

TESTIMONY

SB 1022



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

S.B. NO. 1022, RELATING TO GOVERNMENT LIABILITY.

BEFORE THE:

SENATE COMMITTEES ON WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS

AND ON TRANSPORTATION, INTERNATIONAL, AND INTERGOVERNMENTAL AFFAIRS

DATE: Wednesday, February 11, 2009 **TIME:** 3:30 PM

LOCATION: State Capitol, Room 229

TESTIFIER(S): Mark J. Bennett, Attorney General
or Caron Inagaki, Deputy Attorney General

Chairs Hee and English and Members of the Committees:

The Department of the Attorney General strongly supports this measure.

The purpose of this bill is to make permanent the liability protections in lifeguard cases and liability protections for warning signs for outdoor recreation on public lands. At present, the liability protections provided in Act 170, Session Laws of Hawaii (SLH) 2002 and Act 82, SLH 2003, will sunset on June 30, 2010.

The limited liability protection provided in Act 170 was necessary because some counties would not provide lifeguard services at state beach parks, due to fear of potential liability that might ensue. Thus, Act 170 created a climate in which lifeguard services could be provided by the counties with less fear of liability.

Under Act 152, Session Laws of Hawaii (SLH) 2007, the Legislature found that the limitations on state and county liability have proven to be beneficial to the state and county governments, as well as the public. The liability protections of Act 170, as well as Act 82, SLH 2003, and Act 190, SLH 1996, as amended, have reduced the exposure of the state and county governments to substantial damages and, as a result, have allowed the state and county governments to keep recreational areas and public beach parks with potentially dangerous

natural conditions open to the public. The Legislature further found that state and county compliance with the statutorily required public warning of dangerous conditions at recreational areas and public beach parks have contributed to an improvement in public safety in these areas, which justified making the current liability exemptions for state and county governments relating to recreational areas (Act 82) and public beach parks (Act 190) and actions of county lifeguards (Act 170) permanent or extending their protections. Act 190 was made permanent in 2007 and the liability protections in Acts 170 and 82 were extended to June 30, 2010.

Act 152 established a task force to examine the effectiveness of, collect data, and provide information to the legislature on, Acts 170, 190, and 82. The report submitted by the task force to the 2009 Legislature found nearly unanimously that Act 170 was effective and promotes and increases public safety. The task force, again, nearly unanimously recommended that Act 170 be made permanent. The lone dissenter was the representative of Consumer Lawyers of Hawaii, who believed that lifeguards had not been on the beaches, specifically on Kauai, long enough to determine the efficacy of Act 170.

Following the enactment of Act 170, there have been a total of 131 lifeguard rescues on Oahu's previously unguarded beaches. In 2007-2008 alone, Kauai's water safety officers prevented at least 312 drowning deaths. At Hapuna Beach Park, the only state beach park on the island of Hawaii, approximately 267 individuals were rescued during the fiscal years of 2006-2007 and 2007-2008. In 2008, Maui lifeguards performed approximately 120 rescues. This is a life-saving measure that deserves to be made permanent.

Act 82 established a system of warning signs to increase public safety and protect the State and the counties from unlimited liability arising out of recreational activities on public lands. Many of these lands are inherently dangerous and contain potential risks. Act 82 created a process in which a risk assessment group reviews both the design and placement of a proposed warning sign. If the risk

assessment group approves the sign and placement, the group will then recommend it to the Chairperson of the Board of Land and Natural Resources. Public hearings are conducted and comments are received from the public throughout the process. If the Chairperson approves the design and placement of the sign, the approval will have the legal effect of providing liability protection to the State or the county after the sign is posted. These rigorous requirements must be met in order for the government entities to be afforded protection from liability.

There is now a consistent process for natural hazard evaluation and appurtenant sign designs. Administrative rules have been put in place that eliminate the ambiguity about the design and placement of warning signs and state and county governments have institutionalized this process.

As with Act 170, the Act 152 task force found nearly unanimously that the program established pursuant to Act 82 was effective and promotes and increases public safety, and recommended that Act 82 be made permanent. The lone dissenter was, again, the representative of Consumer Lawyers of Hawaii who wanted this Act considered in the 2010 legislative session.

The process established by Act 82 has allowed the State and the counties to refine its signage and improve the quality of its warning signs on public lands throughout the State, benefiting public users and at the same time providing the State and the counties with conditional protection from liability for the inherent risks that exist on public lands.

Acts 170 and 82 should be made permanent.

We therefore respectfully request that the Committee pass this measure.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the Senate Committees on
WATER, LAND, AGRICULTURE, AND HAWAIIAN AFFAIRS
and
TRANSPORTATION, INTERNATIONAL AND INTERGOVERNMENTAL AFFAIRS**

**Wednesday, February 11, 2009
3:30 PM
State Capitol, Conference Room 229**

**In consideration of
SENATE BILL 1022
RELATING TO GOVERNMENT LIABILITY**

Senate Bill 1022 proposes to make permanent, laws providing the state and county governments with liability protection for public use of certain state or county recreational areas. The Department of Land and Natural Resources (Department) strongly supports this bill as it provides a permanent exception from liability for county lifeguards while carrying out their duties and responsibilities.

This bill amends Act 170, Session Laws of Hawaii (SLH) 2002, as amended by Act 152, SLH 2007, by repealing the June 30, 2010 sunset date. Act 170 provides liability immunity for counties and county lifeguards while providing rescue, resuscitative or other lifeguard services. The State does not have lifeguards and contracts with the counties for lifeguard services at its State Parks. Liability concerns had prevented counties from participating. Act 170 cleared up these concerns and allowed the State to contract with all counties for lifeguard services at State Park beaches

This measure also amends Act 82, SLH 2003 (Act 82), by eliminating the provision that repeals the Act in 2010, thus allowing the Act to continue and be codified in Chapters 663 and 171 of the Hawaii Revised Statutes. Act 82 established a process that balances the responsibility of the government's duty to warn of dangerous natural conditions in specific state and county recreational areas adjacent to natural conditions, and the public's duty to heed posted signs and make an informed choice.

Act 82 was promulgated due to concern about the adequacy of warning signs for potentially dangerous natural conditions and public exposure at state and county parks and along specific Na

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

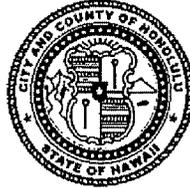
Ala Hele trails and access roads (defined as improved public lands under Act 82). The Department contracted the United States Forest Service to conduct an evaluation of these specific state parks and trails to identify reoccurring dangerous natural conditions that could not be mitigated and that warranted signage. The four natural conditions identified are: rock fall, flashfloods, cliffs and submerged object in streams that would cause injury from impact associated with diving or jumping into the water.

Act 82 established a Risk Assessment Working Group (RAWG) that reviewed the beach safety signs, as well as the most current warning sign standards from the American National Standards Institute (ANSI). Using current ANSI guidelines, the RAWG established prototype sign design and placement guidelines. The prototype signs underwent public review and were modified according to comments. The guidelines were incorporated into Title 13, Chapter 8, Hawaii Administrative Rules for the design and placement of warning signs on improved public lands, which have been approved by the Governor. The final set of signs and their ancillary locations have been approved by the Board of Land and Natural Resources. The signs are now concluded to be adequate, thus reducing the state and county liability associated with the identified natural conditions.

For the reasons stated in this testimony, the Department supports Senate Bill 1022 in its objective to continue the partnership of the state and counties to enhance safety of public park users while promoting a greater understanding, respect, and enjoyment of the otherwise inviting ocean that we are blessed with. The sunset provisions in Act 170, and Act 82 need to be removed.

DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 • HONOLULU, HAWAII 96813
TELEPHONE: (808) 768-5193 • FAX: (808) 768-5105 • INTERNET: www.honolulu.gov



MUFI HANNEMANN
MAYOR

CARRIE K.S. OKINAGA
CORPORATION COUNSEL

DONNA M. WOO
FIRST DEPUTY CORPORATION COUNSEL

February 9, 2009

The Honorable Clayton Hee, Chair
and Members of the Committee on
Water, Land, Agriculture, and Hawaiian Affairs
The Honorable J. Kalani English, Chair
and Members of the Committee on
Transportation, International and
Intergovernmental Affairs
The Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chairs Hee and English, and Committee Members:

Subject: Senate Bill No. 1022
Relating to Government Liability

The City and County of Honolulu ("City") strongly supports SB No. 1022, which seeks to make permanent the liability exemptions for State and County governments relating to recreational areas and public beach parks and for the provision of county lifeguard services. Passage of SB No. 1022 will provide the Counties with more certainty regarding their programs of creating and installing warning signs at public parks and beaches and would make these facilities more accessible and safer by allowing the Counties to continue the placement of lifeguards at State beach parks, without the threat of costly litigation for conditions or events that are outside the Counties' control.

The City supports the findings and recommendations contained in the Report of the Task Force Established by Act 152, Sessions Laws of Hawaii 2007 ("Act 152 Task Force"), filed with the Twenty-Fifth State Legislature, Regular Session 2009. The Act 152 Task Force was established to advise the Legislature of the effectiveness of, and collect sufficient data relating to, Act 82, SLH 2003; Act 170, SLH 2002; and Act 190, SLH 1996, as amended. All three acts were adopted to strike a balance between protecting the safety of residents

The Honorable Clayton Hee, Chair and Members of the
Committee on Water, Land, Agriculture, and Hawaii Affairs
The Honorable J. Kalani English, Chair and Members of the
Committee on Transportation, International and
Intergovernmental Affairs

The Senate

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February 9, 2009

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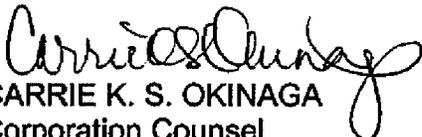
and visitors at public parks and beaches and providing government with protection from liability arising from dangerous natural conditions in the ocean and public recreational areas.

In its report, the Act 152 Task Force concludes that the various programs developed under Acts 82, 170, and 190 have been effective in increasing public safety, that the procedures contained therein have been implemented, and continue to be implemented by the State and the Counties. Both the State and the Counties have adopted uniform signage design and installed signage compliant with the requirements of Act 82. Where funding has been appropriated, Counties have stationed lifeguards at certain State beach parks. The report further discusses the benefits of posting Act 190 and Act 82 signage to the public and how lives have been saved as a result of the posting of County lifeguards at State beach parks. Based upon its review of the various County programs for the implementation of Act 82 and Act 170, the Act 152 Task Force concludes with the recommendation that the sunset dates of Act 82 and Act 170 be repealed.

The City fully supports the recommendations of the Act 152 Task Force, and requests your support in passing SB No. 1022 to make Act 82 and Act 170 permanent laws.

Thank you for the opportunity to provide our comments on this bill.

Very truly yours,


CARRIE K. S. OKINAGA
Corporation Counsel

CKSO:ey

HAWAII COUNCIL OF MAYORS



Testimony of the

Hawaii Council of Mayors
 Bernard P. Carvalho, Jr., Mayor of Kauai
 Mufi Hannemann, Mayor of Honolulu
 Billy Kenoi, Mayor of Hawaii
 Charmaine Tavares, Mayor of Maui

Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senate Committee on Transportation, International and Intergovernmental Affairs

February 11, 2009

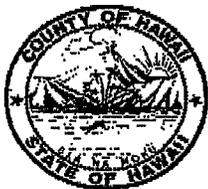
Senate Bill 1022: Relating to Government Liability

We—the mayors of Hawaii, Honolulu, Kauai, and Maui—support Senate Bill 1022, which repeals the sunset date on liability statutes covering county lifeguards.

The immunities granted by the Legislature in Act 152 (2007) to the counties for dangerous natural conditions on public lands (referred to as the “Sacred Falls law”) and the provision of lifeguard services have been very beneficial to the county governments and the public by reducing the liability exposure of the counties to substantial damages, which, as a result, has enabled the counties to keep open to the public those recreational areas and beach parks with potentially dangerous conditions. The counties’ compliance with the posting of signs warning of dangerous conditions at these recreational areas has contributed to an improvement in public safety, which justifies making permanent the existing immunities.

This proposal was included in the Hawaii Council of Mayors’ legislative package for 2009, and we would be very grateful to the members of the Legislature for your continued support of this measure.

Mahalo.



Mayor Billy Kenoi
 County of Hawaii
 25 Aupuni Street
 Hilo, Hawaii 96720



Mayor Mufi Hannemann
 City and County of Honolulu
 530 South King Street
 Honolulu, Hawaii 96813



Mayor Bernard Carvalho, Jr.
 County of Kauai
 444 Rice Street
 Lihue, Hawaii 96766



Mayor Charmaine Tavares
 County of Maui
 200 South High Street, 9th Floor
 Wailuku, Hawaii 96793

Testimony of the

Hawaii Council of Mayors

Bernard P. Carvalho, Jr., Mayor of Kauai

Mufi Hannemann, Mayor of Honolulu

Billy Kenoi, Mayor of Hawaii

Charmaine Tavares, Mayor of Maui

Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senate Committee on Transportation, International and Intergovernmental Affairs

Wednesday, February 11, 2009

3:30 p.m.

SB 1022 Relating to Government Liability

1 copy

William P. Kenoi
Mayor



Lincoln S.T. Ashida
Corporation Counsel

Katherine A. Garson
Assistant Corporation
Counsel

COUNTY OF HAWAII
OFFICE OF THE CORPORATION COUNSEL

101 Aupuni Street, Suite 325 • Hilo, Hawaii 96720-4262 • (808) 961-8251 • Fax (808) 961-8622

February 10, 2009

The Honorable Clayton Hee, Chair
and Members of the Committee on Water,
Land, Agriculture, and Hawaiian Affairs

The Honorable J. Kalani English, Chair
and Members of the Committee on Transportation,
International and Intergovernmental Affairs
State Capitol
415 South Beretania Street
Honolulu, Hawai'i 96813

Dear Chairs Hee, English, and Members:

Re: Testimony in Support of Senate Bill No. 1022
Hearing: Wednesday, February 11, 2009, at 3:30 p.m.,
Conference Room 229

The County of Hawai'i's Office of the Corporation Counsel and Fire Department (collectively as "County") support SB 1022 because it seeks to make permanent the liability exemptions for state and county governments relating to recreational areas and public beaches, and for the provision of county lifeguard services. Passage of the bill will provide more access to the counties' beaches and increase safety to the beachgoers by allowing the counties to place lifeguards at county and state beach parks, without the threat of costly, unnecessary and unwanted litigation arising from dangerous natural conditions in the public beaches and public recreational areas.

The County supports the findings and recommendations contained in the Report of the Task Force Established by Act 152 ("Task Force Report"), submitted to the Twenty-Fifth State Legislature, Regular Session 2009. The Act 152 Task Force was established to advise the Legislature of the effectiveness of three acts (Act 82 (SLH 2003), Act 170 (SLH 2002) and Act 190 (SLH 1996)) that were enacted to balance the interest of protecting the safety of residents and visitors at public parks and beaches, with the interest of providing the counties and state protection from liability arising from dangerous natural conditions or events that are outside their control. The Task Force

The Honorable Clayton Hee, Chair
and Members of the Committee on Water,
Land, Agriculture, and Hawaiian Affairs
The Honorable J. Kalani English, Chair
and Members of the Committee on Transportation,
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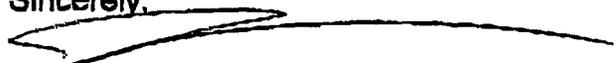
Report concluded that various programs have been effective in increasing public safety, and that both the state and counties adopted uniform signage design and installed appropriate signage. Where funding has been appropriated, counties have stationed lifeguards at certain state beach parks. The Act 152 Task Force recommended repeal of the 2010 sunset dates of Act 82 and Act 170.

The County's statistics concerning the lifeguards' services on the beaches provide substantial objective basis for passage of the bill. For example, from December 2003 to December 2008, for the four (4) beaches on West Hawai'i, there were 5,423,405 beachgoers, with 3,109,598 of those beachgoers utilizing Hāpuna, which is the only state beach on the island of Hawai'i where the County provides lifeguard services. Even though Hāpuna is the most widely used beach on the island, with more than 600,000 visitors per year, there has been only two (2) drownings. In addition, at Hāpuna, 594 beachgoers were rescued, 6 were resuscitated, and 329 were provided first aid by lifeguards. In addition, lifeguards took 59,112 preventive actions for beachgoers, which could have resulted in more injuries or death. The east side beaches show the same trend of the actions of the lifeguards who save lives, give first aid, and prevent injuries and deaths.

The County supports SB 1022 which will make Act 82 and Act 170 permanent laws.

Thank you for your consideration of our testimony.

Sincerely,



JOSEPH K. KAMELAMELA
Deputy Corporation Counsel,
Litigation Supervisor
County of Hawai'i

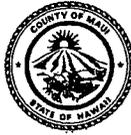
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c via email only: Kevin Dayton, Executive Assistant
Bobby Jean Leithead-Todd, Acting Deputy Planning Director
Darryl Oliveira, Fire Chief

Council Chair
Danny A. Mateo

Vice-Chair
Michael J. Molina

Council Members
Gladys C. Baisa
Jo Anne Johnson
Sol P. Kaho'ohalahala
Bill Kauakea Medeiros
Wayne K. Nishiki
Joseph Pontanilla
Michael P. Victorino



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 10, 2009

TO: Honorable Clayton Hee, Chair
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

Honorable J. Kalani English, Chair
Senate Committee on Transportation, International and Intergovernmental Affairs

FROM: Danny A. Mateo
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 11, 2009; TESTIMONY IN SUPPORT OF SB 1022,
RELATING TO GOVERNMENT LIABILITY**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is make permanent the tort law exception to liability for county lifeguard services and the conclusive presumptions relating to the duty of public entities to warn of dangers on improved public lands.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Act 170, SLH 2002, as amended by Act 152, SLH 2007 provided for an exception to tort liability for county lifeguard services while providing rescue, resuscitation, or other lifeguard services on the beach or in the ocean. It has helped the counties place lifeguards on the public beaches and has helped the State to make public parks safer. The liability protections provided by section 1 of this Act will be repealed on June 30, 2010. This is a life-saving measure that should be made permanent.
2. Act 82, SLH 2003, as amended by Act 152, SLH 2007, established a risk management procedure for public lands, involving the design and placement of signs that warn of dangerous natural conditions, and provided the State and the counties protection from liability for injuries resulting from those dangerous conditions. The Act struck an equitable balance between the personal responsibility of people engaged in recreational pursuits on public lands, and the duty of government to take reasonable measures to protect its citizens from harm by providing adequate warning. The liability protections provided by this Act will be repealed on June 30, 2010. The Act helped to prevent the closure of recreational public lands, and should be made permanent.

For the foregoing reasons, I support this measure.

Council Chair
Danny A. Mateo

Vice-Chair
Michael J. Molina

Council Members
Gladys C. Baisa
Jo Anne Johnson
Sol P. Kaho'ohalahala
Bill Kauakea Medeiros
Wayne K. Nishiki
Joseph Pontanilla
Michael P. Victorino



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 10, 2009

TO: Honorable Senator Clayton Hee, Chair
Senate Committee on Water, Land, Agriculture, and Hawaiian Affairs

Honorable Senator J. Kalani English, Chair
Senate Committee on Transportation, International and Intergovernmental
Affairs

FROM: Joseph Pontanilla, Council Member 

DATE: Wednesday February 11, 2009

SUBJECT: **SUPPORT OF SB 1022, RELATING TO GOVERNMENT
LIABILITY**

Thank you for the opportunity to testify in support of this measure. The purpose of the legislation is to make permanent the tort law exception to liability for county lifeguard services and the conclusive presumptions relating to the duty of public entities to warn of dangers on improved public lands.

I **support SB 1022** for the reasons cited in testimony submitted by Maui County Council Chair Danny A. Mateo and urge you to support this measure.

09:02:11:kbn/JP: SB 1022

Bernard P. Carvalho, Jr.
Mayor



Robert F. Westerman
Fire Chief

John T. Blalock
Deputy Fire Chief

COUNTY OF KAUAI
Fire Department
Mo'ikeha Building
4444 Rice Street, Suite 295
Lihu'e, Kauai, Hawaii 96766

February 4, 2009

The Honorable Senator Clayton Hee
Committee on Water, Land, Agriculture, and Hawaiian Affairs
State Senate
State Capitol, Room 228
Honolulu, Hawaii 96813

Dear Chair Hee:

Subject: S.B. 1022 Relating to Government Liability

My name is Robert F. Westerman, Fire Chief of the County of Kauai Fire Department, testifying in support of the Bill. The Bill extends protection from liability to the State and counties under Act 152, Session Laws of Hawai'i 2007 (Act 152).

Act 152 extended the protections of two important measures to the County until June 20, 2010. One of these measures is Act 82, SLH 2003 (Act 82), which protects the State and the counties from unlimited liability arising out of recreational activities on public lands, and provides for a system of warning signs to increase public safety. The other is Act 170, Session Laws of Hawai'i 2002 (Act 170), which provides protection to lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services. We support removal of the sunset dates of these acts, because they provide important protection to the County and the public.

The benefits of Act 82 and 170 were documented in the findings of the Report of the Task Force Established by Act 152 (Task Force Report), filed with this Legislature this session. In the Task Force Report, all task force members, with the exception of the member representing the Consumer Lawyers of Hawai'i, recommend repeal of the 2010 sunset date, and support codification of Acts 82 and 170 as permanent law. The Task Force Report also states that if Acts 82 and 170 are not made permanent during the 2009 legislative session, that the sunset dates be extended. Senate Bill No. 1022 is consistent with the recommendation for repeal of the sunset dates.

We also request that this Legislature continue the funding to the County for providing lifeguards on certain state beach parks. On Kaua'i, the funding allows the County to provide lifeguards for Kee Beach, which is a State beach. Lifeguarding began at Kee Beach last year, with significant positive results. Between July 1, 2008, and November, 2008, approximately 48 beachgoers were rescued, two were assisted, and 282 provided first aid by lifeguards. In addition, lifeguards took 4,989 preventive actions, which might have resulted in injuries or deaths. The State funding provided by this Legislature prevented tragedies from occurring because of these incidents. We urge you to provide sufficient funding so lifeguarding can continue at Kee Beach.

We thank the Committee for the opportunity to present testimony on this matter.

Sincerely,

A handwritten signature in black ink that reads "Robert Westerman". The signature is written in a cursive style.

Robert F. Westerman
Fire Chief

RFW/crz

Dr. Monty Downs
E.R. Physician, Wilcox Hospital &
Co-Chair, Kauai Water Safety Task Force
160 Lani Alii Place
Kapaa, Kauai, HI 96766

2/10/09

Testimony for: Hawaii State Senate
Committee on Water, Land, Agriculture, and Hawaiian Affairs
Senator Clayton Hee, Chair

And

Committee on Transportation, International, and Intergovernmental Affairs
Senator J. Kalani English, Chair

Subject: HEARING ON 2/11/09 REGARDING SB 1022

Dear Senators Hee, English, and Committee Members:

A prefacing comment: As you can tell from my title, my interest and expertise is in ocean safety issues. My testimony will therefore focus on that part of SB 1022 which concerns Lifeguard Immunity (i.e. Act 170). Although I am in favor of the part of the Bill that deals with Act 82, I have no expertise in that Act nor in what is covered by that Act, and I will leave it to others who do have that expertise to testify on the Act 82 portion of SB 1022.

* * * * *

Act 170 – That is very near and dear to me. As you know, this Act provides County Lifeguards with immunity (except in the case of gross negligence) when they are guarding State Beaches. This Act, along with State funding, is what has allowed Kauai County Lifeguards to cover Ke’e Beach, our very busy State Park that is at the northern end of the road. (The beach is so busy that if you want to go there you will be lucky to find a parking place within 1/4 mile.) After years of lobbying for Act 170 and for funding, our Lifeguard service began on July 1, 2008 and County Lifeguards are at work there as you read this testimony. We Kauaians are extremely grateful to the State for accepting this responsibility for Ke’e State Beach Park.

Ke’e is very popular for snorkeling because of an outer protective reef that keeps the inside lagoon quite calm and placid appearing. But I’m sure you all are aware of how a protective reef can be a double-edged sword. When there are conditions, as there frequently are, wherein the waves break onto and over the reef, you now have the set-up for a strong Rip Current, the avenue by which the incoming water equilibrates itself back out to sea. Many unsuspecting people have been caught in this Ke’e rip current, and out they go down along the wild cliffs and waters of the NaPali coast. Only ½ the bodies are ever recovered. Our last death

was 2 years ago, the pilot of a U.S. Airways flight that was on 24 hour crew layover. His wife and 4 year old son (and a back-up airline crew) flew in the next day to try and deal with this.

For me personally, I feel a happiness every single day knowing that Lifeguards are at Ke'e and that now we almost certainly won't have to endure another family catastrophe there. Look at these Ke'e numbers, compiled by the Lifeguards since 7/1/08:

Rescues	49
First Aid Assistance	333
Preventions	7,548
Public contacts	18,882
Total # of beachgoers	71,428

By these astonishing numbers you can see that this is very much of a "Prevention" tower, and the Lifeguards have to be good conversationalists/communicators as well as water-people! The Tower is right where you walk onto the beach, and you can see how many snorkelers and beachgoers stop and talk with our Lifeguards. Terrific stuff in our challenged visitor-industry economy. How many deaths would there have been had there not been a Lifeguard? Well, even if the answer is One, I ask you to imagine if that one was your family member.

One other comment about the preventions at this Tower: Ke'e Beach is the starting point for the NaPali Coast trail, which takes you to a couple of extremely dangerous beaches called Hanakapiai and Kalalau. I believe our Ke'e Lifeguards have a significant impact on these dangers, since hikers regularly stop to chat with them about conditions before heading up the trail. Cell-phone communication from these beaches is impossible because of the Pali's, but we are looking into (via the private sector) setting up a satellite-technology Personal Radio Beacon that can be activated into our 911 system in an emergency. With this and with Jetskis, it's conceivable that our Ke'e Lifeguards may one day become able to actually have a meaningful shot at making rescues at these remote State/DLNR beaches. We did suffer a young man drowning at Hanakapiai in 2008, his friends had to run out the 2 miles of trail before any rescue could be attempted, and by then it was much too late.

Please do not take away our Ke'e Lifeguards. Please do not let any more unsuspecting snorkelers die at Ke'e. Please repeal the sunset of Act 170 and please support SB 1022.

Respectfully Submitted,



Dr. Monty Downs
Kapaa, Kauai



HAWAIIAN LIFEGUARD ASSOCIATION

February 9, 2009

The Honorable Clayton Hee, Chair,
The Honorable Jill N. Tokuda, Vice-Chair, and Members
Committee on Water, Land, Agriculture and Hawaiian Affairs

The Honorable Kalani J. English, Chair,
The Honorable Mike Gabbard, Vice Chair, and Members
Committee on Transportation, International
and Intergovernmental Affairs

The Senate
The Twenty Fifth Legislature
State of Hawaii:
Regular Session of 2009

Dear Chairs Hee and English, Vice-Chairs Tokuda, Gabbard, and Members:

Re: SB 1022 Relating to Government Liability

The Hawaiian Lifeguard Association (HLA) is the non-profit organization that represents the 400 professional ocean lifeguards in the State of Hawaii. The mission of the HLA is to promote the advancement of professional lifeguarding and to reduce drownings in the ocean surrounding our island state. The HLA attempts to accomplish this mission by supporting the efforts of Hawaii's lifeguards through fundraising and educational programs and by partnering with the government agencies in delivering the statewide Junior Lifeguard Program.

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The HLA strongly supports the intent of SB 1022, which seeks to make permanent the protection from liability provided by Act 170 (2002) and Act 82 (2003). The protection in Act 170 is necessary for individual lifeguards as well as their employing counties to be able to provide services for the State of Hawaii at Kaena Point State Park on Oahu, Hapuna Beach on Hawaii Island, Makena Beach on Maui, and Ke'e Beach on Kauai. These four beaches are popularly used by the public and would be where drownings and serious injuries occur if lifeguard services were not provided.

The United States Lifesaving Association, the national organization of professional open water lifeguard agencies, has collected data over a twenty year period that shows that the chances of drowning at a lifeguarded beach in the United States is one in 18 million. According to the State Department of Health's Injury Prevention and Control Program, drownings that occur at unguarded beaches in the State of Hawaii far outnumber those at guarded beaches by at least 20 to one.

The necessity of providing trained lifeguards at Hawaii's beaches is obvious, a "no brainer." We urge you to acknowledge this fact by moving to remove the sunset provisions from Act 170 and Act 82 to make both laws permanent.

Thank you for the opportunity to present this testimony. I am available to answer any questions you may have. Aloha nui loa.

Sincerely,



Ralph S. Goto

For the Board of Directors

TESTIMONY

SB 1022

(END)