

Honolulu, Hawaii

MAR 23 2018

RE: H.B. No. 2097
H.D. 1
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2018
State of Hawaii

Sir:

Your Committee on Water and Land, to which was referred H.B. No. 2097, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO LIFEGUARDS,"

begs leave to report as follows:

The purpose and intent of this measure is to appropriate funds to the Department of Land and Natural Resources to hire lifeguards to monitor state and county beach parks.

Prior to the hearing on this measure, your Committee posted and made available for public review a proposed S.D. 1, which amends this measure by:

- (1) Adding a preamble section regarding the need for the State to more fully assume the risk of posting county lifeguards at designated state beach parks;
- (2) Amending section 662-16, Hawaii Revised Statutes, to require the Attorney General to defend any civil action or proceeding against a county and any person employed by the county to provide lifeguard services at a designated state beach park under an agreement between the State and the county, except for a civil action or proceeding that results from a county lifeguard's gross negligence or wanton act or omission;



- (3) Specifying appropriation amounts to the Department of Land and Natural Resources for lifeguard services and clarifying that the funds are for the purpose of lifeguard to monitor state beach parks, rather than state and county beach parks;
- (4) Changing the effective date to July 1, 2018; and
- (5) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

Your Committee received testimony in support of the proposed S.D. 1 from the Department of Land and Natural Resources; Hawai'i Fire Department, County of Hawai'i; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; Hawaiian Lifeguard Association; Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i; and one individual. Your Committee received comments on the proposed S.D. 1 from the Department of the Attorney General, Honolulu Emergency Services Department of the City and County of Honolulu, Hawai'i Tourism Authority, and Hawaii Association for Justice.

Your Committee finds that the State contracts with the counties to provide lifeguards at various state beach parks. These lifeguards provide a valuable service as first responders to residents and tourists alike. The frequency of incidents requiring lifeguard involvement is great. According to testimony submitted by the Honolulu Emergency Services Department of the City and County of Honolulu, in 2016, lifeguards performed 103,850 preventive actions; treated 3,364 minor medical issues; responded to and managed 44 major medical responses; and performed 64 ocean rescues. The cost of protecting beachgoers has increased in the past two years and is anticipated to continue to increase in the current fiscal year. The proposed S.D. 1 will provide additional necessary funding to ensure lifeguard services at state beach parks.

Your Committee further finds that existing state law authorizes the Attorney General to defend county lifeguards posted at designated state beach parks and the respective county against lawsuits. However, this existing law does not completely eliminate the risk to the lifeguard or county. The proposed



S.D. 1 will more fully assume the risk of posting county lifeguards at designated state beach parks under an agreement between the State and a county by requiring, instead of authorizing, the Attorney General to defend the lifeguards and the employing counties against civil lawsuits for injuries that result from acts or omissions while the lifeguard is acting within the scope of the lifeguard's employment.

Your Committee has amended this measure by adopting the proposed S.D. 1 and further amending the measure by:

- (1) Adopting the language suggested by the Department of the Attorney General clarifying that in order for the Attorney General to defend any civil action or proceeding brought in any court against a county lifeguard, except for civil actions or proceedings resulting from the county lifeguard's gross negligence or wanton act or omission, the county lifeguard must have acted within the scope of the county lifeguard's employment at a designated state beach park;
- (2) Allowing the county lifeguard to employ an attorney, in lieu of the Attorney General, to defend any civil action or proceeding brought against the county lifeguard at the lifeguard's own expense;
- (3) Clarifying that the appropriations made to the Department of Land and Natural Resources are for the Division of State Parks to contract with the counties for county lifeguard services at designated state beach parks under an agreement between the State and a county; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Water and Land that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2097, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2097, H.D. 1, S.D. 1, and be referred to your Committees on Judiciary and Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Water and Land,




KARL RHOADS, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Water and Land
WTL

Bill / Resolution No.:*	Committee Referral:	Date:		
HB 2097, HD1	WTL, WAM	3/19/18		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input type="checkbox"/> Pass, unamended 2312	<input checked="" type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
RHOADS, Karl (C)	/			
GABBARD, Mike (VC)				/
INOUYE, Lorraine R.				/
RIVIERE, Gil	/			
THIELEN, Laura H.	/			
TOTAL	3	0	0	2
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes