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GOVERNOR OF
HAWAII



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

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DEPUTY DIRECTOR - WATER

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BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
WATER AND LAND**

**Monday, March 19, 2018
2:55 PM
State Capitol, Conference Room 224**

**In consideration of
HOUSE BILL 2097, HOUSE DRAFT 1, PROPOSED SENATE DRAFT 1
RELATING TO LIFEGUARDS**

House Bill 2097, House Draft 1, Proposed Senate Draft 1 proposes 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. Appropriates funds to the Department of Land and Natural Resources (Department) to hire lifeguards to monitor state beach parks. **The Department supports this proposed measure with amendments provided that its passage does not replace or adversely impact priorities indicated in the Executive Supplemental Budget request.**

The State does not have lifeguard positions and as a result, the Department contracts with the four counties to support lifeguard services at state beach parks under the jurisdiction of the Department's Division of State Parks (Division). The beach parks have been identified as having both ocean conditions and a volume of patronage that warrants the critical need for trained water safety personnel.

The total current costs of the lifeguard contracts for four state beach parks under the jurisdiction of the Division is \$2.9 million dollars and funding has been executed through a creative and currently insufficient variety of sources; general fund appropriations, special fund revenue and a portion of the Transient Accommodations Tax allocation.

Ideally – all four contracts would be funded via a commensurate increase in general funds, – including a targeted need for new lifeguard stations at Kua Bay at Kekaha Kai State Park with an additional \$375,000 for personnel costs.

This table illustrates the previous and current costs associated with providing the current lifeguard contracts.

		FY17	FY18	INCREASE
Initial Memorandum: 6/27/12 MOF: State Parks Special Fund/TAT	HAWAII (Hapuna)	\$ 465,785.00	\$ 868,105.79	\$ 402,320.79
Initial Memorandum: 07/03/08 MOF: State Parks General Fund	MAUI (Makena)	\$ 606,469.00	\$ 1,056,058.64	\$ 449,589.64
Initial Memorandum: 03/24/08 MOF: State Parks General Fund	KAUAI (Kee)	\$ 200,065.00	\$ 287,292.10	\$ 87,227.10
Initial Memorandum: 06/27/12 MOF: Special Land and Development Fund	CITY (Keawaula)	\$ 584,216.00	\$ 697,084.39	\$ 112,868.39
	TOTAL	\$ 1,856,535.00	\$ 2,908,540.92	\$ 1,052,005.92

The Department is supportive of approved language that alleviates the concern of liability for County Water Safety personnel in the execution of their duties per a contract with the Department.

The current appropriation of \$1 million dollars would alleviate the current funding challenges associated with the existing contracts, but the Department prefers that the allocation be increased to \$2.9 million dollars to minimally cover existing costs. The Department understands that under collective bargaining the contract cost for salaries may increase – but the increased cost cannot be calculated now.

Thank you for the opportunity to comment on this measure.



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David Y. Ige
Governor

George D. Szigeti
President and Chief Executive Officer

Statement of
George D. Szigeti
Chief Executive Officer
Hawai'i Tourism Authority
on
HB2097 HD1 Proposed SD1
Relating to Lifeguards
Senate Committee on Water and Land
Monday, March 19, 2018
2:55pm
Conference Room 224

Chair Rhoads, Vice-Chair Gabbard and Committee Members:

The Hawai'i Tourism Authority (HTA) **offers comments on HB2097 HD1 Proposed SD1**, which would appropriate \$1,000,000 from the State's general revenues and \$1,000,000 from the Tourism Special Fund (TSF) for the fiscal year 2018-2019 to the Department of Land and Natural Resources Division of State Parks to hire lifeguards.

HTA is actively involved in supporting State, county and community ocean safety programs, as well as programs focused on education and increasing visitor awareness of dangerous ocean conditions. These programs include the Junior Lifeguard Program, which HTA funded in 2017. Through this program, approximately 2,000 young residents were trained as community water safety ambassadors to enhance their ocean safety awareness and water rescue skills. HTA is also a partner to the State's Drowning and Spinal Injury Prevention Advisory Committee, which works collaboratively to address water safety.

HTA agrees with the bill's intent to hire additional lifeguards, but HTA believes that the funds required are best appropriated from Transient Accommodations Tax (TAT) revenues, rather than the TSF. Currently, under HRS § 237D-6.5, TAT revenues are allocated to the special land and development fund for this same purpose and are administered by the Department of Land and Natural Resources for the "protection, preservation, maintenance, and enhancement of natural resources, including beaches, important to the visitor industry." Appropriating all of the funds from the TAT would be consistent with this section.

For these reasons, HTA believes that the funds to hire additional lifeguards to monitor state and county beach parks should come from the TAT. Taking funds from the TSF would hinder the State's ability to attract and retain visitors. Thus, HTA proposes the bill be amended to allocate all of the necessary funding from TAT revenues.

Mahalo for the opportunity to offer this testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2018**

ON THE FOLLOWING MEASURE:

H.B. NO. 2097, H.D. 1, PROPOSED S.D. 1, RELATING TO LIFEGUARDS.

BEFORE THE:

SENATE COMMITTEE ON WATER AND LAND

LATE

DATE: Monday, March 19, 2018

TIME: 2:55 p.m.

LOCATION: State Capitol, Room 224

TESTIFIER(S): Russell A. Suzuki, Acting Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General provides the following comments to PROPOSED Senate Draft 1.

Proposed Senate Draft 1 seeks to amend section 662-16, Hawaii Revised Statutes, to require the Attorney General to defend any civil proceeding against a county-employed lifeguard who is designated to provide lifeguard services at a designated state beach park under an agreement between the State and a county. The Attorney General would not defend the county lifeguard for gross negligence or wanton acts or omissions.

Although the preamble to Proposed Senate Draft 1 makes it clear that the lifeguard must be acting within the scope of the lifeguard's employment in order for the Attorney General to defend the lifeguard, the amendment to the statute does not contain that condition. If this Committee chooses to adopt Proposed Senate Draft 1, we respectfully request that the bill be amended to insert the following underlined wording at page 3, line 1, of the proposed draft.

The attorney general shall defend any civil action or proceeding brought in any court against any person employed by a county as a lifeguard and designated to provide lifeguard services at a designated state beach park under an agreement between the State and a county who is acting within the scope of the lifeguard's employment; provided that the attorney general shall have no obligation

to defend when the civil action or proceeding results from a county lifeguards' gross negligence or wanton act or omission.

Thank you for the opportunity to provide comments to Proposed Senate Draft 1.

Harry Kim
Mayor



Darren J. Rosario
Fire Chief

Renwick J. Victorino
Deputy Fire Chief

County of Hawai'i
HAWAII FIRE DEPARTMENT
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March 16, 2018

The Honorable Senator Karl Rhoads, Chair
Committee on Water and Land
State Capitol, Room 224
Honolulu, Hawai'i 96813

Dear Chair Rhodes:

Subject: H.B. 2097 HD1, Proposed SD1 RELATING TO LIFEGUARDS
Hearing Date: Monday March 19, 2018
Time/Place of Hearing: 2:55 p.m., Conference Room 224

I am Darren J. Rosario, Fire Chief of the Hawai'i Fire Department of the County of Hawaii (HCFD). The HCFD supports HB 2097 HD1, which proposes to appropriate funds for the employment of lifeguards to monitor state and county beaches.

The HCFD manages lifeguard services for the County of Hawaii through its Ocean Safety Division. The HCFD provides services at the Hapuna Beach State Park through funding provided by the State of Hawaii, Department of Land and Natural Resources in a contract for. The HCFD is in support of this measure with the funding amounts proposed. The need to expand lifesaving services across our beaches needs the assistance of the funding this measure allocates as a public safety department, we agree with the urgency of this bill and support its passing.

The HCFD also supports the intent of proposed SD1 which proposes to include liability protection for any person employed by the county to provide lifeguard services at a designated state beach park. The HCFD fully supports this initiative. However, this initiative had been vetoed by Governor Ige last year and has documented opposition this session. It is possible that keeping this proposal in HB 2097 HD1 may threaten the initial intent of HB 2097 HD1 to properly fund services of lifeguards to monitor our public beaches. As stated, we fully support the intent of the proposed SD1 but respectfully understand the position of some legislatures and the Governor on the lifeguard liability issue.

Please do not hesitate to call me at 932-2903 or darren.rosario@hawaiicounty.gov should you have any questions. Thank you for the opportunity to provide testimony in support of HB 2044.

Respectfully,

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

DARREN J. ROSARIO
Fire Chief





HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Water and Land

Testimony by
Hawaii Government Employees Association

March 19, 2018

H.B. 2097, H.D. 1, PROPOSED S.D. 1 – RELATING TO LIFEGUARDS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of both the original H.B. 2097, H.D. 1 which appropriates funds to the Department of Land and Natural Resources to hire lifeguards to monitor state and county beach parks for fiscal year 2018 – 2019, and the proposed S.D. 1 to H.B. 2097 which, in addition to the funding appropriation, requires 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.

The proposed S.D. 1 to H.B. 2097 not only grants the Department of Land and Natural Resources the flexibility and discretion to ensure that beachgoers are safe by hiring ocean safety officers, but also adds necessary protections to ensure that when an ocean safety officer is performing in the scope of their duties with reasonable care, the Attorney General will defend the officer against civil lawsuits. The addition of Section 2 in the proposed S.D. 1 to H.B. 2097 appropriately ensures that the State bears the responsibility and assumes the liability of posting county ocean safety officers at designated state beach parks. While we recognize that this language is not the panacea for all, we trust that this shift will provide much needed peace of mind so that ocean safety officers can focus their energy on their jobs: saving lives.

We are hopeful that passage of this measure will lend much needed ocean resources and help in decreasing the amount of drownings and deaths on our beaches. Thank you for the opportunity to testify in support of the original H.B. 2097, H.D. 1 and the proposed S.D. 1.

Respectfully submitted,



Randy Perreira
Executive Director



HAWAIIAN LIFEGUARD ASSOCIATION

March 18, 2018

The Honorable Karl Rhodes Chair
The Honorable Mike Gabbard, Vice Chair,
and Members
Committee on Water and Land
The Senate
The Twenty Ninth Legislature
Regular Session of 2018

Chair Rhodes, Vice Chair Gabbard, and Members,

RE: HB 2097, HD1 SD1 RELATING TO LIFEGUARDS

The Hawaiian Lifeguard Association (HLA) is the non-profit organization incorporated in the State of Hawaii to support the 450 professional ocean lifeguards employed by the counties in their efforts to reduce drownings and aquatic injuries at our beaches.

The Association accomplishes this goal by upholding the highest standards of professional lifeguard training and certification, delivering the annual Junior Lifeguard Program, and by developing and disseminating water safety prevention messages for visitors to and residents of our island state.

The HLA strongly supports HB 2097, HD1 and the proposed SD1 that would 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 designated state beach parks, and appropriates funds to the Department of Land and Natural Resources to hire lifeguards to monitor state beach parks

The Board of Directors of the Association applauds your efforts to ensure that lifeguard services continue as designated state beach parks by providing this much-needed legislative mandate.

Thank you for the opportunity to testify.

Sincerely,

Ralph S. Goto

For the Board of Directors

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

**TESTIMONY OF NAHELANI WEBSTER FOR THE HAWAII ASSOCIATION
FOR JUSTICE (HAJ) REGARDING H.B. 2097, HD1, Proposed SD1**

March 19, 2018
2:55 p.m.
Room 224

LATE

To: Chair Karl Rhoads and Members of the Senate Committee on Water and Land:

My name is Nahelani Webster and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) regarding H.B. 2097, HD1, proposed SD1, Relating to Lifeguards. We offer the following comments.

The issue of lifeguard responsibility for negligent performance of their duties has been before the legislature for the past 20 years or so. Lifeguards have expressed concern that they will lose their personal assets, including their homes and life savings, if they are sued as a result of someone's serious injury or death while they are on duty. It has been, and continues to be, HAJ's position that lifeguards, just like all other state employees, are already protected by the State Tort Liability Act, HRS Chapter 662.

Lifeguards have provided exemplary service on Hawaii beaches for over 100 years. HAJ has not been able to discover a single instance when a lifeguard lost personal assets because of services performed in the course and scope of their duties. HAJ has repeatedly asked proponents to identify cases in which lifeguards have lost personal assets and for 20 years they have not been able to identify even one time this happened in the 100-year history of lifeguards protecting our beaches. And these proponents, who make up the state and county lifeguard agencies and lifeguards themselves, would best know if indeed there were any instances. It is therefore obvious that there is no actual problem requiring legislative action.

The reason lifeguards have not had their personal assets taken from them is simple. The State Tort Liability Act specifically and explicitly provides in §662-1 that county lifeguards serving on State beaches are considered employees of the State and are subject to the protections of the State Tort Liability Act. Lifeguards are entitled to a defense, at no personal cost, by the Office of the Attorney General under §662-16. The State has assumed liability for negligence of its employees pursuant to §662-2 and therefore pays for all settlements and judgments on their behalf and on behalf of the State itself. There isn't, and has never been, any instance where a lifeguard acting within the course and scope of their employment has not been protected by the State of Hawaii pursuant to the State Tort Liability Act. The same is true when lifeguards work on county beaches because the counties are similarly liable for the negligent acts of its employees; and therefore defend lawsuits and pay settlements and judgments.

Counties are similarly protected when their lifeguards work on State beaches because they are liable only to the extent that their lifeguards are liable; and since their lifeguards are protected by the State Tort Liability Act, the counties are also protected. In addition, counties are specifically and explicitly protected under §662-16. Just as there have been no instances where lifeguards have lost personal assets, there have been no instances where the State has failed to honor its obligations to protect lifeguards and counties pursuant to §662-16. The counties are unable to identify even one instance when a county had to defend and pay for a lifeguard acting in the course and scope of their employment at a state beach park because there simply is none. The present law has worked well in actual practice (for both lifeguards and counties) and there is no actual need for any changes.

Finally, the proposed SD1 guts an appropriations bill and adds new content including a requirement that the Attorney General defend any civil action or proceeding against a County and any person employed by the County to provide lifeguard services for the State. A gut and replace after crossover where the replacement contents has not been heard in the originating body raises potential constitutional problems under the Hawaii Supreme Court's Taomae v. Lingle case.

Thank you for allowing us to testify regarding this measure. Please feel free to contact us should you have any questions or desire additional information.

HB-2097-HD-1

Submitted on: 3/18/2018 2:48:48 PM

Testimony for WTL on 3/19/2018 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for OCC Legislative Priorities Committee, Democratic Party of Hawai'i	Support	No

Comments:

HB-2097-HD-1

Submitted on: 3/15/2018 8:53:04 PM

Testimony for WTL on 3/19/2018 2:55:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments: