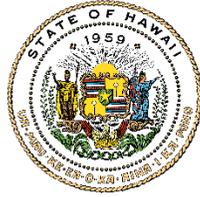


JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA**

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CONSERVATION AND COASTAL LANDS
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ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Thursday, February 8, 2024
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
HOUSE BILL 2266
RELATING TO TORT LIABILITY**

House Bill 2266 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.



**Testimony of the
Hawai'i State Association of Counties
H.B. No. 2266**

Relating to Tort Liability.

Committee on Judiciary & Hawaiian Affairs
Thursday, February 8, 2024, 2 p.m.

The Hawai'i State Association of Counties (HSAC) strongly **supports H.B. 2266**, which provides liability protection for county lifeguards, the employing county, and the State for any damages arising from the acts or omissions of the lifeguards while providing rescue, resuscitative, or other lifeguard services in the scope of employment as a county lifeguard, except for civil damages arising from a county lifeguard's gross negligence or wanton act or omission.

Lifeguard exception to liability was originally enacted in 2002 as Act 170, and remained in effect until 2017. It provided lifeguards with qualified immunity while providing rescue or resuscitative actions or other emergency lifeguard services on the beach.

The sunset date was extended a number of times until 2017, when S.B. No. 562, was vetoed. S.B. No. 562, as originally introduced, proposed to make the limited liability protection for lifeguards permanent. S.B. No. 562, however, was amended by deleting its original content and amended the State Tort Liability Act to require the Attorney General to defend any civil action based on the negligence, wrongful act, or omission of a county lifeguard for services at a designated beach park under an agreement between the State and a county. S.B. No. 562 was vetoed by the Governor, who objected to the bill, "[b]ecause the Attorney General would be required to defend a lawsuit brought against the counties for any "wrongful" act of a lifeguard, and not just acts that are within the scope of the lifeguard's employment..."

It's been argued that this bill is not necessary because lifeguards are already protected by the State Tort Liability Act because lifeguards serving on State beaches are considered employees of the State and subject to protections of the Act. Lifeguards employed by a county



are considered “employees of the State” under the Act while providing “*lifeguard services at a designated state beach park under an agreement between the State and a county...*”

The State has contracts with the counties to provide lifeguard services at five State Parks. The counties, however, provide lifeguard services at 58 beaches statewide (Kauai County 9; Honolulu 29; Maui County 9; Hawai‘i County 11).

The primary objective in proposing H.B. No. 2266, is to re-enact Act 170, Session Laws of Hawai‘i 2002, which exempted county lifeguards from the liability of any civil damages resulting from any act or omission while providing rescue, resuscitative, or other lifeguard services as a county lifeguard.” The Hawaii Tort Law Study Group, established in 1997 by S.C.R. 256 to study Hawai‘i’s tort system, reported that “*immunity is afforded to classes of persons or entities because it is in the public’s best interests to do so,*” and conferring immunity upon a particular class of persons is often based upon whether or not the social values attached to encouraging the behavior of that group are of such great importance as to merit extraordinary protection from suit.

The frequency of incidents requiring lifeguard involvement is great. The Honolulu Emergency Services Department of the City and County of Honolulu, in 2016, reported that 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 has increased and is anticipated to continue to increase.

H.B. 2266 will provide liability protection for county lifeguards for any damages arising from the acts or omissions of the lifeguards while providing rescue, resuscitative, or other lifeguard services in the scope of employment as a county lifeguard, except for civil damages arising from a county lifeguard’s gross negligence or wanton act or omission.

The Hawai‘i State Association of Counties strongly supports H.B. 2266, and requests your favorable consideration of this measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

The Thirty-Second Legislature, State of Hawaii
House of Representatives
Committee on Judiciary & Hawaiian Affairs

Testimony by
Hawaii Government Employees Association

February 8, 2024

H.B.2266 – Relating to Tort Liability

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B.2266, 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 H.B.2266.

Respectfully submitted,

Randy Perreira
Executive Director

**TESTIMONY OF EVAN OUE ON BEHALF OF THE
HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION
TO HB 2266**

Date: Thursday, February 8, 2024

Time: 2:00 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 HB 2266, Relating to Lifeguards.

The purpose of HB 2266 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.

HB-2266

Submitted on: 2/7/2024 2:27:13 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Chantelle Brown	Individual	Support	Written Testimony Only

Comments:

I am writing to express my strong support for HB2266, which aims to provide liability protection for county lifeguards, the employing county, and the state, with regards to any damages arising from the acts or omissions of lifeguards while providing rescue, resuscitative, or other lifeguard services within the scope of their employment.

As an individual who deeply values the safety and well-being of our communities, I believe that lifeguards play a crucial role in ensuring the protection and security of beachgoers and swimmers. They are responsible for preventing and responding to water-related emergencies, providing immediate aid when necessary, and promoting safe aquatic activities.

The nature of a lifeguard's job requires them to make split-second decisions and take prompt action in potentially life-threatening situations. However, in the course of their duty, lifeguards may sometimes face legal challenges and lawsuits, even when they have acted responsibly and within the scope of their training. These legal proceedings can have a detrimental impact on the morale and effectiveness of lifeguards while also imposing financial burdens on the employing county and the state.

HB2266 addresses this issue by offering reasonable protection to lifeguards, the employing county, and the state from civil damages arising from acts or omissions, except in cases of gross negligence or wanton acts or omissions. This legislation strikes a fair balance between ensuring accountability for any gross negligence or intentional misconduct on the part of lifeguards, while also providing the necessary support and protection for those who diligently perform their duties to safeguard public safety.

By granting liability protection, HB2266 will encourage more individuals to pursue careers as lifeguards and ensure the availability of qualified professionals who are willing to assume the responsibility of protecting our beaches and water bodies. It will also enhance the retention of

experienced lifeguards who might otherwise be deterred by the fear of unnecessary legal consequences.

Moreover, this legislation will benefit the general public by ensuring that lifeguards can focus on their primary duty of preventing and responding to water-related emergencies without the distraction and anxiety associated with potential legal actions. It will foster a safer environment for beachgoers, tourists, and residents alike, and further strengthen our community's commitment to public safety.

In conclusion, I strongly urge you to support and advocate for the passage of HB2266. By providing liability protection for county lifeguards, the employing county, and the state, we can empower lifeguards to fulfill their vital role in safeguarding public safety without unnecessary legal constraints. This legislation will not only benefit our lifeguards but also contribute to the overall well-being and security of our communities.

Thank you for considering my testimony and for your dedication to promoting public safety.

HB-2266

Submitted on: 2/7/2024 2:51:23 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Slainden kauhaahaa	Individual	Support	Written Testimony Only

Comments:

We're strongly in support of this bill, due to the rescues and life assisting obstacles we ocean safety officers go through. When saving someone's life, in the moment of rescuing our main goal is to make sure this person lives to tell the tail another day. We do everything in our midst if it's either CPR, compressions, ventilations, taking blood pressure, stopping an arterial bleed with direct pressure and using a tourniquet, splinting a deformity either to the leg or arm, putting a cervical collar on someone's neck while holding manual stabilization of the head and strapping to the board, to putting a bandage or simple ice pack on wounds. We were taught "life over limb" in our class of training with the fire department. So in all and all when we risk our life's to save another I don't think it's right for that person to blame us and think it's right to sue because we didn't do our job. As first responders our job is to care for the individual and the duty to act.

HB-2266

Submitted on: 2/7/2024 2:57:34 PM

Testimony for JHA on 2/8/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
James Hernandez	Individual	Support	Written Testimony Only

Comments:

I am in support of this bill. As Ocean Safety officers, we often put our health and safety on the line in performing our duties. Situations can be chaotic. The ocean is alive, powerful, and often unpredictable and wild. Even though we perform to the best of our abilities and with the best of intentions using our extensive training and experience, a less than perfect outcome can happen. Legal protection from frivolous damage-seeking lawsuits would be welcome. Mahalo