

TESTIMONY
SB 1022
LATE

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TESTIMONY OF ROBERT TOYOFUKU ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) formerly known as the CONSUMER LAWYERS OF HAWAII IN OPPOSITION TO S..B. NO. 1022

February 11, 2009

To: Chairmen Clayton Hee and J. Kalani English and Members of the Senate Committee on Water, Land, Agriculture and Hawaiian Affairs and Members of the Senate Committee on Transportation, International and Intergovernmental 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. No. 1022.

The purpose of this bill is to make Act 170, Sessions Laws of Hawaii, 2002, as amended, and Act 82, Session Laws of Hawaii, 2003, as amended, permanent. Currently, Act 170 regarding the immunity from negligence for lifeguards is scheduled to sunset on June 30, 2010, and this was enacted by the legislature with the knowledge of all of the parties concerned, including the state and counties. The sunset provision in the original bill passed in 2002 was included to "allow for an evaluation of this measure after sufficient experience has been obtained." See Conference Committee Report No. 66-02 on S.B. 796, C.D.2. The sunset date was extended several times and during the 2007 legislative session, the conference committee, in a bill pertaining to several prior Acts pertaining to lifeguards, beach liability and public recreational lands, determined that it would be best to extend the sunset date to 2010 for Act 170.

Act 170 was passed in 2002 and it was not until July 1, 2008, less than one year ago, that lifeguards were placed on Ke'e Beach on Kauai, which was one of the dangerous beaches which was at the heart of this legislation. We feel that it is reasonable to let the sunset date of 2010 remain and that the legislature can look at the information during the 2010 session.

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Please note that the 2002 legislature set the sunset date on this Act for 2007, five years after enactment, on the assumption that lifeguards would be placed on that particular beach and other beaches on Kauai by the end of that year and that there would be at least four years of experience to review. Currently, as to that dangerous beach, we have less than one year of experience.

Regarding Act 82 which was passed due in large part to the deaths and injuries that occurred by the rock slide at Sacred Falls in 1999 and the ensuing civil trial in 2001 on behalf of those killed and injured. Like in Act 170, the legislature in 2003 included a sunset date of 2008, five years after passage, in order to determine how the intent of the law was working and to provide the legislature with adequate information. It was four years later when the first warning signs were approved and placed (2007) and five years later (2008) when other signs were approved and placed at different locations. So rather than four or five years of experience to give to the legislature, it is more like one to one and one half years of experience and information.

Because the legislature by Act 152 extended the sunset date to 2010, it at least provides more time to see how the legislation has worked. Further, there is a risk assessment group that should have made reports to the Board of Land and Natural Resources that can be reviewed by the legislature.

A sunset provision is included to give the proponents of the legislation as well as others the opportunity to collect sufficient information to present to the legislature so that the members could make a reasonable and informed decision as to whether the law they passed has worked and is still working in the way they intended.

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Because these Acts have major impact on consumer rights, HAJ feels it is more prudent to first obtain sufficient information on how the law has worked. We feel that the legislature should wait to fully assess the impact of these laws during the 2010 session when it is scheduled to sunset and when the legislature can make it permanent or modify it according to the information presented.

Thank you for the opportunity to testify on this bill.

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
Lihue, Kauai, Hawaii 96766

February 4, 2009

LATE TESTIMONY

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 Kauai, 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".

Robert F. Westerman
Fire Chief

RFW/crz

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(END)