



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Thirtieth Legislature, State of Hawaii
The Senate
Committee on Public Safety, Intergovernmental, and Military Affairs

Testimony by
Hawaii Government Employees Association


February 12, 2019

S.B. 160 – RELATING TO TORT LIABILITY

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 160 which permanently reestablishes an exemption for the State and counties from tort liability for lifeguard services.

After years of extensions granted by the Legislature, the protections afforded to lifeguards under Act 170, Session Laws of Hawaii 2002 sunset on June 30, 2017. While we are unaware of any current lawsuits that have arisen since then, we respectfully request the Legislature pass S.B. 160 and reestablish limited liability protections for county lifeguards while acting within the scope of their duties and responsibilities, with the exception of gross negligence or wanton acts of omissions. This protection from liability ensures that critical lifeguard services will be provided and that ocean safety officers are given much deserved peace of mind so they can focus their energy on their jobs: saving lives.

Thank you for the opportunity to testify in support of S.B. 160.

Respectfully submitted,

for Randy Perreira
Executive Director


Hawai'i State Association of Counties (HSAC)

Counties of Kaua'i, Maui, Hawai'i and City & County of Honolulu
25 Aupuni Street, Hilo, Hawai'i 96720 (808) 961-8828 www.hawaii-counties.com



February 11, 2019

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

FROM: Valerie T. Poindexter
HSAC President 

SUBJECT: HEARING OF FEBRUARY 12, 2019; TESTIMONY IN SUPPORT OF SB160,
RELATING TO TORT LIABILITY

Thank you for the opportunity to testify on behalf of the Hawai'i State Association of Counties. Therefore, I submit this testimony on HSAC's behalf.

This bill appropriates makes an exemption from tort liability for the State and counties arising from lifeguard services, except for gross negligence or wanton acts or omissions.

I strongly support and urge the enactment of SB160. Mahalo for your time and consideration.



SB-160

Submitted on: 2/11/2019 2:41:13 PM

Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Andrew Kakalia	Testifying for County of Kauai ocean safety bureau	Support	No

Comments:

I think that lifeguard should definitely have liability insurance. Thank you for your consideration!!



Maui Hotel & Lodging

ASSOCIATION

Testimony of

Lisa H. Paulson

Executive Director

Maui Hotel & Lodging Association

on

SB 160

Relating To Tort Liability

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Tuesday, February 12, 2019, 1:45 pm

Conference Room 229

Dear Chair Nishihara, Vice Chair Wakai and Members of the Committee,

The Maui Hotel & Lodging Association (MHLA) is the legislative arm of the visitor industry. Our membership includes 195 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 support of SB 160**, which makes an exemption from tort liability for the State and counties arising from lifeguard services, except for gross negligence or wanton acts or omissions.

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.

Permanently reinstating the liability protections previously afforded for lifeguard services 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.

SB-160

Submitted on: 2/11/2019 3:06:25 PM

Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Ron Bregman	Testifying for Ocean Safety and Lifeguard Services	Support	No

Comments:

I/we support this SB160 for the following reasons:

1. The unpredictable nature of ocean conditions in general.
2. The unprecedented dangers inherent in Hawaiian ocean waters and coastal areas.
3. The lack of knowledge and experience exhibited by visitors to the Hawaiian Islands.
4. The sheer number of visitors to Hawaii which are highly encouraged to utilize the beaches and enter the water despite their lack of understanding regarding Hawaiian beaches and ocean conditions.

SB-160

Submitted on: 2/11/2019 1:21:54 PM

Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Amelia Jose	Individual	Support	No

Comments:

Aloha Senate Members,

My name is Amelia Jose, I am a spouse of a C&C Lifeguard and I am writing in support of SB160. On a daily basis lifeguards put their lives at risk to save others; by providing lifeguards with liability protections, lifeguards can continue to rescue those in need, provide life saving measures and other lifeguarding services without fear of personal liability.

Mahalo,

Amelia Jose

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Ross Kagawa, Vice Chair
Arthur Brun
Mason K. Chock
Felicia Cowden
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone: (808) 241-4188
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Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

February 11, 2019

TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
SB 160, RELATING TO TORT LIABILITY
Senate Committee on Public Safety, Intergovernmental, and Military Affairs
Tuesday, February 12, 2019
1:45 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 160, Relating to Tort Liability, which is included in the Hawai'i State Association of Counties (HSAC) Legislative Package. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

SB 160 would provide tort liability protections for county lifeguards on State beaches. Protection at beaches such as Kē'e Beach on the island of Kaua'i is essential.

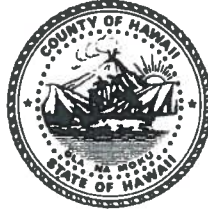
Thank you again for this opportunity to provide testimony in support of SB 160. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:dmc

REBECCA VILLEGAS
Council Member
District 7, Central Kona



PHONE: (808) 323-4267
FAX: (808) 323-4786
EMAIL: Rebecca.villegas@hawaiiicounty.gov

HAWAI'I COUNTY COUNCIL

West Hawai'i Civic Center, Bldg. A
74-5044 Ane Keohokalole Hwy.
Kailua-Kona, Hawai'i 96740

February 8, 2019

TESTIMONY OF REBECCA VILLEGAS
COUNCIL MEMBER, HAWAI'I COUNTY COUNCIL
ON SB 160, RELATING TO TORT LIABILITY.
Committee on Public Safety, Intergovernmental and Military Affairs
Tuesday, February 12, 2019
1:45 p.m.
Conference Room 229

Aloha Chair Nishihara and Members of the Committee:

I thank you for the opportunity to testify in support of SB 160, relating to tort liability. My testimony is submitted in my individual capacity as a member of the Hawai'i County Council and Chair of the Committee on Public Safety.

The purpose of this measure makes an exemption from tort liability for the state and counties arising from lifeguard services, except for gross negligence or wanton acts or omissions and reinstate the liability protections.

Act 170 provided liability protection for lifeguard services on the beach or in the ocean, except for gross negligence or wanton acts or omissions. This limited liability was necessary as counties would not provide lifeguard services at state beaches due to the potential liability that might ensue. Act 170 was repealed on June 30, 2017 leaving our state beaches with no lifeguards available when an emergency occurs. Supporting SB 160 would address this shortfall of services needed at our state beaches.

For the reasons stated above, I urge the Committee on Public Safety, Intergovernmental and Military Affairs to support this measure as well. Should you have any questions, please feel free to contact me at (808) 323-4267.

Mahalo for your consideration.

Rebecca Villegas
Council Member, Hawai'i County Council

February 8, 2019

Senator Clarence K. Nishihara
Chair, Public Safety, Intergovernmental, and Military Affairs Committee
Hawaii State Capitol, room 214
415 South Beretania St.
Honolulu, HI 96813

Chair Nishihara,

I am the Co-Chairperson of the state Drowning and Aquatics Injury Prevention Advisory Committee and a recently retired Battalion Chief of the Hawaii Fire Department. As the past Battalion Chief of Special Operations, part of my duties was to oversee the Ocean Safety division on the island of Hawaii. I am also a board member of the Hawaiian Lifeguard Association. I am submitting this testimony in support of SB160 to protect our lifeguards from liability.

Hapuna beach is one of the most popular beaches in Hawaii averaging over 600,000 people who visit there annually. We currently have six full time lifeguards assigned there providing coverage seven day a week, including every holiday. Our lifeguards currently cover three towers there and perform preventative actions for approximately 22 thousand patrons annually. In spite of these preventative actions, they still perform an average of 100 rescues annually.

From 2001 to 2006, Hapuna beach was the number one location for spinal injuries in the state, yes even more than Sandy beach or Waimea Bay. Since 2006, Hapuna still remained in the top 10 beaches where spinal injuries occurred. This is a major concern because if someone with a spinal injury is not attended to immediately or handled improperly, they could become partially or completely disabled, or in the worse case scenario, become a fatality.

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
Co-Chair, Drowning and Aquatics Injury Prevention Advisory Committee

SB-160

Submitted on: 2/11/2019 10:33:58 AM

Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Antya Miller	Individual	Support	No

Comments:

Council Chair
Kelly T. King

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

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Alice L. Lee
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Tamara Paltin
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Director of Council Services
Maria E. Zielinski

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

LATE

February 11, 2019

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

FROM: Kelly T. King, Secretary
Hawaii State Association of Counties ("HSAC") *Kelly T. King*

SUBJECT: **HEARING OF FEBRUARY 12, 2019; TESTIMONY IN SUPPORT OF SB 160, RELATING TO TORT LIABILITY**

Thank you for the opportunity to testify in **support** this important measure. The purpose of this bill is to make an exemption from tort liability for the State and counties arising from lifeguard services, except for gross negligence or wanton acts or omissions.

This measure is included in the HSAC Legislative Package. Therefore, I offer this testimony on the Maui County Council's behalf.

The County Council supports this measure for the following reasons:

1. Act 170, Session Laws of Hawaii 2002, provided liability protection for lifeguard services on the beach or in the ocean and created a climate in which lifeguard services could be provided by the counties without fear of liability.
2. The liability protections in Act 170 were repealed on June 30, 2017.
3. The liability protections to the counties should be reestablished to encourage the counties to provide lifeguard services at state beach parks without fear of potential liability.

For the foregoing reasons, the Maui County Council **supports** this measure.



**KAUA'I FIRE DEPARTMENT
THE COUNTY OF KAUA'I**

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

KILIPAKI VAUGHAN
DEPUTY FIRE CHIEF

February 11, 2019



The Honorable Clarence K. Nishihara, Chair
Committee on Public Safety, Intergovernmental, and Military Affairs
The State Senate
State Capitol, Room 214
415 South Beretania Street
Honolulu, Hawai'i 96813

Aloha Chair Nishihara:

Subject: Senate Bill (SB) 160, Relating to Tort Liability

I am Kilipaki Vaughan, Deputy Fire Chief of the Kaua'i Fire Department (KFD). The KFD strongly supports the purpose of this Act to permanently reinstate the liability protections previously afforded for lifeguard services.

Passage of SB 160 would make our Kauai beaches accessible and safer by allowing counties to continue posting lifeguards at county and state beaches without the threat of costly litigation for conditions or events outside of human control.

KFD Ocean Safety Bureau (OSB) currently employs a professional workforce of 56 Ocean Safety Officer (OSO) Positions dedicated to the life safety of approximately 71,000+ Kauai residents and around 30,000+ visitors each day. Our KFD OSB faces this challenge each day while the community and people engage with the beauty and mana of our Kauai island shores.

This proposed amendment to add a new section to Hawaii Revised Statutes (HRS) Chapter 663 would protect County Lifeguards in responsibly performing their kuleana of providing rescue, resuscitative services, or other lifeguard services on the beach or in the ocean in the scope of employment. Our highly-trained personnel, as well as other County Lifeguards on all the Hawaiian Islands, should be afforded the protection of the law in performing their job professionally.

The KFD and our Ocean Safety Bureau urge your committee's support on the passage of SB 160.

www.kauai.gov

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**KAUA'I FIRE DEPARTMENT
THE COUNTY OF KAUAI**

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

KILIPAKI VAUGHAN
DEPUTY FIRE CHIEF

The Honorable Clarence Nishihara, Chair
Page 2

LATE

The KFD respectfully requests your passage of SB 160.

Should you have questions, please contact me at (808) 241-4980 or via email at kvaughan@kauai.gov

Ke aloha nui,

Kilipaki Vaughan
Deputy Fire Chief
Kauai Fire Department, County of Kauai



**TESTIMONY OF NAHELANI WEBSTER FOR THE HAWAII ASSOCIATION
FOR JUSTICE (HAJ) IN OPOSITION TO S.B. 160**

February 12, 2019
1:45 p.m.
Room 229

LATE

To: Chair Clarence K. Nishihara and Members of the Senate Committee on Public
Safety, Intergovernmental and Military Affairs:

My name is Nahelani Webster and I am presenting this testimony on behalf of the
Hawaii Association for Justice (HAJ) in opposition to S.B. 160, Relating to Tort
Liability.

Act 181 (2018) already provides the protections that this measure is trying to
achieve. Lifeguards, just like all other state employees, are already protected by the State
Tort Liability Act, Hawaii Revised Statutes (“HRS”) Chapter 662.

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, 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.

LATE

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.

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 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 therefore becomes obvious that there is no actual problem requiring legislative action.

This bill seeks to absolve both lifeguards and counties from civil liability which is poor public policy and endangers our residents and visitors alike. There is no valid reason to enact such a drastic measure and therefore we oppose this bill.

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.

LATE

SB-160

Submitted on: 2/11/2019 9:07:52 PM

Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan	Individual	Support	No

Comments:

Aloha,

My name is Dylan Haight and I work as a lifeguard on the north shore of Kauai. I support this bill and feel that it is necessary to protect the lifeguards. Everyday we go to work to to keep the public safe even in the most dangerous conditions. It is important for us to be able to do our jobs without having to worry about liability. I hope that everyone will see how important it is for us to feel that we have your support when we put our lives on the line.

Mahalo for your support,

Dylan Haight

LATE

SB-160

Submitted on: 2/11/2019 10:25:04 PM
Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
john hoogsteden	Individual	Support	No

Comments:

I am strongly in favor of SB 160. This bill provides tort liability immunity for lifeguards except in cases of gross negligence.

Passage of this bill is necessary because lifeguards work in an unpredictable, chaotic environment. Lifeguards are trained to accomplish rescues and treat the public in a safe, professional manner. The variability of ocean conditions (surf, wind, bottom contour, tide, strength of current, angle of sun, etc.) however, means that standard text-book procedures are not always possible. They may form a basis for a lifeguard's training but are not the limit of the lifeguard's experience. A lifeguard will rely on his training and all of his ocean experience to accomplish a rescue. A lifeguard has to deal with the mercurial nature of the ocean - unlike other public safety agencies.

Please support this bill.

LATE

SB-160

Submitted on: 2/11/2019 10:53:59 PM

Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
vince wiernicki	Individual	Support	No

Comments:

Ocean lifeguards interact with everyone especially visitors. The majority have no idea what we do. We sit there and answer questions like where is the best snorkeling, waves, waterfalls. We give directions, can we take a picture? We have homeless people, intoxicated people and lost people. Where are the turtles, the whales? The language barriers. Who else can they ask on weekends and holidays? So besides that and watching the ocean for waves, rips and unaware people. This bill would give lifeguards a little more comfort in this position. Negligence is the most common source of common law. Ocean lifeguards do more preventive measures then ever before, hopefully this also helps the liability for everyone. The ocean is always changing some days we have high surf with no forecast or warning. Mahalo for listening and being in office.

LATE

SB-160

Submitted on: 2/12/2019 5:44:48 AM

Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Brett Kulbis	Testifying for Honolulu County Republican Party	Support	No

Comments:

LATE

SB-160

Submitted on: 2/12/2019 7:08:11 AM
Testimony for PSM on 2/12/2019 1:45:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Courtney McLaughlin	Individual	Support	No

Comments:

Our lifeguards risk their lives everyday to save others. It is deplorable that they are not given the support and trust of the State. How can you expect these brave men and women to go forth everyday into hazardous conditions without the support of their government. It's unspeakable. They are government employees yet are not given the respect by those who employ them. Please vote to reinstate their liability coverage. Do the right thing. Support those who support all of our residents and visitors. Without their hard work many more would die on our beaches each year. They are an underpaid and under appreciated resource that deserve better. The least we can do is pass this legislation as a way of saying "thank you- we've got your backs too!"



OFFICE OF THE MAYOR
THE COUNTY OF KAUA'I

DEREK S. K. KAWAKAMI, MAYOR
MICHAEL A. DAHLIG, MANAGING DIRECTOR

LATE

Testimony of Derek S. K. Kawakami
Mayor, County of Kaua'i

Senate Committee on Public Safety, Intergovernmental, & Military Affairs
February 12, 2019; 1:45 pm
Conference Room 229

In consideration of
Senate Bill 160
Relating to Tort Liability

Honorable Chair Nishihara, Vice Chair Wakai, and Members of the Committee:

The County of Kaua'i is in **strong support** of SB160 which proposes to make an exemption from tort liability for the State and counties arising from lifeguard services, except for gross negligence or wanton acts or omissions.

As Mayor of the County of Kaua'i and Ni'ihau I humbly implore you to reinstate the protections of our county lifeguards that were afforded by Act 170, Session Laws of Hawai'i 2002 and repealed on June 30, 2017 as they guard our state beaches. Kē'ē Beach located in Hā'ena State Park is one of the four state beaches protected by county lifeguards. In 2014 there were 22 rescues, 10,649 preventions, 116,423 beachgoers, and zero deaths; in 2015 there were 11 rescues, 15,533 preventions, 149,640 beachgoers, and zero deaths; in 2016 there were 28 rescues, 24,936 preventions, 184,823 beachgoers, and zero deaths; in 2017 there were 12 rescues, 21,010 preventions, 208,784 beachgoers, and zero deaths; and in 2018 with our beach and park with limited access after the April floods there were 10 rescues, 5,410 preventions, 50,924 beachgoers, and zero deaths.

Our lifeguards put their lives on the line to protect our keiki, our kupuna, our locals and our visitors. With each prevention and rescue, our lifeguards prevent the heartbreak that parents, children, family and friends are dealt when losing someone to drowning. This bill protects those who protect us. It is a means to return the favor.

Thank you for the opportunity to submit testimony on this measure.

Respectfully,

Derek S.K. Kawakami

