



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 562, RELATING TO TORT LIABILITY.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 1, 2017 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): WRITTEN COMMENTS ONLY. For more information, call
Caron Inagaki, Deputy Attorney General at 586-1300

Chair Keith-Agaran and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of the bill is to make the liability protections for lifeguards provided in Act 170, Session Laws of Hawaii (SLH) 2002, permanent. At present, the liability protections of Act 170 will sunset on June 30, 2017. The exception from liability does not apply for gross negligence or wanton acts or omissions of the lifeguard.

This limited liability protection was necessary because some counties would not provide lifeguard services at state beach parks due to fear of potential liability that might arise from the public's use and enjoyment of the beach and ocean. 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. 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 (along with Act 190 and Act 82) was effective and promotes public safety. The task force, again, with near unanimity recommended that Act 170 become permanent. Acts 190 and 82 have since become permanent law (sections 663-1.56 and 663-52, Hawaii Revised Statutes, respectively).

Following the enactment of Act 170, there have been tens of thousands of rescues and preventative actions by lifeguards each year on every state beach park on Oahu, Maui, Kauai, and Hawaii Island, rescues and preventative actions that would not have occurred if Act 170 had not been in effect and lifeguards had not been assigned to those beach parks.

If Act 170 is allowed to sunset, the counties may not be able to keep lifeguard coverage at the state beaches putting the safety of the hundreds of thousands of yearly visitors to beaches at risk. In the past, the Hawaii Association for Justice 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 approximately \$3,000,000 a year in order to keep lifeguards on its beaches. This yearly cost would not be feasible.

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

We respectfully request that this bill be passed.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
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

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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY AND LABOR**

**Wednesday, March 1, 2017
9:15 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 562
RELATING TO TORT LIABILITY**

Senate Bill 562 proposes to make Act 170, Session Laws of Hawaii 2002, which provides limited liability protection for county lifeguards and counties providing lifeguard services on beaches or in the ocean permanent. **The Department of Land and Natural Resources supports this measure.**

Thank you for the opportunity to comment on this measure.

February 27, 2017

The Honorable Gilbert S.C. Keith Agaran, Chairman
Judiciary Committee
State Capitol, Room 221
Honolulu, Hawai'i 96813

Dear Chair Agaran;

Subject: SB 562 Relating to Liability

I am a Battalion Chief in charge of Special Operations for the Hawaii Fire Department on the island of Hawaii. As part of my duties, I oversee the Ocean Safety division. I also sit on the Board of Directors on the state Hawaiian Lifeguard Association and am the co-Chair of the state Drowning and Aquatic Injury Prevention Advisory Committee.

I am in support of SB 562 in continuing to protect our lifeguards who work at all state beaches that includes the Hapuna Beach Park on the island of Hawaii. We currently have nine full-time lifeguards assigned there providing coverage seven days 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 staff three towers there and perform preventative actions for approximately 90 thousand patrons annually. In spite of these preventative actions, they also still perform an average of 80 rescues annually.

From 2009 to 2016, Hapuna beach was second in the state for spinal injuries, more than Sandy beach or Waimea Bay. Makena on Maui was the only beach that spinal injuries surpassed Hapuna. This is a major concern because if someone with a spinal injury is not attended to immediately or not handled properly, they could become permanently disabled, or in the worse case scenario, become a fatality, as we have seen in many other unguarded beaches.

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

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



February 24, 2017

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

FROM: Stacy Crivello
HSAC President

SUBJECT: **HEARING OF MARCH 1, 2017; TESTIMONY IN SUPPORT OF SB 562,
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 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 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 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.

Mahalo for your consideration.

HSAC:FY2017:17Testimony:SB562b_mkz

COUNTY COUNCIL

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

February 27, 2017

**TESTIMONY OF JOANN A. YUKIMURA
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
SB 562, Relating to Tort Liability
Senate Committee on Judiciary and Labor
Wednesday, March 1, 2017
9:15 a.m.
Conference Room 016**

Dear Chair Keith-Agaran and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 562, Relating to Tort Liability. My testimony is submitted in my individual capacity as a Councilmember on the Kaua'i County Council.

This measure is identical to SB 451, which is included in the 2017 Hawai'i State Association of Counties Legislative Package, and supported by all four (4) city/county councils. 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 allows the counties to be protected at the same level as the state against frivolous lawsuits. The current grant of immunity for county lifeguards will expire on June 30 of this year unless the State 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.

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

Sincerely,

JOANN A. YUKIMURA
Councilmember, Kaua'i County Council

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, Lihu'e, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 27, 2017

The Honorable Gilbert S. C. Keith-Agaran, Chair
Committee on Judiciary and Labor
The State Senate
State Capitol, Room 229
415 South Beretania St.
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: SB 562 Relating to Tort Liability

I am Kalani Vierra, Operations Chief of the Ocean Safety Bureau (OSB) of the Kaua'i Fire Department (KFD). I am writing in support of SB562. I have first-hand knowledge as a lifeguard, and as a supervisor of Ke'e Beach lifeguard operations and can attest to its value to our visitors and residents.

Ke'e Beach is very busy with people almost every day. On calm days it is a snorkeler's paradise. On days, however, where waves break onto the barrier reef, water comes over the reef and this creates a strong, and unseen rip current that pulls unsuspecting people out to sea. In the past years before Lifeguard operations were in effect there had been at least one drowning each year. There have been zero (0) drownings at Ke'e since Ke'e lifeguard operations went into effect on July 1, 2008.

Here are some statistics from the last three years:

*2016 = 28 Rescues, 258 1st Aids, 36,598 Public contacts, 24,936 Preventative actions, and 184,823 Beach attendance.

*2015 = 11 Rescues, 226 1st Aids, 33,578 Public contact, 15,533 Preventative actions, and 149,640 Beach attendance.

*2014 = 22 Rescues, 278 1st aids, 25,858 Public contacts, 10,649 Preventative Actions, and 116,423 Beach attendance.

The Honorable Gilbert S. C. Keith-Agaran, Chair
February 27, 2017
Page 2

As you can see, removal of lifeguard operation at Ke'e Beach would lead to many more incidents and tragedies.

“Preventative Actions” refers to conversations or sign posting that Lifeguards have with beach goers, in which the Lifeguards give them safety advice. Since Ke'e Beach is “The Gateway to the Na Pali Coast”, these preventative actions have definitely impacted public safety.

If you believe that Lifeguards at busy and dangerous beaches are essential for our citizens' and visitors' safety, then Lifeguard operations at Ke'e Beach must be maintained. Act 170 allows this service to be maintained, and I humbly ask for your support to pass SB562

Respectfully,

D. Kalani Vierra
Ocean Safety Operations Chief
Kaua'i Fire Department

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Wallace G. Rezendes, Jr.
Managing Director

Kilipaki K. F. Vaughan
Deputy Fire Chief

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February 27, 2017

The Honorable Gilbert S. C. Keith-Agaran, Chair
Committee on Judiciary and Labor
The State Senate
State Capitol, Room 229
415 South Beretania St.
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

Subject: SB 562 Relating to Tort Liability

I am Robert Westerman, Fire Chief of the Kauai Fire Department (KFD). The KFD supports SB 562, 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 Gilbert S. C. Keith-Agaran, Chair

February 27, 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.

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

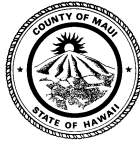
RFW/eld

Council Chair
Mike White

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
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Sandy K. Baz

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
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February 24, 2017

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

FROM: Mike White
Council Chair

A handwritten signature in black ink, appearing to read "Mike White", is written over the printed name and title.

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

Thank you for the opportunity to testify in support of this measure.

The Maui County Council supports this bill and concurs with the testimony provided by the Hawaii State Association of Counties President Stacy Crivello.

I urge you to **support** this measure.

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. 562**

Date: Wednesday, March 1, 2017

Time: 9:15 a.m.

Room: 016

To: Chair Gilbert S.C. Keith-Agaran and Members of the Senate Committee on Judiciary
and Labor:

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. 562, Relating to Tort
Liability.

The purpose of this bill is to make Act 170, Session Laws of Hawaii, 2002,
permanent. Currently, Act 170 regarding immunity for lifeguards is scheduled to sunset
on June 30, 2017. HAJ strongly opposes making Act 170 permanent, as it is the wrong
solution for the situation and there are more reasonable alternatives. 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.

Hawaii has some of the most beautiful beaches in the world and they attract visitors globally. It makes no sense to expect our lifeguards to work at a lower standard than any other first responder in the State. Ocean and beach goers should be able to expect that the lifeguards will use reasonable care as they were trained and are continually trained to do. We believe that lifeguards expect no less of themselves and their fellow lifeguards.

The original purpose of Act 170 was to enable counties to provide lifeguards at state parks. It was passed in a climate when the counties would not provide lifeguards at state parks for fear of liability. The Center for Disease Control issued a report on Lifeguard Effectiveness. They stated, “It is clear that providing a safe aquatic environment and instituting programs to prevent aquatic injury or death offer significant economic and social savings to society as a whole.” The benefit of county lifeguards being stationed on state parks is irrefutable. However, what is not discussed is how relieving lifeguards of their normal duty to perform their job reasonably is in the public interest. Like other safety providers, lifeguards “are expected to act within a standard of

care set by their training, local protocols and past court rulings.” CDC Report. Act 170 condones a substandard level of care and does nothing to ensure that lifeguards perform their jobs with reasonable care.

In years past, a number of entities testified in support of making Act 170 permanent, citing reduced drownings. None of the testimony attributed this to the higher level of immunity for lifeguards. Rather, the Task Force on Beach and Water Safety reports from 2009 to 2017 focused on the increased signage installed at various state parks. None of the reports indicate that, had the level of immunity remained at a reasonable care standard, more people would have drowned.

In fact, an NBC report in 2013 cited, “Five months into 2013, Kauai is already close to tripling the four drowning deaths seen on the island in all of 2012.” (NBC 5/13/13 Source: Hawaii's Dangerous Destinations Revealed | NBC Bay Area).

In that same news report, Dr. Monty Downs, an emergency room doctor at Wilcox Hospital in Kauai called the drowning an endemic problem to the island of Kauai.

“Drowning had just been almost been a dirty little secret that Hawaii was willing to sweep under the carpet,” Downs said. He’s witnessed drowning victims come in to his emergency room for years. But said [2013] has been even worst. In part, he believes because the deaths are occurring primarily at non-lifeguarded beaches. “The most common victim is a man in his 30s, or 40s, or 50s with children. They come over for their wonderful vacation in Hawaii, and all of a sudden the wife is a widow and the children are without a father,” he told NBC Bay Area.

Thus, it is not the level of immunity that contributes to these ocean tragedies, it is the lack of manpower.

Additionally, there has been commentary that resources should be aimed at controlling the information about the safety of dangerous ocean conditions. Sue Kanofo,

the executive director of the Kauai Visitors Bureau, blamed the published information – which sometimes underplays the dangers of the spot - for guiding tourists to high-risk locations on the island. In a Civil Beat article dated January 19, 2016, the author discussed the high cost of hiring more lifeguards but “[t]hat shouldn’t absolve us of trying to provide more lifeguards. But it should also motivate legislative, tourism and safety leaders to reach out to visitors in ways that have far greater impact than the means currently used.” They emphasized the need for further-reaching educational safety information to visitors.

In 2013, the Honolulu City and County Corporation Counsel essentially testified that the effectiveness of Act 170 is inconclusive.

The City has repeatedly testified in the past that “effectiveness” of the statutes is not measureable without asking every single beach user whether the posted sign or the presence of a lifeguard at the beach park affected their behavior. **Any reductions in the number of lawsuits, claims or deaths, may have nothing to do with the effectiveness of the legislation.** Jan 24, 2013, testimony for H.B. 215 (emphasis added).

Thus, this is a remedy in search of a problem. The fact that the effectiveness of Act 170 is inconclusive should result in the sunset going forward, rather than making the reduced standard of care permanent. There has never been a showing that, but for this heightened immunity, the lifeguards would have faced lawsuits. In other words, the “fear of liability” is unfounded and there are other ways to address this concern, discussed below.

Act 170 is not about our individual lifeguards; it is about fairness for counties that put their lifeguards on State beach parks at the county’s risk. There are ways to address the added risk for the counties: (1) the State may enter into a contract with the county and

provide sufficient funds to purchase liability insurance, or (2) the State can defend and indemnify counties so that the State carries the risks associated with State beach parks. These alternatives directly address the additional cost and risk for counties when they provide lifeguards for State beach parks; and fairly allocates those costs and risks to the State instead of to the counties.

Thank you very much for allowing me to testify in **OPPOSITION** to this measure.



HAWAIIAN LIFEGUARD ASSOCIATION

February 27, 2017

The Honorable Gilbert S.C. Keith-Agaran, Chair
The Honorable Karl Rhodes, Vice Chair, and Members
Committee on Judiciary and Labor
The Senate
The Twenty-Ninth Legislature
Regular Session of 2017

Dear Chair Keith-Agaran, Vice-Chair Rhodes, and Members:

RE: SB 562 RELATING TO TORT LIABILITY

The Hawaiian Lifeguard Association (HLA) strongly supports SB 562, 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, 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, appearing to read "Ralph S. Goto" with a stylized flourish at the end.

Ralph S. Goto

For the Board of Directors



INJURY PREVENTION ADVISORY COMMITTEE

A SAFE HAWAII FROM THE MOUNTAINS TO THE SEA

February 24, 2017

Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhodes, Vice Chair and Members
COMMITTEE ON JUDICAIRY AND LABOR
THE SENATE
THE TWENTY-NINTH LEGISLATURE
REGUALRY SESSION OF 2017

Dear Chair Keith-Agaran, Vice Chair Rhodes, and Members:

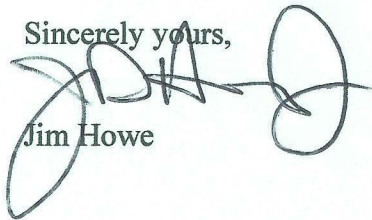
Re: Senate Bill 562 Relating to Tort Liability

The Drowning Prevention and Aquatic Injury Steering Committee and the Injury Prevention Advisory Committee (IPAC) are in support of Senate Bill 562.

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

The policy provision of SB 562 has proven to be successful in the prevention of drowning and aquatic injuries and as such should be made permanent.

Sincerely yours,



Jim Howe

Chair, Hawaii Drowning and Aquatic Injury Prevention Advisory Committee
Member, IPAC Steering Committee



Deborah Goebert, Chair, IPAC

IPAC is a statewide volunteer network of professionals and community members that have been working together for over two decades to prevent injuries, which are the main cause of death to children and adults ages 1-40 in Hawaii

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

2/27/17

RE: TESTIMONY IN FAVOR OF PASSAGE OF SB 562
Public Decision Making taking place on 3/1/17, 9:15 AM

To: SENATE COMMITTEE ON JUDICIARY AND LABOR
Chairman Gilbert Keith-Agaran, Vice-Chair Karl Rhoads

Dear Chairman Keith Agaran, Vice-Chair Rhoads, 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 caused by waves breaking over the 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; but equally significantly and
quite unrelated, 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.")

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 at Ke'e.

Let me briefly present a not-at-all-far-fetched scenario: A woman slips on a soapy
cement floor in the Ke'e shower, cracks the back of her head, is laying there bleeding and
unconscious. The Lifeguards are of course the nearest First Responders and when they hear
the commotion they sprint to the shower, AED in hand. They immediately are concerned about

her gurgling breathing ("A" in emergency responders' ABCD's). They correctly perform chin-lift and jaw-thrust maneuvers, and her airway opens and her breathing stabilizes ("B"). They check her strong pulse ("C"), and then they quickly determine that she's not moving her arms or legs and they immobilize her cervical spine ("D" in the ABCD's). The ambulance arrives 20 minutes later and transports her to the ER where it's determined that she has a skull fracture as well as a neck fracture, and she has partial quadriplegia from the neck fracture. Fortunately she recovers much of her function but she retains deficits and can no longer work at her pre-existing job and she and her family sue the Lifeguards, the County, and the State claiming that the Lifeguards didn't do a proper job of immobilizing her spine, and the State didn't do a good enough job of scrubbing the showers. (A similar scenario is very easy to imagine with all that takes place on the Kalalau Trail, which looks like the prettiest park in all of Disneyland but which can be highly treacherous.)

The point of these scenarios is once again that our phenomenal Ke'e Lifeguards, in their remote and yet heavily-visited setting, do a whole lot more than sit in a Tower watching people who are swimming. We need them to continue to be our guardians and caregivers and first responders at Ke'e Lagoon and at Ke'e Beach Park and on the DLNR's Kalalau Trail (way above and beyond any usual Lifeguard job description!), and we need them to feel that their work merits and receives the full support of the agencies whose territory and people they are taking care of.

I will conclude my brief testimony repeating Zero. Thank you for your attention in this matter, and thank you in advance for considering a Yes vote for Act 170, a vote that will save lives and that will prevent deaths and that will protect our people.

Respectfully Submitted,

Monty Downs, M.D.



Maui Hotel & Lodging
ASSOCIATION

Testimony of
Lisa H. Paulson
Executive Director
Maui Hotel & Lodging Association
on
SB 562
Relating To Tort Liability

COMMITTEE ON JUDICIARY AND LABOR
Wednesday, March 1, 2017, 9:15am
Room 016

Dear Chair Keith-Agaran, Vice Chair Rhoads and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes over 175 property and allied business members in Maui County – all of whom have an interest in the visitor industry. Collectively, MHLA’s membership employs over 25,000 residents and represents over 19,000 rooms. The visitor industry is the economic driver for Maui County. We are the largest employer of residents on the Island - directly employing approximately 40% of all residents (indirectly, the percentage increases to 75%).

MHLA is in **strong support** of SB 562 which makes Act 170, SLH 2002, which provides limited liability protection for county lifeguards and counties providing lifeguard services on beaches or in the ocean permanent.

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

Making the extension permanent would further encourage counties to expand recreational safety education and public awareness programs, rather than expending time and monies on defending costly litigation.

Thank you for the opportunity to testify.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: *Submitted testimony for SB562 on Mar 1, 2017 09:15AM*
Date: Tuesday, February 28, 2017 12:53:00 PM

SB562

Submitted on: 2/28/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Arianna Feinberg	Individual	Support	No

Comments:

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Subject: *Submitted testimony for SB562 on Mar 1, 2017 09:15AM*
Date: Monday, February 27, 2017 3:06:08 PM

SB562

Submitted on: 2/27/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara Barry	Individual	Support	No

Comments:

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Aloha,

I am writing in support of SB 562 to cover lifeguards on our beaches of Hawai'i. These men and women deserve the protection. These men and women are trained professionals and take every inch of their job seriously. This protection would allow more coastline to be covered down in the future. Every year we have more visitors. Tourists and locals come to our beaches and it is the job of these Ocean Safety Officers to prevent any injury and protect from beachgoers. Without this protection not only would this possibly remove lifeguards from some of the crowded beaches(that need lifeguards), it would prevent some people from looking at this profession as a career.

Mahalo for your time, Brad Quinto

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Sunday, February 26, 2017 9:47:39 PM

SB562

Submitted on: 2/26/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Cory Harden	Individual	Support	No

Comments: Aloha legislators, I've heard of tragic tourist drownings recently. Please protect the people! mahalo, Cory Harden, Hilo

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Cc:
Subject: *Submitted testimony for SB562 on Mar 1, 2017 09:15AM*
Date: Tuesday, February 28, 2017 8:36:49 AM

SB562

Submitted on: 2/28/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Yuki Lei Sugimura	Individual	Support	No

Comments:

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Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Tuesday, February 28, 2017 1:33:32 PM

SB562

Submitted on: 2/28/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Dave Kisor	Individual	Comments Only	No

Comments: I question the limited liability aspect of this legislation. Why should there be limited liability when someone is willing to risk their neck to save someone else? As a Veteran of Naval service who had deployed on board aircraft carriers, I find this questionable. At what point would the limit be drawn and who would make that distinction?

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Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Sunday, February 26, 2017 3:10:05 PM

SB562

Submitted on: 2/26/2017

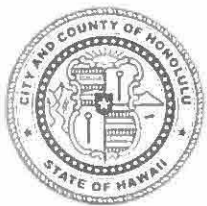
Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
George Vierra	Individual	Support	No

Comments: This is common sense. We need lifeguards at Makena, Ke'e, Hapuna and Yokohama Bay, these are dangerous State beach parks that the Counties provide lifeguard service at but will not continue to provide service at with out Act 170 (SB562) is passed. If lifeguards are pulled people will die, it will be bad publicity for the tourism industry and it will hurt families and people. Lawyers are upset because they want to be able to sue people so they manufacture outrage in an attempt to get lifeguards pulled from these treacherous beaches and it opens the door wide open for them to then sue the State. Please see through their disgusting greed and do the right thing. George Vierra

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CITY COUNCIL
CITY AND COUNTY OF HONOLULU
530 SOUTH KING STREET, ROOM 202
HONOLULU, HAWAII 96813-3065
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IKAIKA ANDERSON

Council Vice Chair

Councilmember, District 3

Email: landerson@honolulu.gov

Phone: 808-768-5003

Fax: 808-768-1235

March 1, 2017

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary & Labor

FROM: Councilmember Ikaika Anderson, Vice Chair
Honolulu City Council

SUBJECT: TESTIMONY IN SUPPORT OF SB 562

HEARING: Wednesday, MARCH 1, 9:15AM
Conference Room 229, Hawaii State Capitol

I am Testifying in SUPPORT of SB 562, Relating to Tort Liability

Each time a county lifeguard responds to a call for help, current law provides them legal immunity and protection for damages resulting from rescue, resuscitative, or other lifeguard services. This law is set to sunset on June 30th of this year, exposing county lifeguards to liability risks.

This purpose of this measure is to repeal the sunset date and make permanent the limited liability protection found in Act 170 (2002) for county lifeguards. 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, exposing them to further liability is unjust.

I SUPPORT the passage of SB 562 and would like to thank the committee for the opportunity to testify on this important measure.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Saturday, February 25, 2017 10:06:52 AM

SB562

Submitted on: 2/25/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Margaret Gill	Individual	Support	No

Comments: Aloha! I have lived along the road to Ke'e Beach on the North Shore of Kauai for 22 years. I well remember the bad old days when people died there on a regular basis because there were no lifeguards there. No matter what signs you put up, tourists who have read about the wonderful snorkeling at Ke'e will go in even on high surf days because they don't know any better. The lifeguards save lives. We need to keep them there. It is the right thing to do. To stop offering them immunity because of potential lawsuits is the wrong thing to do. You have the power to save lives. All other considerations fall by the wayside. This is the right thing to do. Do it.

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Ross Kagawa, Vice Chair
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Derek S.K. Kawakami
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Telephone: (808) 241-4188
Facsimile: (808) 241-6349
E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihue, Kauai, Hawaii 96766

February 27, 2017

**TESTIMONY OF MEL RAPOZO
COUNCIL CHAIR, KAUAI COUNTY COUNCIL
ON
SB 562, Relating to Tort Liability
Senate Committee on Judiciary and Labor
Wednesday, March 1, 2017
9:15 a.m.
Conference Room 016**

Dear Chair Keith-Agaran and Members of the Committee:

Thank you for this opportunity to provide testimony in support of SB 562, Relating to Tort Liability. My testimony is submitted in my individual capacity as Council Chair of the Kauai County Council and as Secretary of the Hawaii State Association of Counties (HSAC).

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, which is included in the 2017 Hawaii 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 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 Senate Committee on Judiciary and Labor to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

MEL RAPOZO
Council Chair, Kauai County Council

From: [Mike Victorino](#)
To: [JDLTestimony](#)
Cc:
Subject: SBC 562
Date: Friday, February 24, 2017 12:38:48 PM

Dear Chair Agaran and Vice Chair Rhoades

I am in full support of SBC 562 giving the County Life Guards (Ocean Safety Officers) the same immunity as the State enjoys. They protect our Visitors and Resident alike. Please make this SBC 562 permanent.

Mike Victorino
HSAC Lobbyist

Sent from my iPad

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Friday, February 24, 2017 10:01:01 AM

SB562

Submitted on: 2/24/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
robert carroll	Individual	Support	No

Comments: I support SB562 Relating to Tort Liability because it will provide limited liability protection for county lifeguards and counties providing lifeguard services on beaches or in the Ocean.

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Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Tuesday, February 28, 2017 11:46:55 AM

SB562

Submitted on: 2/28/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Shannon Rudolph	Individual	Support	No

Comments: Strongly Support!

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Subject: *Submitted testimony for SB562 on Mar 1, 2017 09:15AM*
Date: Sunday, February 26, 2017 5:09:21 PM

SB562

Submitted on: 2/26/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Vickery	Individual	Support	No

Comments:

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Cc:
Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Sunday, February 26, 2017 3:02:29 PM

SB562

Submitted on: 2/26/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Tamara Paltin	Individual	Support	No

Comments: Aloha Senators, I strongly urge you to pass SB562, if this bill doesn't pass all of the counties are threatening to pull out their workers from State parks and withdrawing lifeguard services from dangerous State beaches where they were previously provided is a huge liability for the state and probably plays right into the Hawaii Association for Justice's hands. They want the ability to sue somebody they don't really care if it is individual lifeguards or its the State. This situation between the state and individual counties has been working since 2002 there is no reason to allow act 170 to sunset unless you would like to see lawsuits against the State for not providing lifeguard services at beaches the State knows to be dangerous and beaches where lifeguard services were provided at up until Act 170 stopped. Please listen to the majority of people in our tourist dependent economy the State already downplays the danger of the ocean people will die if lifeguards are removed from these State beaches. Mahalo for reading my testimony Tamara Paltin Napili

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc:
Subject: Submitted testimony for SB562 on Mar 1, 2017 09:15AM
Date: Friday, February 24, 2017 10:07:11 AM

SB562

Submitted on: 2/24/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
tyson	Individual	Comments Only	No

Comments: As a former kee lifeguard I've seen and delt with many visitors who got hurt and needed help. Kee is a place where one minor mistake could end your life. If it wasn't for the lifeguard preventions itself, Many people would not be here today. To keep it short.. if you take away the kee (life)guards People will die!!!!!!

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Cc:
Subject: *Submitted testimony for SB562 on Mar 1, 2017 09:15AM*
Date: Friday, February 24, 2017 12:00:25 PM

SB562

Submitted on: 2/24/2017

Testimony for JDL on Mar 1, 2017 09:15AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Valerie Weiss	Individual	Support	No

Comments:

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