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DEPARTMENT OF LAND AND NATURAL RESOURCES
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KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**Testimony of
DAWN N.S. CHANG
Chairperson**

**Before the Senate Committee on
PUBLIC SAFETY AND INTERGOVERNMENTAL AND MILITARY AFFAIRS**

**Friday, February 9, 2024
3:01 PM
State Capitol, Conference Room 225**

**In consideration of
SENATE BILL 3259
RELATING TO TORT LIABILITY**

Senate Bill 3259 proposes to permanently reinstate the liability protections afforded to county lifeguards providing services at State beach parks or in the ocean. **The Department of Land and Natural Resources (Department) supports this measure.**

The Department's Division of State Parks continues to enter into memorandum of agreements with the counties for services at 5 State park beaches. This bill supports the continued cooperation between the Department and counties to help ensure public safety at our State beach parks.

Mahalo for the opportunity to provide testimony in support of this measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Thirty-Second Legislature, State of Hawaii
Senate
Committee on Public Safety and Intergovernmental and Military Affairs

Testimony by
Hawaii Government Employees Association

February 9, 2024

S.B.3259 – Relating to Tort Liability

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B.3259, which permanently reinstates the liability protections previously afforded to county lifeguards providing services at state beach parks or in the ocean.

This will allow counties to continue providing lifeguard services without fear of liability, to protect residents and visitors of Hawaii. There are daily occurrences in which lifeguards put themselves in life-threatening situations to prevent and/or perform rescues due to beachgoers who fail to heed to recommendations and warnings. Reinstating the liability protection ensures that the safety of beaches and beachgoers continue as a priority of our state.

Thank you for the opportunity to testify in support of S.B.3259.

Respectfully submitted,

Randy Perreira
Executive Director

**TESTIMONY OF EVAN OUE ON BEHALF OF THE
HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION
TO SB 3259**

Date: Friday, February 9, 2024

Time: 3:01 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **OPPOSITION** to SB 3259, Relating to Lifeguards.

The purpose of SB 3259 is to make liability exemptions for certain lifeguard services permanent. Purpose of this bill is to reinstate language previously implemented by Act 170, Session Laws of Hawaii, 2002, which ended in 2019. Act 170 is no longer in statute as there was no evidence to support the need for a continued exemption from liability.

To provide some background history on this legislation, the State does not employ lifeguards. Therefore, it contracts with counties to provide county lifeguards at several State beach parks. In the late 90s the counties experienced a period of increased insurance premiums for lifeguard services. The counties claimed they needed immunity for lifeguard services at State beach parks because insurance was becoming too costly. The counties were afraid that incidents at state beach parks might make insurance unaffordable, and therefore, sought immunity to avoid liability - even when their lifeguards were negligent.

HAJ has always maintained that giving lifeguards immunity for performing their duties in an unreasonable or negligent manner is bad public policy and compromises safety for residents and tourists alike.

Hawaii law requires that all first responders, such as ambulance EMTs, police, firefighters, emergency room doctors and nurses, and others, perform their jobs with reasonable care under the circumstances. Lifeguards should not be granted a carve out to prevent them

from being responsible if they are negligent. There is no public policy justification for condoning negligent job performance by any government employee; nor is there any justification for treating lifeguards any different from other first responders who provide equally dangerous lifesaving services.

To be clear, HAJ is not against lifeguards or lifeguard services. In fact, our lifeguards have provided exemplary service on Hawaii beaches for over 100 years and are among the best and most dedicated lifeguards in the world. Lifeguards save lives and risk their own lives in doing so. Lifeguards are only responsible when they perform their job negligently which is conduct that is unreasonable under the circumstances. For example, a lifeguard may be distracted while talking with a friend rather than concentrating on the shoreline. Again, there is no sound reason to protect or condone unreasonable performance of lifeguard services.

Further, the immunity from liability covered under this bill is unnecessary as 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 Act. Lifeguards are entitled to a defense, at no personal cost, by the Office of the Attorney General under §662-16 for "**any civil action or proceeding brought in any court against a county based on an allegedly negligent or wrongful act or omission of persons employed by a county as lifeguards at a state park.**" 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 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.

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 are at risk if they are sued as a result of someone's serious injury or death while they are on duty. HAJ is not aware of an instance when a lifeguard has lost personal assets because of services performed in the course and scope of their duties. In turn, there is no actual problem requiring legislative action. 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.

In sum, unnecessarily immunizing lifeguards and counties from civil liability endangers our residents and visitors without a valid reason to enact such a drastic measure. Accordingly, HAJ opposes 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.