



EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 11, 2017

GOV. MSG. NO. 1269

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Twenty-Ninth State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Twenty-Ninth State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB562 SD1 HD1, without my approval and with the statement of objections relating to the measure.

SB562 SD1 HD1

RELATING TO TORT LIABILITY

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 11, 2017

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 562

Honorable Members
Twenty-Ninth Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 562, entitled "A Bill for an Act Relating to Tort Liability."

The purpose of this bill is to require the Attorney General to defend any civil action or proceeding brought in any court against a county based on any negligent or wrongful act or omission of a lifeguard who provides lifeguard services at a state beach park under an agreement between the State and a county.

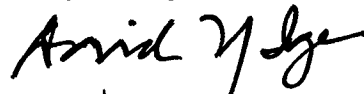
This bill is objectionable because it requires the Attorney General to defend the counties for any civil action or proceeding, without exception, based on an allegedly negligent or wrongful act or omissions of a county lifeguard providing lifeguard services at a state beach park. Because the Attorney 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, the Attorney General potentially could be required to defend the counties for acts arising out of criminal or intentional acts of lifeguards and for the county's own wrongful acts that may have allowed the lifeguard to commit criminal or intentional acts. This is contrary to well-established tort and agency law and is bad public policy.

The safety of the beachgoing public remains the utmost priority. In order to avoid a disruption in lifeguard services, the state and counties are working together to extend the existing agreements to keep lifeguards on the state beaches until more comprehensive agreements can be reached with the respective counties that can address any issues that may arise from the loss of the limited liability protections with the sunset of Act 170 (SLH 2002).

STATEMENT OF OBJECTIONS
SENATE BILL NO. 562
Page 2

For the foregoing reasons, I am returning Senate Bill No. 562 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

P R O C L A M A T I O N

WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawai'i, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 562, entitled "A Bill for an Act Relating to Tort Liability," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 562 is unacceptable to the Governor of the State of Hawai'i;

NOW, THEREFORE, I, DAVID Y. IGE, Governor of the State of Hawai'i, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawai'i, giving notice of my plan to return Senate Bill No. 562 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawai'i, this 11
day of July, 2017.



DAVID Y. IGE
Governor of Hawai'i

A BILL FOR AN ACT

RELATING TO TORT LIABILITY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 662-16, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§662-16 Defense of state employees.** The attorney general
4 may defend any civil action or proceeding brought in any court
5 against any employee of the State for damage to property or for
6 personal injury, including death, resulting from the act or
7 omission of any state employee while acting within the scope of
8 the employee's employment. The employee against whom such civil
9 action or proceeding is brought shall deliver within the time
10 after the date of service or knowledge of service as determined
11 by the attorney general, all process or complaint served upon
12 the employee or an attested true copy thereof to the employee's
13 immediate superior or to whomever was designated by the head of
14 the employee's department to receive such papers and such person
15 shall promptly furnish copies of the pleadings and process
16 therein to the department of the attorney general.



1 No judgment by default shall be entered against a state
2 employee based on a cause of action arising out of an act or
3 omission of such employee while acting within the scope of the
4 employee's employment unless the department of the attorney
5 general has received a copy of the complaint or other relevant
6 pleadings and a period of twenty days has elapsed from the date
7 of such receipt.

8 The attorney general [~~may also~~] shall defend any civil
9 action or proceeding brought in any court against a county based
10 on an allegedly negligent or wrongful act or omission of persons
11 employed by a county as lifeguards and designated to provide
12 lifeguard services at a designated state beach park under an
13 agreement between the State and a county.

14 The attorney general may also defend any civil action or
15 proceeding brought in any court against any provider of medical,
16 dental, or psychological services pursuant to contract with the
17 department of public safety when the provider is sued for acts
18 or omissions within the contract's scope of work."

19 SECTION 2. Statutory material to be repealed is bracketed
20 and stricken. New statutory material is underscored.

21 SECTION 3. This Act shall take effect upon its approval.

S.B. NO. 562
S.D. 1
H.D. 1

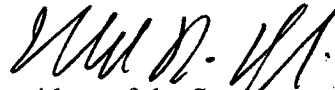
APPROVED this day of , 2017

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAII

Date: April 28, 2017
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the
Senate of the Twenty-ninth Legislature of the State of Hawaii, Regular Session of 2017.



President of the Senate



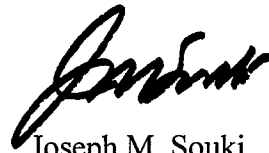
Clerk of the Senate

SB No. 562, SD 1, HD 1

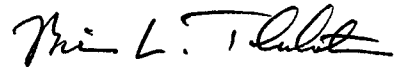
THE HOUSE OF REPRESENTATIVES OF THE
STATE OF HAWAII

Date: April 11, 2017
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Third Reading in the House of Representatives of the Twenty-Ninth Legislature of the State of Hawaii, Regular Session of 2017.



Joseph M. Souki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives