

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

ROBERT K. MASUDA
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
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KAHOOLAWE ISLAND RESERVE COMMISSION
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 Committees on
JUDICIARY
and
WAYS AND MEANS

Thursday, March 29, 2018
10:30 AM
State Capitol, Conference Room 211

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

House Bill 2097, House Draft 1, Senate Draft 1 proposes to: (1) 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 and (2) appropriates funds to the Department of Land and Natural Resources (Department) to contract with the Counties for county lifeguard services at designated state beach parks under an agreement between the State and a county. **The Department supports this 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.

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

March 29, 2018
10:30 a.m.
Room 211

To: Chair Brian T. Taniguchi and Members of the Senate Committee on Judiciary and
Chair Donavan M. Dela Cruz and Members of the Senate Committee on Ways and
Means:

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, 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 is not, nor has there ever been, any instance when 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, SD1 guts an appropriations bill and replaces its contents with 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.



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND ON WAYS AND MEANS

DATE: Thursday, March 29, 2018

TIME: 10:30 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Caron Inagaki,
Deputy Attorney General, at 586-1300)

Chairs Taniguchi and Dela Cruz and Members of the Committees:

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

The original purpose of House Bill No. 2097 was to appropriate funds to the Department of Land and Natural Resources to hire lifeguards to monitor state beach parks.

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 acting within the scope of the county lifeguard's employment 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. Senate Draft 1 also seeks to require the Attorney General to defend any civil proceeding against a county based on an allegedly negligent or wrongful act or omission of a county lifeguard acting within the scope of the county lifeguard's employment at a designated state beach park.

Senate Draft 1, as currently written, would require the Attorney General to defend a county, not just for the negligent acts of the county lifeguard, but for the county's own negligence separate from the acts of the lifeguard. For example, if a county-employed

lifeguard commits a negligent act, claims are often also brought against a county for the negligent hiring, supervision, or training of that lifeguard. These claims against a county are “based on an allegedly negligent or wrongful act or omission” of the lifeguard but are separate negligent acts by the county. The State should not be required to defend a county for the county’s own negligence.

For this reason, we respectfully request that the bill be amended to insert the following underlined wording starting at page 4, line 15.

The attorney general shall defend any civil action or proceeding brought in any court against a county based on an allegedly negligent or wrongful act or omission of persons who are employed by a county as lifeguards designated to provide lifeguard services at a designated state beach park under an agreement between the State and a county, and acting within the scope of their employment as county lifeguards at a designated state beach park; provided that the attorney general shall have no[] obligation to defend when the civil action or proceeding results from a county lifeguard’s gross negligence or wanton act or omission, or when claims are made against the county for its own negligence or wrongful acts or omissions.

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

HB-2097-SD-1

Submitted on: 3/25/2018 10:32:37 PM

Testimony for JDC on 3/29/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
De MONT R. D. CONNER	Testifying for Ho'omanapono Political Action Committee (HPAC)	Support	Yes

Comments:

We STRONGLY SUPPORT this bill. Mahalo.

Harry Kim
Mayor



Wil Okabe
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i
Office of the Mayor

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March 27, 2018

Senator Brian T. Taniguchi, Chair
Committee on Judiciary
Hawai'i State Capitol, Room 211
Honolulu, HI 96813

Senator Donovan M. Dela Cruz, Chair
Committee on Ways and Means
Hawai'i State Capitol, Room 211
Honolulu, HI 96813

Dear Chair Taniguchi and Dela Cruz, and Committee Members:

Re: HB 2097, HD 1, SD 1 Relating to Lifeguards
Hearing Date: 03-29-18 – 10:30 am; Conference Room 211

Thank you for this opportunity to support HB 2097, HD 1, SD 1.

With the issue of lifeguard liability hanging over our first responders, and no indication that any other legislative solution is at hand, my Fire Department supports the hiring of lifeguards by DLNR for State beaches, and the involvement of the Attorney General in defending cases of alleged negligence.

We also appreciate Section 3 of SD 1, assuming that this will be new State money in addition to what is currently allocated for lifeguards.

Respectfully submitted,

Harry Kim
Mayor, County of Hawai'i



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Judiciary
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association

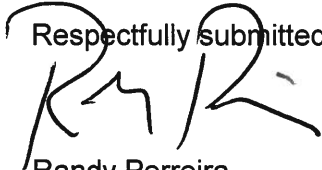
March 29, 2018

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

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 2097, H.D. 1, S.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 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.

H.B. 2097, H.D. 1, S.D. 1 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. Section 2 of 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, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

HONOLULU EMERGENCY SERVICES DEPARTMENT
CITY AND COUNTY OF HONOLULU

3375 KOAPAKA STREET, SUITE H-450 • HONOLULU, HAWAII 96819-1814
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KIRK CALDWELL
MAYOR

JAMES D. HOWE, JR.
DIRECTOR

IAN T.T. SANTEE
DEPUTY DIRECTOR

March 27, 2018

The Honorable Brian T. Taniguchi, Chair
The Honorable Karl Rhoads, Vice-Chair
Senate Committee on Judiciary

The Honorable Donovan M. Dela Cruz, Chair
The Honorable Gilbert S.C. Keith-Agaran, Vice-Chair
Senate Committee on Ways and Means
The Senate
Twenty-Ninth Legislature
Regular Session of 2018

Re: HB2097 HD1, SD1 Relating to Lifeguards

Dear Chair Taniguchi, Chair Dela Cruz, Vice-Chair Rhoads, Vice-Chair Keith-Agaran, and Members:

The Honolulu Emergency Services Department is in support of HB2097 HD1, SD1.

The Honolulu Emergency Services Department contracts with the Department of Land and Natural Resources, State Parks Division for the provision of ocean safety and lifeguard services at Kaena Point State Park. It is the exclusive provider of these services. The service area our personnel patrol can be large, covering not only the beaches and shorelines in the park area but also activity on the ocean waters up to one mile off shore which is under the jurisdiction of the State.

The frequency of incidents requiring lifeguard involvement is great. In 2016 alone, 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 in these areas has increased in the past two years and is anticipated to increase again in the current fiscal year. As the contracted service provider, the Department's recovery of these increased costs is critical to ensuring the continued provision of these services.

The amended Bill additionally will require the State to partially assume the legal and financial risks associated with providing lifeguard services at State beach parks where the county is contracted to perform these public safety services.

Thank you for the opportunity to testify on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "James D. Howe, Jr.", is written over a horizontal line.

James D. Howe, Jr.
Director

Handwritten initials in black ink, possibly "JH", are written to the left of the name and title.

HB-2097-SD-1

Submitted on: 3/28/2018 9:20:56 AM

Testimony for JDC on 3/29/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Melodie Aduja	Testifying for Oahu County Committee on Legislative Priorities of the Democratic Party of Hawai'i	Support	No

Comments:

HB-2097-SD-1

Submitted on: 3/26/2018 9:42:47 PM

Testimony for JDC on 3/29/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Jennifer Mather	Individual	Support	No

Comments:

Aloha,

My name is Jen Mather and I am a resident of Lahaina in West Maui. I support the Hawaii Attorney General legally defending county lifeguards that are stationed at state beach parks.

Mahalo,

Jen Mather

HB-2097-SD-1

Submitted on: 3/26/2018 5:34:13 PM

Testimony for JDC on 3/29/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Mary Whispering Wind	Individual	Support	No

Comments:

Aloha Lawmakers,

I SUPPORT HB2097.

Please support our lifeguards, and the safety of our citizens and tourists, as we enjoy Hawaii's beautiful beach parks.

Mahalo NUI!

HB-2097-SD-1

Submitted on: 3/26/2018 6:25:58 PM

Testimony for JDC on 3/29/2018 10:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Support	No

Comments:



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David Y. Ige
Governor

George D. Szigeti
President and Chief Executive Officer

LATE

Statement of
George D. Szigeti
Chief Executive Officer
Hawai'i Tourism Authority
on
HB2097 HD1 SD1
Relating to Lifeguards
Senate Committee on Judiciary
Senate Committee on Ways and Means
Thursday, March 29, 2018
10:30 a.m.
Conference Room 211

Chair Taniguchi and Dela Cruz, Vice-Chair Rhoads and Keith-Agaran and Committee Members:

The Hawai'i Tourism Authority (HTA) **offers comments on HB2097 HD1 SD1**, which would require the Attorney General's office to defend lifeguards in civil actions in certain circumstances and appropriate \$1,000,000 from the State's general revenues and \$1,000,000 from the Tourism Special Fund (TSF) for 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 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 Department of Health's Drowning and Aquatic 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 the same purpose and 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." Taking funds from the TSF would hinder the State's ability to attract and retain visitors. Appropriating all of the funds from the TAT would be consistent with this section and would not impact TSF funding.

For these reasons, HTA believes that the funds to hire additional lifeguards to monitor state and county beach parks should come from the TAT.

Mahalo for the opportunity to offer this testimony.