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**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

October 14, 2021

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

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

The Honorable Alice L. Lee  
Council Chair  
County of Maui  
Wailuku, Hawaii 96793

Dear Chair Lee:

**SUBJECT: INCLUDING A PROPOSED STATE BILL RELATING TO  
LIMITED LIABILITY FOR COUNTY LIFEGUARDS IN  
THE 2022 HAWAII STATE ASSOCIATION OF  
COUNTIES LEGISLATIVE PACKAGE**

May I request the attached proposed resolution, entitled "APPROVING FOR INCLUSION IN THE 2022 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL TO PROVIDE LIMITED LIABILITY FOR COUNTY LIFEGUARDS AND COUNTIES PROVIDING LIFEGUARD SERVICES ON BEACHES," be placed on the next Council meeting agenda.

Sincerely,

A handwritten signature in cursive script that reads "Kelly T. King".

KELLY TAKAYA KING  
Councilmember

ocs:proj:hsac:fy2022:ltr:lifeguards

Enclosure

RECEIVED  
2021 OCT 15 AM 8:56  
OFFICE OF THE  
COUNTY CLERK

COUNTY COMMUNICATION NO. 21-487

# Resolution

No. \_\_\_\_\_

APPROVING FOR INCLUSION IN THE 2022  
HAWAII STATE ASSOCIATION OF COUNTIES  
LEGISLATIVE PACKAGE A STATE BILL TO  
PROVIDE LIMITED LIABILITY FOR COUNTY  
LIFEGUARDS AND COUNTIES PROVIDING  
LIFEGUARD SERVICES ON BEACHES

WHEREAS, Act 170, Session Laws of Hawaii 2007, was enacted to provide immunity for county lifeguards and the State and county that employed them from liability against damages arising from acts or omissions committed while providing rescue or resuscitative actions or other emergency lifeguard services on the beach; and

WHEREAS, Act 170 was enacted with a sunset provision to allow for “evaluation of this measure after sufficient experience has been obtained;” and

WHEREAS, under Act 152 (2007), Act 170 was extended until June 30, 2010, and subsequently, under Act 81 (2009), the Act was extended until June 30, 2014, noting that Act 170 “created a climate in which lifeguard services could be provided by the counties without fear of liability;” and

WHEREAS, sufficient experience has shown that the liability for exemptions for the actions of county lifeguards should be made permanent; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit “A,” to provide limited liability for county lifeguards and counties providing lifeguard services on beaches, is approved for inclusion in the 2022 Hawai‘i State Association of Counties Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

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# A BILL FOR AN ACT

RELATING TO LIFEGUARDS.

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

1       SECTION 1. Act 170, Session Laws of Hawaii 2007, was  
2 enacted to provide immunity for county lifeguards and the State  
3 and county that employed them from liability against damages  
4 arising from the acts or omissions of lifeguards while rescue,  
5 resuscitative, and other lifeguard duties. Act 170 was intended  
6 to provide the State and counties with qualified immunity so  
7 that lifeguards can be stationed at dangerous beaches, while  
8 appropriately limiting the immunity to acts or omissions  
9 committed while providing rescue or resuscitative actions or  
10 other emergency lifeguard services on the beach.

11       The Hawaii Tort Law Study Group was established in 1997 by  
12 S.C.R. 256 to study Hawaii's tort system. Regarding immunity,  
13 the Group reported that "immunity is afforded to classes of  
14 persons or entities because it is in the public's best interests  
15 to do so," and conferring immunity upon a particular class of  
16 persons is often based upon whether or not the social values

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1 attached to encouraging the behavior of that group are of such  
2 great importance as to merit extraordinary protection from suit.

3 Among the criteria established by the Group for reviewing  
4 requests for immunity was considering that individuals engaging  
5 in inherently dangerous activities need to accept personal  
6 responsibility for their actions, and that the Legislature, in  
7 determining whether or not to grant immunity, should weigh the  
8 costs of not granting immunity to the public in public dollar  
9 costs.

10 Act 170 was enacted with a sunset provision to allow for  
11 "evaluation of this measure after sufficient experience has been  
12 obtained." Act 152, Session Laws of Hawaii 2007, extended the  
13 Act until June 30, 2010, and Act 81, Session Laws of Hawaii  
14 2009, extended the Act until June 30, 2014, noting that Act 170  
15 "created a climate in which lifeguard services could be provided  
16 by the counties without fear of liability..."

17 The Legislature finds that sufficient experience has been  
18 obtained to allow a determination that the liability for  
19 exemptions for the actions of lifeguard should be made  
20 permanent.

21 SECTION 2. Section 663-1.5, Hawaii Revised Statutes, is  
22 amended to read as follows:

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1       "§663-1.5   **Exception to liability.**   (a)   Any person  
2   who in good faith renders emergency care, without  
3   remuneration or expectation of remuneration, at the scene  
4   of an accident or emergency to a victim of the accident  
5   or emergency shall not be liable for any civil damages  
6   resulting from the person's acts or omissions, except for  
7   such damages as may result from the person's gross  
8   negligence or wanton acts or omissions.

9       (b)   No act or omission of any rescue team or  
10   physician working in direct communication with a rescue  
11   team operating in conjunction with a hospital or an  
12   authorized emergency vehicle of the hospital or the State  
13   or county, while attempting to resuscitate any person who  
14   is in immediate danger of loss of life, shall impose any  
15   liability upon the rescue team, the physicians, or the  
16   owners or operators of such hospital or authorized  
17   emergency vehicle, if good faith is exercised.

18       This section shall not relieve the owners or  
19   operators of the hospital or authorized emergency vehicle  
20   of any other duty imposed upon them by law for the

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1 designation and training of members of a rescue team or  
2 for any provisions regarding maintenance of equipment to  
3 be used by the rescue team or any damages resulting from  
4 gross negligence or wanton acts or omissions.

5 (c) Any physician or physician assistant licensed to  
6 practice under the laws of this State or any other state  
7 who in good faith renders emergency medical care in a  
8 hospital to a person, who is in immediate danger of loss  
9 of life, without remuneration or expectation of  
10 remuneration, shall not be liable for any civil damages,  
11 if the physician or physician assistant exercises that  
12 standard of care expected of similar physicians or  
13 physician assistants under similar circumstances. Any  
14 physician who supervises a physician assistant providing  
15 emergency medical care pursuant to this section shall not  
16 be required to meet the requirements set forth in chapter  
17 453 regarding supervising physicians.

18 (d) Any person or other entity who as a public  
19 service publishes written general first aid information  
20 dealing with emergency first aid treatment, without

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1 remuneration or expectation of remuneration for providing  
2 this public service, shall not be liable for any civil  
3 damages resulting from the written publication of such  
4 first aid information except as may result from its gross  
5 negligence or wanton acts or omissions.

6 (e) Any person who in good faith, without  
7 remuneration or expectation of remuneration, attempts to  
8 resuscitate a person in immediate danger of loss of life  
9 when administering any automated external defibrillator,  
10 regardless of where the automated external defibrillator  
11 that is used is located, shall not be liable for any  
12 civil damages resulting from any act or omission except  
13 as may result from the person's gross negligence or  
14 wanton acts or omissions.

15 Any person, including an employer, who provides for  
16 an automated external defibrillator or an automated  
17 external defibrillator training program shall not be  
18 vicariously liable for any civil damages resulting from  
19 any act or omission of the persons or employees who, in  
20 good faith and without remuneration or the expectation of

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1 remuneration, attempt to resuscitate a person in  
2 immediate danger of loss of life by administering an  
3 automated external defibrillator, except as may result  
4 from a person's or employer's gross negligence or wanton  
5 acts or omissions.

6 (f) Any physician or physician assistant who  
7 administers an automated external defibrillator program  
8 without remuneration or expectation of remuneration shall  
9 not be liable for any civil damages resulting from any  
10 act or omission involving the use of an automated  
11 external defibrillator, except as may result from the  
12 physician's or physician assistant's gross negligence or  
13 wanton acts or omissions.

14 (g) Any person who in good faith, without  
15 remuneration or expectation of remuneration, attempts to  
16 rescue a person in immediate danger of loss of life by  
17 use of a rescue tube, regardless of where the rescue tube  
18 that is used is located, shall not be liable for any  
19 civil damages resulting from any act or omission except



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1 as may result from the person's gross negligence or  
2 wanton acts or omissions.

3 The owner or operator of any premises, property, or  
4 facility that is adjacent to navigable waters, where a  
5 rescue tube is located shall not be liable for any civil  
6 damages resulting from any act or omission relating to  
7 the storage, maintenance, or use of the rescue tube.

8 (h) This section shall not relieve any person,  
9 physician, physician assistant, or employer of:

10 (1) Any other duty imposed by law regarding the  
11 designation and training of persons or  
12 employees;

13 (2) Any other duty imposed by provisions regarding  
14 the maintenance of equipment to be used for  
15 resuscitation; or

16 (3) Liability for any damages resulting from gross  
17 negligence, or wanton acts or omissions.

18 (i) Any person qualified as a county lifeguard,  
19 including an employing county, who renders rescue,  
20 resuscitative, or other lifeguard services, without

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1 remuneration or expectation of remuneration, on a beach  
2 or in the ocean in the scope of employment as a county  
3 lifeguard shall not be liable for any civil damages  
4 resulting from the person's acts or omissions while  
5 providing rescue, resuscitative, or other lifeguard  
6 services, except for such damages as may result from the  
7 person's gross negligence or wanton acts or omissions.

8 (j) For the purposes of this section:

9 "Automated external defibrillator program" means an  
10 appropriate training course that includes cardiopulmonary  
11 resuscitation and proficiency in the use of an automated  
12 external defibrillator.

13 "Good faith" includes but is not limited to a  
14 reasonable opinion that the immediacy of the situation is  
15 such that the rendering of care should not be postponed.

16 "Rescue team" means a special group of physicians,  
17 basic life support personnel, advanced life support  
18 personnel, surgeons, nurses, volunteers, or employees of  
19 the owners or operators of the hospital or authorized  
20 emergency vehicle who have been trained in basic or

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1 advanced life support and have been designated by the  
2 owners or operators of the hospital or authorized  
3 emergency vehicle to attempt to provide such support and  
4 resuscitate persons who are in immediate danger of loss  
5 of life in cases of emergency.

6 "Rescue tube" means a flotation device used for water  
7 rescues that helps support the victim's and rescuer's  
8 weight."

9 SECTION 3. This Act does not affect rights and  
10 duties that matured, penalties that were incurred, and  
11 proceedings that were begun before its effective date.

12 SECTION 4. New statutory material is underscored.

13 SECTION 5. This Act shall take effect upon its  
14 approval.

15

16 INTRODUCED BY: \_\_\_\_\_

17

18 ocs:proj:hsac:fy2022:reso:lifeguards(exhibit a)

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**Report Title:**

County lifeguards; immunity.

**Description:**

Provides limited liability for county lifeguards and counties providing lifeguard services on beaches.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*