

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
JUDICIARY & HAWAIIAN AFFAIRS**

**Thursday, February 10, 2022
2:00 PM
State Capitol, Via Videoconference**

**In consideration of
HOUSE BILL 1447
RELATING TO LIFEGUARDS**

House Bill 1029 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 proposed House draft.**

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

DAVID Y. IGE
GOVERNOR OF
HAWAII



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

February 9, 2022

**TESTIMONY OF FELICIA COWDEN
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON
HB 1447, RELATING TO LIFEGUARDS
House Committee on Judiciary & Hawaiian Affairs
Thursday, February 10, 2022
2:00 p.m.
Via Videoconference
Conference Room 325**

Dear Chair Nakashima and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 1447, Relating to Lifeguards. My testimony is submitted in my individual capacity as a Member of the Kaua'i County Council and Committee Chair of the Council's Public Safety & Human Services Committee.

I strongly support the provision of immunity for our county lifeguards who routinely risk their lives in the most dangerous of conditions on a regular basis. We are proud of the judgement of our extraordinary watermen that often have to make instantaneous difficult decisions.

It is clearly in the public's best interest for the Ocean Safety Officers to be provided immunity from suit such that they are not penalized nor reluctant to provide the dangerous ocean rescues that are the very reason for their jobs.

Kaua'i is promoted to the world through the lure of our dramatic beaches, beautiful ocean and dramatic trails that encourage the reckless unawareness that particularly confront visitors and people new to the island.

Mahalo for offering this protection provided in HB 1447.

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.

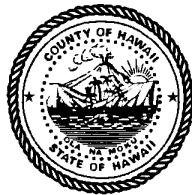
Sincerely,

FELICIA COWDEN
Councilmember, Kaua'i County Council

AMK:ss

Mitchell D. Roth
Mayor

Lee E. Lord
Managing Director



Kazuo S. K. L. Todd
Fire Chief

Eric H. Moller
Deputy Fire Chief

County of Hawai'i
HAWAI'I FIRE DEPARTMENT
25 Aupuni Street • Suite 2501 • Hilo, Hawai'i 96720
(808) 932-2900 • Fax (808) 932-2928

February 8, 2022

The Honorable Representative Mark M. Nakashima, Chair
Committee on Judiciary & Hawaiian Affairs
State Capitol, Room 432
Honolulu, Hawai'i 96813

Dear Chair Nakashima:

Subject: H.B. 1447 Relating to Liability
Hearing Date: Thursday, February 10, 2022
Time/Place of Hearing: 2:00 p.m.

I am Kazuo S. K. L. Todd, Fire Chief of the Hawai'i Fire Department (HFD). I am respectfully presenting testimony related to HB 1447. The Hawai'i Fire Department is in support of HB 1447, which extends for four years the provisions of Act 170, Session Laws of Hawaii 2002.

This measure provides limited liability protection for county lifeguards and counties providing lifeguard services on beaches or in the ocean. Providing immunity for county lifeguards encourages the counties to provide more safety personnel at our beaches. This protects visitors and local residents. This measure also allows the counties to be protected from frivolous lawsuits at the same level as the State. Lifeguards already risk their lives to save others. Exposing them to figure liability is unjust. Thank you for your consideration in strong support of HB 1447.

Please do not hesitate to call me at 808-932-2903 or kazuo.todd@hawaiicounty.gov should you have any questions. Thank you for the opportunity to provide testimony for this very important piece of legislation.

Respectfully,

KAZUO S. K. L. TODD
Fire Chief
Hawai'i County

KT:lk

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

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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

February 9, 2022

TO: Honorable Chair Mark M. Nakashima, Vice-Chair Scot Z. Matayoshi, and members of the House Committee on Judiciary & Hawaiian Affairs

FROM: Tamara Paltin
Maui County Councilmember

DATE: February 9, 2022

SUBJECT: **SUPPORT OF HB 1447, 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, 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.

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.

February 9, 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 initial 'T' and 'P'.

TAMARA PALTIN
Maui County Councilmember



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 Judiciary & Hawaiian Affairs

Testimony by
Hawaii Government Employees Association

February 10, 2022

H.B. 1447 – RELATING TO LIFEGUARDS

The Hawaii Government Employees Association, AFSCME Local 152, AFL- CIO supports the purpose and intent of H.B. 1447, which provides that any county lifeguard who renders rescue, resuscitative, or other lifeguard services, without remuneration or expectation of remuneration in the scope of their employment, shall not be liable for any civil damages 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.

Respectfully submitted,

Randy Perreira
Executive Director

HB-1447

Submitted on: 2/9/2022 9:03:08 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| BOWEN MEDEIROS | Ocean Safety Maui | Support | No |

Comments:

Aloha,

My name is Bowen and I've been an Ocean Safety Officer for Maui County for 10 years now. I just wanted to say how important this is for us knowing that our government will support us in this matter. We take risks with every rescue we make and we always try our best to use the knowledge and experience we have to make the best decisions during rescues and life saving measures to save lives. In some cases that's not enough for family members of loved ones lost and they some times will look to take there sadness and pain of the loss out on the rescuer. Unfortunately that's just how it goes in some cases and even though we did our best and risked our lives to try save someone they loved we are still able to be sued.

I am married with 2 young children, I have a mortgage and two vehicles to pay for with a county salary. Knowing before hand that I won't lose everything I have just because I had tried to save someone's life, would take such a weight off Ocean Safeties shoulders. All we are asking for is that our government have our backs because we got their back.

Mahalo.




Testimony of the
Hawai'i State Association of Counties
on
H.B. No. 1447
Relating to Lifeguards.

Committee on Judiciary & Hawaiian Affairs

Thursday, February 10, 2022, 2 p.m.

Room 325



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

This exception to liability was originally enacted in 2002 to provide the State and counties with qualified immunity so that lifeguards can be stationed at dangerous beaches, while appropriately limiting such immunity to acts or omissions committed while providing rescue or resuscitative actions or other emergency lifeguard services on the beach. It was originally enacted with a sunset provision that will allow for an evaluation of this measure after sufficient experience has been obtained.

In 2009, the Task Force on Beach and Water Safety reported to the Legislature that "Act 170, SLH 2002, provides liability immunity for counties and county lifeguards while providing rescue, resuscitative or other lifeguard services." The State does not have its own lifeguards and contracts with the counties for lifeguard services at State Parks (as of 2009). With the results of the Task Force and the sunset date of the liability immunity extended through 2017, the State and counties were able to enter into a partnership to expand lifeguard services to include 4 popular yet dangerous State beaches without the worry of frivolous lawsuits. The counties provide lifeguard services at 58 beaches statewide (Kauai County 9, Honolulu 29,



Maui 9, Hawai'i County 11). 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.

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...”

The reasons for providing 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 prospect of large damage suits contributes to the costs of insurance and the reluctance to provide lifeguards. Lifeguards and the State or county must have immunity so that lifeguards can at least be provided on the beaches.

“[Liability protection for county lifeguards] is necessary for individual lifeguards as well as their employing counties to be able to provide services for the State of Hawai'i at Kaena Point State Park on Oahu, Hapuna Beach on Hawai'i Island, Makena Beach on Maui, and Ke'e Beach on Kauai. These four beaches are popularly used by the public



and would be where drownings and serious injuries occur if lifeguard services were not provided.

The United States Lifesaving Association, the national organization of professional open water lifeguard agencies, has collected data over a twenty year period that shows that the chances of drowning at a lifeguarded beach in the United States is one in 18 million.” (*Testimony of Ralph Goto, Hawaiian Lifeguard Association*)

The frequency of incidents requiring lifeguard involvement is great. According to testimony submitted [in 2018] by the Honolulu Emergency Services Department of the City and County of Honolulu, in 2016, 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 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, and requests your favorable consideration of this measure.

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

Date: Thursday, February 10, 2022

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 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.

HB-1447

Submitted on: 2/8/2022 5:03:21 PM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Cary Kayama | Individual | Support | No |

Comments:

I am in full support for HB1447, Lifeguard Liability.

HB-1447

Submitted on: 2/8/2022 9:39:39 PM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Steven Kuailani | Individual | Support | No |

Comments:

Aloha. Lifeguards risk their lives to save people who don't know their limits in the ocean. Most tourists come to Hawai'i to enjoy the ocean and lifeguards keep them safe. Lifeguards also keep Hawai'i residents safe in the ocean. Hawai'i is surrounded by the Pacific Ocean and ocean safety should be a priority. Lifeguards should be appreciated and this bill is one way of fulfilling that.

HB-1447

Submitted on: 2/9/2022 9:30:42 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|-------------------------------------|---------------------------|-----------------------------------|
| kona_kuailani | County of Maui/ Ocean Safety Bureau | Support | No |

Comments:

Aloha, My name is Dustin Kona Kuailani. I am I support of this bill protecting the men & women who protect our ocean waters, wether it be local residents as well as the tourism industry. When we rescue or help people, we are not trying to do a bad job, other than police & fire fighters, we are 100% of the time, First responders. We arrive on the scene & do the best we can with the variables that are at hand. We want to save people as well as keeping ourselves safe. To be put on the chopping block for attempting to do our very best is unfair and also not right! Please consider passing this bill protecting us who protect others. Mahalo

HB-1447

Submitted on: 2/9/2022 9:37:10 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Ian Albert Barnes | Individual | Support | No |

Comments:

Aloha, I support HB1447. Lifeguards do a great service to our community and to the visitors to our state and island. They should be protected as much as possible.

HB-1447

Submitted on: 2/9/2022 9:38:05 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Joao Batista | Individual | Support | No |

Comments:

Aloha,

I support this bill, HB1447, Maui County lifeguards doesn't have a minimum staffing at the beach they work, I have seen about 400 patrons attending South side beaches, however the staff to cover that number of patrons are really low, sometimes I have seen just one lifeguard at the tower to perform rescues, first aid and CPR. Lifeguards are the front line in the field, their time of response is really short, they have seconds to respond. Lifeguards need support from their Employer and the Community to keep our visitors safe. Thank you.

HB-1447

Submitted on: 2/9/2022 9:53:16 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Patrick Da Silva | Individual | Support | No |

Comments:

Aloha to all,

Lifeguards are, most of the time, the first ones on scene of an emergency around their area of responsibility. With that being said, there's no heads up to what kind of emergency they are going to have to deal with. It can range from water rescues in the ocean to medical emergencies on land. Being on the front lines, they not only need to have quick responses but also to be able to recognize on the spot what kind of emergencies they are dealing with and the proper treatments to be done. Additional emergency agencies are called to assist if extra help is needed. If we put in perspective the amount of people they are watching over on a daily basis on our beaches and beyond with jet ski operations, their area of response and responsibility are of an extreme importance to our community and visitors that goes to the ocean and to our beaches! The immunity protection to Lifeguards are important to protect them on these scenarios that happens in an uncontrollable environment and under extreme hazardous conditions.

HB-1447

Submitted on: 2/9/2022 10:28:09 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Chantelle Brown | Individual | Support | No |

Comments:

Aloha, My name is Chantelle Brown and I have been employed with the County of Maui for 26 years, within those 26 years, I've been with Ocean Safety for 24 and never thought in my wildest dreams that someone who we risked our life for would come back and try to sue us. But it has happened and this is why I am in support of this bill. It's so crazy to think how many tourists come to our island to visit, who think they are invincible, ignore all of the warning signs posted and/or our PA announcements that are voicing warnings and preventative actions, GET INTO TROUBLE, EXPECTED TO BE SAVED and yet turns around tries to sue us for their ignorance. We need this bill. We need this bill because WE as Ocean Safety Officers have families too and although we love our job and think of our job as a lifestyle we have our lives as well as our families lives to protect. We risk our lives everyday and it's so frustrating to know that the person you just saved is not grateful or appreciative but angry because all of a sudden it's our fault. Not only do we risk our lives but take up resources that cost money or could've been used on a real emergency or someone who really needed our help. This bill protects us by making sure we can provide food for the mouths we need to feed, clothe our children, have transportation to get to our job and keep a roof over our heads. Mahalo.

HB-1447

Submitted on: 2/9/2022 10:31:37 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| lindsay barnes | Individual | Support | No |

Comments:

I believe that Maui county lifeguards should be exempt from being sued while helping the public. They all have to go through rigorous training to operate under stressful conditions and in many cases there are elements outside their control and training. These individuals are the best of the best and should all be protected against wrongful lawsuits.

HB-1447

Submitted on: 2/9/2022 10:44:17 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Kailea Moikeha | Individual | Support | No |

Comments:

Aloha Chair Nakashima & Members of the Judiciary & Hawaiian Affairs Committe,

I am submitting testimony in support of this bill, HB1447. Our lifeguards are an integral part of our community for both residents and visitors to Hawaii. Every day lifeguards risk their own personal safety to rescue and assist individuals who find themselves in dangerous life-threatening situations, due to both their own negligence, ignorance and/or lack of awareness. It is only right that they and the counties that employ them be protected from liability that may arise from any such life saving scenario and that we as residents continue to show our support for them.

The protection afforded to lifeguards and each individual county by this bill, will in turn provide better care to those individuals who may find themselves in harms way in our oceans and on our beaches, as they are supported in making split decisions in the face of a dire emergency, which requires quick thinking and extreme measures, without the worry of facing legal actions when their actions show no negligence of their own part.

Mahalo,

Kailea Moikeha - Life Long Maui County Resident

HB-1447

Submitted on: 2/9/2022 11:12:53 AM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Brittany Young | Individual | Support | No |

Comments:

In support of protecting the lifeguards

Testimony of
Jon Okudara
on
H.B. No. 1447
Relating to Lifeguards.
Committee on Judiciary & Hawaiian Affairs
Thursday, February 10, 2022, 2:00 p.m.
Room 325

I would like to provide strong support for H.B. 1447, with a suggested amendment, 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 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.

Although Act 170 was inadvertently repealed when SB 562 was vetoed on 2017, the reasons remain for providing 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.

H.B. No. 1447 was drafted to amend the Good Samaritan Law, section 663-1.5, HRS, based upon advice that what was being proposed is very much like the exemption from liability like physicians rendering emergency medical care, administering an automatic defibrillator program, etc. Concern has been raised particularly about a condition of the Good Samaritan Law that the person rendering the emergency care do so "without any expectation of remuneration."

The primary objective in proposing H.B. No. 1447, 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 Committee should consider amending H.B. No. 1447 to re-enact Act 170, as proposed in the attached proposed H.D.1, attached to this testimony.

For these reasons I strongly support H.B. 1447, with the proposed amendment, and request your favorable consideration of this measure.

A BILL FOR AN ACT

RELATING TO LIFEGUARDS.

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

1 SECTION 1. The legislature finds that Act 170,
2 Session Laws of Hawaii 2002, was enacted to provide
3 immunity from liability for county lifeguards, the county
4 that employs them, and the State, against damages arising
5 from the acts or omissions of lifeguards while performing
6 rescue, resuscitative, and other lifeguard duties. Act
7 170 was intended to provide the State and counties with
8 qualified immunity so that lifeguards can be stationed at
9 dangerous beaches, while appropriately limiting the
10 immunity to acts or omissions committed while providing
11 rescue or resuscitative actions or other emergency
12 lifeguard services on the beach.

13 The legislature further finds that the Hawaii tort
14 law study group was established in 1997 by Senate
15 Concurrent Resolution No. 256 to study Hawaii's tort
16 system. Regarding immunity, the group reported that
17 "immunity is afforded to classes of persons or entities
18 because it is in the public's best interest to do so,"

1 and conferring immunity upon a particular class of
2 persons is often based upon whether or not the social
3 values attached to encouraging the behavior of that group
4 are of such great importance as to merit extraordinary
5 protection from suit.

6 The legislature notes that, among the criteria
7 established by the group for reviewing requests for
8 immunity were considerations that individuals engaging in
9 inherently dangerous activities need to accept personal
10 responsibility for their activities and that the
11 legislature, in determining whether or not to grant
12 immunity, should weigh the costs to the public of not
13 granting immunity.

14 The legislature recognizes that Act 170 was enacted
15 with a sunset provision to allow for "evaluation of this
16 measure after sufficient experience has been
17 obtained." Act 152, Session Laws of Hawaii 2007,
18 extended the Act until July 30, 2010; and Act 81, Session
19 Laws of Hawaii 2009, extended the Act until June 30,
20 2014, noting that Act 170 "created a climate in which
21 lifeguard services could be provided by the counties
22 without fear of liability[.]"

23 Accordingly, the purpose of this Act is to make
24 liability exemptions for certain lifeguard services
25 permanent.

26

1 SECTION 2. Chapter 663, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 **"§666- Exception to liability for county lifeguard**

5 **services.** (a) For the purpose of this section:

6 "County lifeguard" means a person employed as a lifeguard
7 by a county of this State.

8 "Employing county" means the county employing a county
9 lifeguard.

10 (b) Notwithstanding any other law to the contrary, a county
11 lifeguard, the employing county, and the State shall not be
12 liable for any civil damages resulting from any act or omission
13 of the lifeguard while providing rescue, resuscitative, or other
14 lifeguard services on the beach or in the ocean in the scope of
15 employment as a county lifeguard. This exception from
16 liability, however, shall not apply when the claim for civil
17 damages results from a county lifeguard's gross negligence or
18 wanton act or omission."

19 SECTION 3. This Act does not affect rights and duties that
20 matured, penalties that were incurred, and proceedings that were
21 begun before its effective date.

22 SECTION 4. Statutory material to be repealed is bracketed
23 and stricken. New statutory material is underscored.

24 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

LATE

HB-1447

Submitted on: 2/9/2022 4:04:50 PM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Harold Teshima | Individual | Support | No |

Comments:

I am Lifeguard in Maui County and I support this bill. We try our absolute best to keep our community and visitors safe. Please help us to continue to protect our community and visitors without the risk of being sued and losing our livelihood. Mahalo

LATE

HB-1447

Submitted on: 2/9/2022 6:43:29 PM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|---------------------|---------------------|---------------------------|-----------------------------------|
| Curren Ohama | Individual | Support | No |

Comments:

Save a life & they try to sue them. That needs to be impossible.

LATE

HB-1447

Submitted on: 2/9/2022 9:55:16 PM

Testimony for JHA on 2/10/2022 2:00:00 PM

| Submitted By | Organization | Testifier Position | Remote Testimony Requested |
|--------------|--------------|--------------------|----------------------------|
| Brad Quinto | Individual | Support | No |

Comments:

Aloha, I am writing to you all in hopes that you support and pass HB1447. Lifeguards across the state need the liability protection. They protect people prior to entering the ocean by using preventative actions whether by using the P.A. and or face to face contact. Some avoid these tips and disregard them. Some get lucky and make it out of the water and some need to be rescued. This is when the lifeguards jump in when others run out. Risking their own lives to save another. Some I believe are dissatisfied with the rescue and throw a lawsuit at them. Although the victim is back on land with their family and or friends they choose to civilly pursue a case against the lifeguard. Without the act the lifeguard has taken to rescue the victim, that person would have most likely have drowned. The state needs to understand to protect the ones who protect the people that the State invites to enjoy our Islands. "Who will rescue the rescuer"? Please support and pass HB1447!!!! Mahalo