



*Maui Hotel & Lodging*  
ASSOCIATION

**LATE**

Testimony of  
**Lisa H. Paulson**  
Executive Director  
Maui Hotel & Lodging Association  
on  
**SB 562**  
**Relating To Tort Liability**

COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL AND MILITARY AFFAIRS

**Tuesday, February 7, 2017, 1:20pm**  
**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 over 175 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 **strong support** of SB 562 which provides limited liability protection for county lifeguards and counties providing lifeguard services on beaches or in the ocean permanent.

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.

Making the extension permanent 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.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**

AFSCME Local 152, AFL-CIO

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

**LATE**

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

Testimony by  
Hawaii Government Employees Association

February 7, 2017

S.B. 562 – RELATING TO TORT LIABILITY

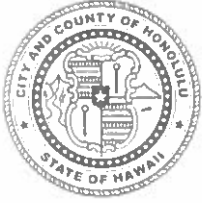
The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 562, which makes the liability protections for the county lifeguards permanent. S.B. 562 provides limited liability protection for county lifeguards and counties providing lifeguard services while acting within the scope of their duties and responsibilities, except for gross negligence or wanton acts of omissions. At present, the liability protections afforded to lifeguards under Act 98, SLH 2014 will expire on June 30, 2017.

This liability protection enables lifeguard services to be provided by the counties at beach parks without fear of liability. This ensures that the protection of our beaches will continue as a priority for our State.

Thank you for the opportunity to testify in support of S.B. 562

Respectfully submitted,

Randy Perreira  
Executive Director



**CITY COUNCIL**  
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**LATE**

February 7, 2017

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

FROM: Councilmember Ikaika Anderson, Vice Chair *IA*  
Honolulu City Council

SUBJECT: TESTIMONY IN SUPPORT OF SB 562

HEARING: Tuesday, February 7, 2017, 1:20 PM  
Conference Room 229, Hawaii State Capitol

I am Testifying in SUPPORT of SB 562, Relating to Tort Liability

Each time a county lifeguard responds to a call for help, current law provides them legal immunity and protection for damages resulting from rescue, resuscitative, or other lifeguard services. This law is set to sunset on June 30<sup>th</sup> of this year, exposing county lifeguards to liability risks.

This purpose of this measure is to repeal the sunset date and make permanent the limited liability protection found in Act 170 (2002) for county lifeguards. This measure allows the counties to be protected at the same level as the state against frivolous lawsuits. Lifeguards already risk their lives to save others, exposing them to further liability is unjust.

I SUPPORT the passage of SB 562 and would like to thank the committee for the opportunity to testify on this important measure.

**LATE**

**TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION TO S.B. 562**

Date: Tuesday, February 7, 2017  
Time: 1:20 p.m.

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

My name is Bob Toyofuku and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in OPPOSITION to S.B. 562, Relating to Tort Liability.

The purpose of this bill is to make Act 170, Session Laws of Hawaii, 2002, permanent. Currently, Act 170 regarding ~~certtain protections~~ immunity for lifeguards is scheduled to sunset on June 30, 2017. HAJ strongly opposes making Act 170 permanent, as it is the wrong solution for the ~~stated problem situation and~~ there are more reasonable alternatives exist. Permitting Giving lifeguards immunity ~~from to for~~ performing their duties in an unreasonable or negligent matter manner is bad public policy and compromises safety ~~would result in our beaches and oceans being substandard and dangerous~~ 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. Currently, only lifeguards are allowed to perform at a substandard level by providing them with immunity against their negligent

performance of lifeguard services. 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.

HAI is not against lifeguards or lifeguard services. Hawaii has among the best and most dedicated lifeguards in the world. Lifeguards ~~provide a very important service~~ save lives and and risk their own lives in doing so – just like other first responders. Lifeguards are not automatically responsible whenever they are unable to save someone. Sometimes lives cannot be saved no matter how heroic their efforts. Lifeguards are only responsible when they perform their job negligently. Negligence is conduct that is unreasonable under the circumstances. There is no sound reason to protect ~~or condone~~ unreasonable performance of lifeguard services.

Hawaii has some of the most beautiful beaches in the world and they attract visitors globally. It makes no sense to ~~hold~~ expect our lifeguards to work at a lower standard than any other first responder in the State. Ocean and beach goers should be able to expect that the lifeguards will use reasonable care as they were trained and are continually trained to do. We believe that lifeguards expect no less of themselves and their fellow lifeguards.

The original purpose of Act 170 was to enable counties to provide lifeguards at state parks. It was passed in a climate when the counties would not provide lifeguards at state parks for fear of liability. The Center for Disease Control issued a report on Lifeguard Effectiveness. They stated, “It is clear that providing a safe aquatic environment and instituting programs to prevent aquatic injury or death offer significant

economic and social savings to society as a whole.” The benefit of county lifeguards being stationed on state parks is irrefutable. However, what is not discussed is how relieving lifeguards of their normal standards of care is harmful to the visitors duty to perform their job reasonably is in the public interest. Like other safety providers, lifeguards “are expected to act within a standard of care set by their training, local protocols and past court rulings.” CDC Report. Act 170 condones a substandard level of care and which is frightening. It does nothing to insure that serve the public to employ lifeguards who are allowed to work at a base level below that of perform their jobs with reasonable care. That was what they were trained to do.

In years past, a number of entities testified in support of making Act 170 permanent, citing reduced drownings. None of the testimony attributed this to ~~the heightened~~ the higher level of -immunity for lifeguards. Rather, the Task Force on Beach and Water Safety reports from 2009 to 2017 focused on the increased signage installed at various state parks. None of the reports indicate that, had the level of immunity remained at a reasonable care standard, more people would have drowned.

~~they would have been sued~~ In fact, an NBC report in 2013 cited, “Five months into 2013, Kauai is already close to tripling the four drowning deaths seen on the island in all of 2012.” (NBC 5/13/13 Source: Hawaii's Dangerous Destinations Revealed | NBC Bay Area <http://www.nbcbayarea.com/investigations/series/hawaii-deadly-tourists-spots/Hawaiis-Dangerous-Destinations-Revealed-207296061.html#ixzz4XpVqUDDy>).

In that same news report, Dr. Monty Downs, [BERT HE HAS SUBMITTED TESTIMONY BEFORE SO I THOUGHT THIS WAS INTERESTING] an emergency

room doctor at Wilcox Hospital in Kauai called the drowning an endemic problem to the island of Kauai.

“Drowning had just been almost been a dirty little secret that Hawaii was willing to sweep under the carpet,” Downs said. He’s witnessed drowning victims come in to his emergency room for years. But said [2013] has been even worst. In part, he believes because the deaths are occurring primarily at non-lifeguarded beaches. “The most common victim is a man in his 30s, or 40s, or 50s with children. They come over for their wonderful vacation in Hawaii, and all of a sudden the wife is a widow and the children are without a father,” he told NBC Bay Area.

Thus, it is not the level of immunity that contributes to these ocean tragedies, it is the lack of manpower.

Additionally, there has been commentary that resources should be aimed to controlling the information about the safety of dangerous ocean conditions. Sue Kanoho, the executive director of the Kauai Visitors Bureau, blamed the published information – which sometimes underplay the dangers of the spot - for guiding tourists to high-risk locations on the island. In a Civil Beat article dated January 19, 2016, the author discussed the high cost of hiring more lifeguards but “[t]hat shouldn’t absolve us of trying to provide more lifeguards. But it should also motivate legislative, tourism and safety leaders to reach out to visitors in ways that have far greater impact than the means currently used.” They emphasized the need for further-reaching educational safety information to visitors.

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In 2013, the Honolulu City and County Corporation Counsel essentially testified that the effectiveness of Act 170 is inconclusive.

The City has repeatedly testified in the past that “effectiveness” of the statutes is not measureable without asking every single beach user whether

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the posted sign or the presence of a lifeguard at the beach park affected their behavior. **Any reductions in the number of lawsuits, claims or deaths, may have nothing to do with the effectiveness of the legislation.** Jan 24, 2013, testimony for H.B. 215 (emphasis added).

Thus, this is a remedy in search of a problem. The fact that the effectiveness of [Act 170](#) is inconclusive should result in the sunset going forward, ~~as opposed to rather~~ [than](#) making the reduced standard of care permanent. There has never been a showing that, but for this heightened immunity, the lifeguards would have faced lawsuits. In other words, the “fear of liability” is unfounded and there are other ways to address this concern, discussed below.

~~The passage of this bill will create a slippery slope for lowering the level of accountability for all emergency workers and first responders. As members of the community, we have peace of mind knowing that lifeguards, firefighters, emergency medical service workers and police officers have gone through extensive training and continuing education so that they can handle emergency situations. We are also comforted knowing that all first responders will exercise normal and reasonable care in performing their duties. However, carving out an exception for only lifeguards affords them additional protection for acting in an unreasonable manner. This inconsistency is not what we as citizens want from our rescue workers.~~

~~The idea that Hawaii would be the only state in which a lifeguard will be “forgiven” for negligent actions is frightening especially in light of the thousands of tourists who see lifeguards prominently situated at our beaches and have an expectation of safety and security. All lifeguards should have the same standard of care and duty as any other trained emergency worker in our State.~~



~~———— In the American legal system, tort law is designed to to compensate a person for his or her injuries as a result of another's negligence including a government entity. Tort law is also meant to serve as a deterrent to prevent negligent or irresponsible behavior. When someone realizes that they may be held liable by acting unreasonably, there is a strong incentive to prevent the occurrence of harm. One reason for imposing liability is the deliberate purpose of providing that incentive. Said another way, tort law encourages responsible behavior.~~

~~———— The more we move to provide immunity for negligent behavior, the less deterrence against irresponsible behavior you will have. Again, the law protects lifeguards unless they act unreasonably. This is a difficult standard to prove in any situation, much less one dealing with highly skilled and trained lifeguards. Allowing the standard to sink to unreasonable behavior only harms the public.~~

~~HAI is not necessarily against giving lifeguards immunity, as long as it is clearly shown that the loss of protection for citizens is outweighed by the benefits of providing lifeguard services and that such services cannot be provided without immunity. However, there has been no showing of adequate justification for doing so.~~

~~Act 170 is really not about our individual lifeguards; it is about fairness for counties that put their lifeguards on State beach parks at the county's risk. There are ways to address the added risk for the counties: Finally, there are alternative remedies available: (1) the State may enter into a contract with the county and provide sufficient funds to provide lifeguards and purchase liability insurance. ~~— If insufficient funds are an issue, then seek out other sources of contribution;~~ or (2) the State Enter into a contract with a complete or partial can defend and indemnification agreement counties so that~~

the State carries the risks associated with State beach parks. These alternatives directly addresses the additional cost and risk for counties when they provide lifeguards for State beach parks; and fairly allocates those costs and risks to the State instead of to the counties. ~~But making it permanent to allow lifeguards to perform their duties at a substandard level is dangerous and would harm visitors and residents alike.~~

Thank you very much for allowing me to testify in OPPOSITION to this measure.