i State Association of Counties.

The purpose of this measure is to extend the limited liability protection found in Act 170 (2002) for county lifeguards and counties that provide lifeguard services on beaches or in the ocean until June 30, 2021. This measure is similar to SB 451, which is included in the 2017 Hawai'i State Association of Counties Legislative Package.

The current grant of immunity for county lifeguards will expire on June 30 of this year unless the Legislature extends the sunset date or makes the protection permanent. Protecting lifeguards from liability encourages the counties to provide more safety personnel at beaches, which protects visitors and local residents. This measure allows the counties to be protected at the same level as the state against frivolous lawsuits.

For the reasons stated above, I urge the House Committee on Judiciary to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

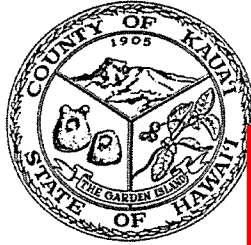
Sincerely,

MEL RAPOZO
Council Chair, Kaua'i County Council

AMK:dmc

COUNTY COUNCIL

Mel Rapozo, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Arryl Kaneshiro
Derek S.K. Kawakami
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

LATE

Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

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

April 5, 2017

**TESTIMONY OF DEREK S.K. KAWAKAMI
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

**SB 562, SD1, Relating to Tort Liability
House Committee on Judiciary
Wednesday, April 5, 2017
2:00 p.m.
Conference Room 325**

Dear Chair Nishimoto, Vice Chair San Buenaventura and Members of the Committee:

First off I want to thank you for your service to our State and her people, and also would like to say that I truly miss all of you deeply. Thank you so very much for hearing SB 562, SD1, Relating to Tort Liability. I am writing to express my strong support for this very important measure. On Kaua'i, we have one of the most dangerous State beaches being protected by county lifeguards. This beach is Kē'e Beach. Since the implementation of lifeguard operations on Kē'e Beach there have been zero drownings. Over the last three years there have been 61 rescues, 762 First Aid assists, 96,034 public contacts, 51,118 preventative actions, and over 450,886 beachgoers. As you can see, this partnership between the State and County is a great example of how much we can accomplish when we work together. The one request that I would also like to add is to please consider reverting back to the original language of the bill that repealed the sunset date altogether.

Once again I would like to thank you for your hard work and dedication and I wish all of you well as you head toward the final weeks of this very productive legislative session. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

With Love,

DEREK S.K. KAWAKAMI
Councilmember, Kaua'i County Council

AMK:mn



HAWAIIAN LIFEGUARD ASSOCIATION

April 5, 2017

The Honorable Scott Y. Nishimoto, Chair,
And Members
Committee on Judiciary
The House of Representatives
The Twenty-Ninth Legislature
Regular Session of 2017

Dear Chair Nishimoto and Members:

RE: SB 562 SD1 RELATING TO TORT LIABILITY

The Hawaiian Lifeguard Association (HLA) strongly supports SB 562 SD1, which removes the sunset provision for Act 170, Session Laws 2002, and makes the needed legislative protection provided by the Act permanent.

The HLA submitted written testimony for consideration by the Committee on Public Safety, Intergovernmental, and Military Affairs on February 7, 2017, and to the Senate Committee on Judiciary and Labor on February 27, 2017, explaining the history and need for permanent protection for the counties and their ocean safety employees providing lifeguard services at State beach parks. Without this protection, the counties have expressed serious concerns about continuing to provide these essential public safety services. If county lifeguards were pulled from the four State Parks (Hapuna, Makena, Ke'e, and Kaena Point), the question to ask would be "when, not if," drownings and serious injuries would occur.

To be clear, Act 170 does not provide complete immunity for county lifeguards and their respective employers, as stated by its detractors. Cases of gross negligence and/or wanton acts or omissions would still be subject to adjudication based on the facts of each case.

The front line of defense in any aquatic safety program begins with properly trained and properly equipped lifeguard personnel. The HLA and its national organization, the United States Lifesaving Association (USLA), maintain highest standards for open water lifeguards. Ocean lifeguards in the State of Hawaii are recognized internationally for their prevention and rescue initiatives as well as their professionalism and demanding training regimens.

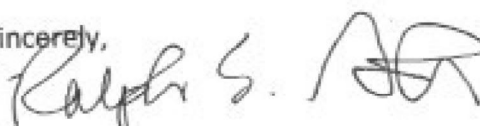
P.O. Box 283324 • Honolulu, Hawaii 96828 • (808) 922-3888
Facsimile (808) 922-0411 • Email: lifeguards@aloha.com

The USLA maintains a data base of all major lifeguard agencies in the United States that can be viewed at <USLA.ORG >. According to these statistics, the chances of a fatal drowning occurring at a beach protected by USLA certified lifeguards are one (1) in 18 million (18,000,000). The four county lifeguard agencies in the State of Hawaii are all USLA certified and provide the highest level of open water lifeguard services in the United States.

Since its passage in 2002, the sunset provision for Act 170 has been extended for 15 years. It is time for the matter to be made permanent and included in the Hawaii Revised Statutes.

Thank you for the opportunity to present this testimony.

Sincerely,

A handwritten signature in black ink that reads "Ralph S. Goto" followed by a stylized monogram "RSG".

Ralph S. Goto

For the Board of Directors

Monty Downs, M.D.
ER Physician, Wilcox Hospital &
President, Kauai Lifeguard Association
160 Lani Alii Place
Kapa'a, HI. 96746

4/5/17

RE: TESTIMONY IN FAVOR OF PASSAGE OF SB 562 SD 1

To: HOUSE JUDICIARY COMMITTEE
Chairman Scott Nishimoto, Vice-Chair Joy A. San Buenaventura

COMMITTEE HEARING ON 4/5/17, 2:30 PM

Dear Chairman Nishimoto, Vice-Chair San Buenaventura, and members of the Senate
Committee on Judiciary and Labor:

Although this Bill impacts State Beach Parks in all of our Hawaii Counties, my testimony will focus on Kauai County and our Ke'e Beach State Park.

This Bill, by eliminating the Sunset of Act 170, will continue to provide liability protection for County Lifeguards when they guard Ke'e, and they do this 365 days/year. For any of you who may not have visited this beach: On any day that's not pouring rain, this beach is packed with people, and you can see this immediately when you try and go there and find that parking is backed up for up to 1/2 mile. Because of a barrier reef there is beautiful snorkeling and there is usually very benign-appearing swimming in the Ke'e Lagoon. However, there is also a Western portal to the lagoon and this serves as the outgoing (and unseen to the inexperienced eye) rip current, i.e. river. As with all rip currents, the outgoing water flow equilibrates the incoming water that's caused by waves breaking over the protecting barrier reef.

Prior to having our County Lifeguards at Ke'e, we suffered a drowning a year there. After being pulled out by the rip current into the wide Pacific Ocean, most victims' bodies were never recovered despite wide-scale searches. I'm an ER Physician and I could tell you some shocking stories about families that were destroyed there. Since having our Lifeguards at Ke'e (2008) we have had zero Ke'e drownings. Knock on wood of course but still Zero.

By far the biggest reason for this safety record is preventive actions, i.e. Keeping swimmers away from the Western portal. In regards to rescues themselves: Our Ke'e Lifeguards have certainly made some water life-saving rescues.

Equally significantly and somewhat unrelated is the fact that they have carried out many outstanding first aid measures (including successful AED resuscitations) not only on beachgoers but also on people throughout the Beach Park, AND ALSO on people who are on the Kalalau Trail (Ke'e Beach being at the Kalalau Trailhead and serving as the "Gateway to the NaPali."). They have played a key role in incidents all the way out to the sometimes-dangerous and in fact deadly Hanakapiai Stream crossing, 2 miles in! They are truly the on-site Caregivers and First Responders for the entire State Park.

All the while the number of beachgoers at Ke'e, not to mention the number of Kalalau Trail hikers, has grown and grown and grown. I will defer to our Kauai County Ocean Safety

Supervisor Kalani Vierra to provide you with specific numbers for the number of beachgoers, preventive actions, and rescues that take place every year at Ke'e.

If the State hired Lifeguards Act 170 would obviously be moot, since they would be represented in liability situations the way all State workers are represented if something adverse occurred in their working environment. However since the State needs County Lifeguards to protect their Beach Park, the County in turn needs some kind of assurance and indication that they and their employees have the support of the Agency whose territory and people they are protecting. Hence the need for Act 170, and without Act 170 there is a strong chance that the County would choose not to provide the Lifeguards. I can guarantee that this would lead to fatalities and it would leave a gaping safety hole in the entire Beach Park.

I will conclude my testimony repeating Zero. Thank you for your attention in this matter, and thank you in advance for considering a Yes vote for SB 562, a vote that will save lives and that will prevent deaths and that will protect our people.

Respectfully Submitted,

Monty Downs, M.D.

LATE

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 5, 2017 2:10 PM
To: JUDtestimony
Cc: mkurihara@hgea.org
Subject: *Submitted testimony for SB562 on Apr 5, 2017 14:00PM*

SB562

Submitted on: 4/5/2017

Testimony for JUD on Apr 5, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Randy Perreira	Hawaii Government Employees Association	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.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

The Twenty-Ninth Legislature, State of Hawaii
House of Representatives
Committee on Judiciary

LATE

Testimony by
Hawaii Government Employees Association

April 5, 2017

S.B. 562, S.D. 1 - RELATING TO TORT
LIABILITY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 562, S.D. 1 which makes the liability protections for the county lifeguards permanent. S.B. 562, S.D. 1 provides limited liability protection for county lifeguards and counties providing lifeguard services while acting within the scope of their duties and responsibilities, except for gross negligence or wanton acts of omissions. At present, the liability protections afforded to lifeguards under Act 98, SLH 2014 will expire on June 30, 2017.

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

Thank you for the opportunity to testify in support of S.B. 562, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

LATE

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) REGARDING S.B. 562, SD 1**

Date: Wednesday, April 5, 2017

To: Chairman Scott Nishimoto and Members of the House Committee on Judiciary:

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) Regarding S.B. 562, SD 1 Relating to Tort Liability.

The original purpose of this bill is to make Act 170, Session Laws of Hawaii, 2002, permanent. Currently, Act 170 provides an exception to liability for county lifeguards, the employing county and the state resulting from negligent action by a lifeguard. HAJ has always opposed making Act 170 permanent, as it is the wrong solution for the situation and there are other solutions. Some history on this legislation should be helpful. The State does not employ lifeguards. Therefore, it contracts with counties to provide county lifeguards at several State beach parks. In the late 90s the counties experienced a period of increased insurance premiums for lifeguard services. The counties claimed they needed immunity for lifeguard services at State beach parks because insurance was becoming too costly. The counties were afraid that drownings at state beach parks might make insurance unaffordable and therefore sought immunity to avoid liability – even when their lifeguards were negligent.

Although there was no history of excessive or unfounded lawsuits, the counties threatened not to put lifeguards on State beach parks if the legislature did not grant them immunity. Act 170 was passed in 2002.

HAI has always maintained that giving lifeguards immunity for performing their duties in an unreasonable or negligent manner is bad public policy and compromises safety for residents and tourists alike.

Hawaii law requires that all first responders, such as ambulance EMTs, police, firefighters, emergency room doctors and nurses, and others, perform their jobs with reasonable care under the circumstances. Currently, only lifeguards are allowed to perform at a substandard level by providing them with immunity against their negligent performance of lifeguard services. There is no public policy justification for condoning negligent job performance by any government employee; nor is there any justification for treating lifeguards any different from other first responders who provide equally dangerous lifesaving services.

HAI is not against lifeguards or lifeguard services. Hawaii has among the best and most dedicated lifeguards in the world. Lifeguards save lives and risk their own lives in doing so – just like other first responders. Lifeguards are not automatically responsible whenever they are unable to save someone. Sometimes lives cannot be saved no matter how heroic their efforts. Lifeguards are only responsible when they perform their job negligently. Negligence is conduct that is unreasonable under the circumstances. There is no sound reason to protect or condone unreasonable performance of lifeguard services.

In order to protect the counties from possible negligence by county lifeguards who are assigned to guard at state beach parks, the following provides a solution. Counties are currently protected by the State Tort Claims Act which treats county lifeguards on State beach parks as State employees and provides for the State to defend

any lawsuits against the counties. The legislature provided liability protection for the counties long ago when it made county lifeguards State employees for purposes of the State Tort Liability Act.

HRS section 662-1 specifically provides:

“Employees of the State” includes officers and employees of any state agency, members of the Hawaii national guard, Hawaii state defense force, and persons acting in behalf of a state agency in an official capacity, temporarily, whether with or without compensation. **“Employees of the State” also includes persons employed by a county of this State as lifeguards and designated to provide lifeguard services at a designated state beach park under an agreement between the State and that county.**

Therefore, the liability of County lifeguards at State beach parks is the responsibility of the State, not the counties, because the State is liable for the liability of “State Employees” under the State Tort Liability Act.

Further, the State Department of the Attorney General is specifically authorized to defend the counties in cases brought against them because of county lifeguards stationed at State beach parks.

HRS section 662-16 states:

The **attorney general may also defend any civil action** or proceeding brought in any court **against a county based on an allegedly negligent or wrongful act or omission of persons employed by a county as lifeguards** and designated to provide lifeguard services **at a designated state beach park** under an agreement between the State and a county.

HAI supports the modification in HRS 662-16 which makes it clear that the State Attorney General shall defend in any civil action against any possible negligent conduct by s county lifeguard at a state beach park.

Thank you very much for allowing me to testify regarding this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, April 5, 2017 2:01 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for SB562 on Apr 5, 2017 14:00PM*

SB562

Submitted on: 4/5/2017

Testimony for JUD on Apr 5, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	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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Cc: bethann@hawaii.rr.com
Subject: Submitted testimony for SB562 on Apr 5, 2017 14:00PM

SB562

Submitted on: 4/5/2017

Testimony for JUD on Apr 5, 2017 14:00PM in Conference Room 325

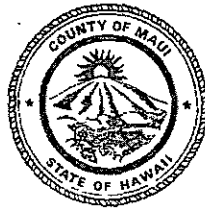
Submitted By	Organization	Testifier Position	Present at Hearing
Beth Tokioka	Individual	Support	No

Comments: This bill is critically important for Kauai to continue to provide lifeguard service at Kee Beach. Please support this bill. Thank you.

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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ALAN M. ARAKAWA
MAYOR



KEITH A. REGAN
MANAGING DIRECTOR

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 HOUSE COMMITTEE ON JUDICIARY

Wednesday, April 5, at 2:00 p.m.

SENATE BILL 562, SD1, RELATING TO TORT LIABILITY

Honorable Scott Y. Nishimoto, Chair
Honorable Joy A. San Buenaventura, Vice Chair
Honorable Members of the House Judiciary Committee

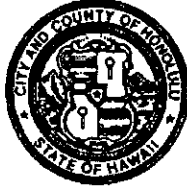
Thank you for this opportunity to testify in **strong support** of SB 562, SD1.

The liability protections afforded lifeguards originally enacted by Act 170, Session Laws of Hawaii, are scheduled to sunset on June 30, 2017. Simply put, without these protections the County of Maui will not be able to provide lifeguard services at state beach parks, which includes the popular Makena Beach Park, due to fear of potential liability.

As Mayor of Maui County and for the safety of our residents and visitors I respectfully urge this body to extend the liability protections afforded lifeguards.

HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1814
Phone: (808) 723-7800 • Fax: (808) 723-7836



KIRK CALDWELL
MAYOR

JAMES D. HOWE, JR.
DIRECTOR DESIGNATE

IAN T.T. SANTEE
DEPUTY DIRECTOR

April 5, 2017

The Honorable Scott Y. Nishimoto, Chair
The Honorable Joy A. San Buenaventura, Vice-Chair
House Committee on Judiciary
House of Representatives
Twenty-Ninth Legislature
Regular Session of 2017

Re: SB562, Relating to Tort Liability

Dear Chair Nishimoto, Vice Chair San Buenaventura, and Members:


The Honolulu Emergency Services Department, Ocean Safety and Lifeguard Services Division, supports SB562.

Ocean related drowning continues to be the lead cause of visitor death in our State. Ocean lifeguard service at our State's beaches has been empirically shown to be the single best measure to prevent the loss of life due to drowning.

The policy provision of SB562 has proven to be successful in the prevention of drowning and aquatic injuries, and as such should be made permanent.

We, the Honolulu Emergency Services Department, supports SB562.

Sincerely,


James D. Howe, Jr.
Director Designate