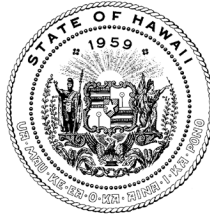


DAVID Y. IGE
GOVERNOR OF
HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
FINANCE**

**Wednesday, March 2, 2022
1:00 PM**

State Capitol, Conference Room 308, Via Videoconference

**In consideration of
HOUSE BILL 1447, HOUSE DRAFT 1
RELATING TO LIFEGUARDS**

House Bill 1029, House Draft 1 proposes to provide that any person qualified as a county lifeguard who renders rescue, resuscitative, or other lifeguard services, without remuneration or expectation of remuneration, on a beach or in the ocean in the scope of the person's employment as a county lifeguard, shall not be liable, and the employing county shall not be liable, for any civil damages resulting from the person's act or omissions while providing rescue, resuscitative, or other lifeguard services, except as may result from the person's gross negligence or wanton acts or omissions. **The Department of Land and Natural Resources supports this measure and defers to the Department of the Attorney General on the legal aspects of the House Draft 1.**

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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

HB-1447-HD-1

Submitted on: 3/1/2022 8:25:37 AM

Testimony for FIN on 3/2/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Alan Carpenter	DLNR	Support	Yes

Comments:

I am available for questions to DLNR. Please allow me Zoom access.

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

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E-mail: cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawaii 96766

February 28, 2022

TESTIMONY OF MASON K. CHOCK
COUNCIL VICE CHAIR, KAUAI COUNTY COUNCIL
ON
HB 1447, HD1, RELATING TO LIFEGUARDS
House Committee on Finance
Wednesday, March 2, 2022
1:00 p.m.
Via Videoconference
Conference Room 308

Dear Chair Luke and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 1447, HD1, Relating to Lifeguards. My testimony is submitted in my individual capacity as Council Vice Chair of the Kaua'i County Council.

The frequency of incidents requiring lifeguard involvement is great. H.B. 1447, HD1, 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.

Thank you again for this opportunity to provide testimony. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188 or via E-mail to cokcouncil@kauai.gov.

Sincerely,

MASON K. CHOCK
Council Vice Chair, Kaua'i County Council

AMK:lc

Testimony of D. Kalani Vierra
Ocean Safety Bureau Chief, Kaua'i Fire Department

Before the
Committee on Finance
March 2, 2022; 1:00 p.m.
Via Video Conference

In consideration of
House Bill 1447 HD1
Relating to Lifeguards

The Honorable Chair Luke, Vice Chair Yamashita, and Members of the Committee:

The Kaua'i Fire Department, Ocean Safety Bureau **supports** HB 1447 HD1, which exempts county lifeguards, the employing counties, and the State from liability for any civil damages resulting from any act or omission of the county lifeguard while providing lifeguard services:

Ocean safety services provided in the counties are a vital life safety service delivered by highly skilled professional lifeguards in and around the water. Lifeguards are the first responders in and around the water. These dedicated public safety professionals operate in a dynamic and often dangerous environment where their actions can make the difference between life and death. They place themselves in harm's way in the service of others. The last thought they should have to consider is the threat of liability from civil action for performing their duties.

These professionals go through extensive and ongoing training to provide lifesaving services to those who enjoy the beaches and ocean around Hawaii. They provide water rescue, emergency medical aid, preventative actions, etc. to millions of visitors to our great State.

As the Ocean Safety Bureau Chief of the County of Kaua'i, I strongly urge your committee's support on passage of HB1447 HD1

Should you have questions, please contact me at 808-241-4980 or dvierra@kauai.gov

Sincerely,

David T. K. Vierra

D. Kalani Vierra
Ocean Safety Bureau Chief

OFFICE OF THE MAYOR

DEREK S.K. KAWAKAMI, MAYOR

MICHAEL A. DAHLIG, MANAGING DIRECTOR



Testimony of
Derek S.K Kawakami
Mayor, County of Kaua'i

Before the
House Committee on Finance
March 2, 2022 at 1:00 p.m.
Room 308 and Via Videoconference

In consideration of
House Bill 1447 HD1
Relating to Lifeguards

Honorable Chair Luke, Vice Chair Yamashita, and Members of the Committee:

The County of Kaua'i is in **strong support of HB 1447 HD1** which exempts county lifeguards, the employing counties, and the State from liability for any civil damages resulting from any act or omission of the county lifeguard while providing lifeguard services unless the civil damages result from a county lifeguard's gross negligence or wanton act or omission.

The passage of this measure will make our beaches accessible and safer by allowing counties to continue posting lifeguards at state beach parks without the threat of costly litigation for conditions or events outside the county's control. HB 1447 HD1 protects lifeguards from liability when they provide rescue, resuscitative, or other lifeguard services.

Our lifeguards put their lives on the line to protect our keiki, our kupuna, our locals and our visitors. With each prevention and rescue, our lifeguards prevent the heartbreak that parents, children, family and friends are dealt when losing someone to drowning. This bill protects those who protect us. It is a means to return the favor.

Mahalo for the opportunity to submit testimony in **strong support** of HB 1477 HD1.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 1, 2022

TO: Honorable Chair Sylvia Luke, Vice-Chair Kyle T. Yamashita, and members of the House Committee on Finance

FROM: Tamara Paltin
Councilmember

DATE: March 1, 2022

SUBJECT: **SUPPORT OF HB 1447 HD1, RELATING TO LIFEGUARDS**

Thank you for the opportunity to testify on this important measure. The purpose of this measure is to provide 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 and resuscitative 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.

I support this measure for the following reasons:

1. Providing qualified immunity saves lives by allowing for the expansion of services to more dangerous beaches without the prospect of frivolous large damage lawsuits contributing to the costs of insurance and the reluctance to provide lifeguards.
2. In 2009, the Task Force established by Act 152 reported with near unanimity that liability protections for lifeguards provided in Act 170 have proven to be effective in promoting and increasing public safety, therefore, making an argument for the importance of HB 1447.
3. Here in the State of Hawaii, our ocean conditions are extremely dangerous and unpredictable, even more so in the impact zone. When rescuing someone in this volatile, perilous, and uncontrolled environment, lifeguards are navigating countless variables while performing lifesaving efforts.

March 1, 2022
Page 2

Respectfully Submitted,

A handwritten signature in black ink that reads "Tamara M. Paltin". The signature is written in a cursive style with a large, stylized initial 'T'.

TAMARA PALTIN
Maui County Councilmember

COUNTY COUNCIL

Arryl Kaneshiro, Chair
Mason K. Chock, Vice Chair
Bernard P. Carvalho, Jr.
Felicia Cowden
Bill DeCosta
Luke A. Evslin
KipuKai Kualii



OFFICE OF THE COUNTY CLERK

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Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawai'i 96766

March 1, 2022

TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
HB 1447, HD1, RELATING TO LIFEGUARDS
House Committee on Finance
Wednesday, March 2, 2022
1:00 p.m.
Via Videoconference
Conference Room 308

Dear Chair Luke and Members of the Committee:

Thank you for the opportunity to provide testimony in support of HB 1447, HD1, Relating to Lifeguards. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council.

The frequency of incidents requiring lifeguard involvement is great. HB 1447, HD1 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.

Thank you again for this opportunity to provide testimony in support of HB 1447, HD1. Should you have any questions, please feel to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

FELICIA COWDEN
Councilmember, Kaua'i County Council

AAO:mn

**TESTIMONY OF EVAN OUE ON BEHALF OF THE
HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN OPPOSITION
TO HB 1447**

Date: Wednesday, March 2, 2022

Time: 1:00 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 1447, Relating to Lifeguards.

The purpose of HB 1447 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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

The Thirty-First Legislature, State of Hawaii
House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

March 2, 2022

H.B. 1447, H.D. 1 – RELATING TO LIFEGUARDS

The Hawaii Government Employees Association, AFSCME Local 152, AFL- CIO supports the purpose and intent of H.B. 1447, H.D. 1, which provides in part, that a county lifeguard who renders rescue, resuscitative, or other lifeguard services on a beach or in the ocean in the scope of the person’s employment as a county lifeguard, shall not be liable for any civil damages resulting from the person’s act or omissions while providing rescue, resuscitative, or other lifeguard services, except as may result from the person’s gross negligence or wanton acts or omissions.

In addition to performing life-saving rescues, lifeguards also educate and conduct preventive measures to avoid the possibility of any member of the public having to encounter a dangerous and harmful situation. Unfortunately, some beach goers choose to ignore the warnings. This protection enables lifeguards to provide services on beaches and in the ocean without fear of liability.

Thank you for the opportunity to testify in support of H.B. 1447, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director



Hawai'i State Association of Counties (HSAC)

Counties of Kaua'i, Maui, Hawai'i, and City & County of Honolulu
Website: hawaiicounties.org | Email: hsac@hawaiicounties.org

Testimony of the
Hawai'i State Association of Counties
on
H.B. No. 1447, H.D.1
Relating to Lifeguards.
Committee on Finance
Wednesday, March 2, 2022, 1.00 p.m.

The Hawai'i State Association of Counties (HSAC) strongly supports H.B. 1447, H.D.1 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, "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..."

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; Hawaii County 11).

The primary objective in proposing H.B. No. 1447, H.D.1, is to re-enact Act 170, Session Laws of Hawaii 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 Hawaii’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 in the past two years and is anticipated to continue to increase in the current fiscal year.

H.B. 1447, H.D.1, 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. 1447, H.D.1, and requests your favorable consideration of this measure.

HB-1447-HD-1

Submitted on: 2/28/2022 1:06:14 PM

Testimony for FIN on 3/2/2022 1:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Douglas Perrine	Individual	Support	No

Comments:

If HB1447 is not passed, most Hawaii County beaches will not have lifeguards.