



**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 PUBLIC SAFETY, INTERGOVERNMENTAL, AND
MILITARY AFFAIRS

DATE: Tuesday, February 7, 2017 **TIME:** 1:20 p.m.

LOCATION: State Capitol, Room 229

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Nishihara 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 (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 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
PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS**

**Tuesday, February 7, 2017
1:20 PM
State Capitol, Conference Room 229**

**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.

Bernard P. Carvalho, Jr.
Mayor



Wallace Rezentes
Managing Director

OFFICE OF THE MAYOR
County of Kauai, State of Hawaii

4444 Rice Street, Suite 235, Lihu'e, Hawaii'i 96766
TEL (808) 241-4900 FAX (808) 241-6877

Testimony of Mayor Bernard P. Carvalho Jr.

Before the House Committee on Public Safety, Intergovernmental and Military Affairs

Tuesday, February 7, 2017

1:20 P.M.

Conference Room 229

State Capitol

Senate Bill 562 Relating to Tort Liability

Honorable Chair Clarence Nishihara and Members,

I am writing in support 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,

Bernard P. Carvalho Jr.
Mayor

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

Wallace G. Rezentes, Jr.
Managing Director

Kilipaki K. F. Vaughan
Deputy Fire Chief

KAUAI FIRE DEPARTMENT
County of Kaua'i, State of Hawai'i
4444 Rice Street, Suite 315, Lihue, Hawai'i 96766
TEL (808) 241-4980 FAX (808) 241-6508

February 6, 2017

The Honorable Clarence K. Nishihara, Chair
Committee on Public Safety, Intergovernmental, and Military Affairs
The State Senate
State Capitol, Room 229
415 South Beretania St.
Honolulu, Hawaii 96813

Dear Chair Nishihara:

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

*2014 = 11 Rescues, 226 Ist Aids, 33,578 Public contact, 15,533 Preventative actions, and 149,640 Beach attendance.

The Honorable Clarence K. Nishihara, Chair
February 6, 2017
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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. Rezentes, Jr.
Managing Director

Kilipaki K. F. Vaughan
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KAUA'I FIRE DEPARTMENT
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4444 Rice Street, Suite 315, Līhu'e, Hawai'i 96766
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February 6, 2017

The Honorable Clarence K. Nishihara, Chair
Committee on Public Safety, Intergovernmental, and Military Affairs
The State Senate
State Capitol, Room 229
415 South Beretania St.
Honolulu, Hawaii 96813

Dear Chair Nishihara:

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.

Honorable Chair Clarence K. Nishihara

February 6, 2017

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The Lifeguards/ocean safety officers at Kēʻē have rescued 28 swimmers in distress at Keʻe 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 Kēʻē 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 Kauaʻi

RFW/eld

From: mailinglist@capitol.hawaii.gov
Sent: Saturday, February 4, 2017 1:49 PM
To: PSMTestimony
Cc: yukilei.sugimura@mauicounty.us
Subject: Submitted testimony for SB562 on Feb 7, 2017 13:20PM

SB562

Submitted on: 2/4/2017

Testimony for PSM on Feb 7, 2017 13:20PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Yuki Lei Sugimura	Maui County Council	Comments Only	No

Comments: SB 562 RELATING TO TORT LIABILITY. I am in STRONG SUPPORT SB 562 which will delete the sunset provisions for the liability exceptions for county lifeguards. I STRONGLY SUPPORT THIS LEGISLATION for the reasons cited in testimony submitted by HSAC President Stacy Crivello.

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

February 6, 2017

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

**SB 562, Relating to Tort Liability
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Tuesday, February 7, 2017
1:20 p.m.
Conference Room 229**

Dear Chair Nishihara 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 Kaua'i County Council and as Secretary of the Hawai'i 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 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 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 Public Safety, Intergovernmental, and Military Affairs to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

A handwritten signature in black ink, appearing to read "Mel Rapozo", with a long horizontal flourish extending to the right.

MEL RAPOZO
Council Chair, Kaua'i County Council

AMK:mn

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 3, 2017

TO: The Honorable Clarence K. Nishihara, Chair
Senate Committee on Public Safety, Intergovernmental, and Military Affairs

FROM: Stacy Crivello
HSAC President 

SUBJECT: **HEARING OF FEBRUARY 7, 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:SB562a_mkz



HAWAIIAN LIFEGUARD ASSOCIATION

February 6, 2017

The Honorable Clarence K. Nishihara, Chair,
The Honorable Glenn Wakai, Vice Chair, and Members
Committee on Public Safety, Intergovernmental, and Military Affairs
The Senate
The Twenty Ninth Legislature
Regular Session of 2017

Dear Chair Nishihara, Vice Chair Wakai, and Members:

Re: SB 562 Relating to Tort Liability

The Hawaiian Lifeguard Association (HLA) is the non-profit organization that represents over 400 professional lifeguards who protect the residents and visitors who use the State's primary resource, its beaches and surrounding ocean waters. The mission of the HLA is to promote the advancement of professional lifeguarding and to reduce the incidence of drowning and serious injury in the ocean environment. The HLA works to accomplish this mission through public education campaigns, and by partnering with county agencies and the Hawaii Tourism Authority (HTA) in delivering statewide initiatives such as the popular Junior Lifeguard Program.

The Association strongly supports SB 562, which seeks to make permanent the protection from liability provided by Act 170 (Session Laws 2002). The protection provided in Act 170 is necessary for individual lifeguards as well as their employers to be able to provide lifeguard services at four State beach parks: Kaena Point State Park on Oahu, Hapuna Beach on Hawaii Island, Makena Beach on Maui, and Ke'e Beach on Kauai. These four beaches are popularly used by residents and visitors and were identified as high priority for lifeguard services by a group of ocean safety experts in 1991. Since lifeguards were assigned to these beaches, the number of drownings and serious injuries has been significantly reduced because of their presence. This fact has been documented by the State of Hawaii's Department of Health as well as in a publication of the United States Department of Health and Human Services Centers for Disease Control and Prevention (CDC) titled, "Lifeguard Effectiveness: A Report of the Working Group."

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

The United States Lifesaving Association (USLA), the national organization of open water lifeguard agencies, has collected data over a twenty five year period that shows that the chances of drowning at a lifeguarded beach in the United States is one in 18 million. According to the Hawaii State Department of Health's Injury Prevention and Control Program, drowning occur ten times more often at beaches in Hawaii that are not manned by lifeguards compared to those with lifeguard protection.

The HLA maintains that properly trained and equipped lifeguards are the front line of defense in any drowning prevention program. The majority of the highly publicized drownings that have recently occurred have taken place at beaches and areas not patrolled by lifeguards. The necessity of providing trained lifeguards is obvious and supported by reliable data.

We urge you to acknowledge this fact by removing the sunset provision from Act 170 and make the llaw permanent.

Thank you for the opportunity to provide this testimony. I am available to answer any questions you may have. Aloha nui loa.

Sincerely,



Ralph S. Goto

For the Board of Directors

From: mailinglist@capitol.hawaii.gov
Sent: Sunday, February 5, 2017 12:00 PM
To: PSMTestimony
Cc: lady.flach@gmail.com
Subject: *Submitted testimony for SB562 on Feb 7, 2017 13:20PM*

SB562

Submitted on: 2/5/2017

Testimony for PSM on Feb 7, 2017 13:20PM in Conference Room 229

Submitted By	Organization	Testifier Position	Present at Hearing
Teri Heede	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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