

Hawaii

Counties: 'We Got Screwed' By The Legislature On Lifeguard Protection

Council members, mayors and others remain frustrated by the influence a group of personal injury lawyers had on the decision.

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By Nathan Eagle    / May 23, 2017

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County officials are blaming a group of prominent personal injury lawyers with strong ties to House leaders for thwarting an effort to extend most liability protection to lifeguards who might face lawsuits related to their jobs.

Limited liability immunity for lifeguards has been in place for the past 15 years and has been extended by the Legislature several times.

But this year, the Hawaii Association for Justice, which includes roughly 130 personal injury attorneys, lobbied to let the current law expire June 30 despite overwhelming [support](#) for making it permanent. The group was the only opposition to the measure.

Rather than extend the current law as initially put forward under [Senate Bill 562](#), the House Judiciary Committee, chaired by Rep. Scott Nishimoto, [gutted and replaced](#) the measure with language that requires the state

Attorney General's office to defend the counties against any civil action based on an "allegedly negligent or wrongful act or omission."

But the bill doesn't include a mandate for the AG to defend lifeguards individually from liability for civil damages. It leaves that to the counties, who argued that the cost of those cases could be devastating.



Cory Lum/Civil Beat

Rep. Scott Nishimoto, seated left, and Finance Chair Sylvia Luke are close to the group of personal injury lawyers that successfully lobbied to end liability immunity for lifeguards.

Attorney General Doug Chin told legislators earlier this session that it was not feasible for the state to pay the estimated \$3 million annually that it would cost to purchase insurance to cover the lifeguards at state beach parks, which include Hapuna Beach on Big Island, Kaena Point on Oahu, Makena Beach on Maui and Kee Beach on Kauai.

The [amended bill](#), now on Gov. David Ige's desk, passed the full Legislature in late April with only Sen. Russell Ruderman voting against it.

County officials are frustrated by the sway the personal injury lawyers apparently had over the Legislature. But the Hawaii Association for Justice's close ties to state lawmakers are raising questions.

Rep. Sylvia Luke, who chairs the Finance Committee, is a personal injury lawyer and is listed as a member of the group on its website. She did not return a message seeking comment.

Luke faced criticism in 2014 over her handling of a bill to increase access to rock-climbing spots and public trails across the state. Advocates for the measure [alleged that she used her power](#) to weaken the bill, which would have extended and expanded an existing law protecting the state from unlimited liability for accidents on public land. And like the lifeguard bill this session, the Hawaii Association for Justice was the only group in opposition.

House Speaker Scott Saiki, who was majority leader at the time the lifeguard liability bill was moving through the Legislature, is also a personal injury attorney.

And [state documents show](#) Nishimoto's campaign treasurer works at the same law firm as Luke — Cronin, Fried, Sekiya, Kekina & Fairbanks, which bills itself as the “premier personal injury law firm in Hawaii.”

Nishimoto, the committee chair, didn't respond to repeated requests for comment.

The group also hired Robert Toyofuku, one of the state's top lobbyists, to advocate for the change to the law.

“We really got screwed,” said Kauai County Council Chair Mel Rapozo. “The counties got screwed.”

He said there might not be a legal conflict of interest for the lawmakers who are also personal injury attorneys to pass a bill that benefits personal injury attorneys. But he said that “morally and ethically,” given their connection to that industry, they should have taken a back seat.

Rapozo has advocated for years as a member of the Hawaii State Association of Counties that the Legislature make the immunity law

permanent. He said the counties' exposure to lawsuits will increase as a result of the change to the law.

"We can get sued every time our lifeguards go out and make a rescue," he said. "So we are now going to be faced with more lawsuits, which affects our budgets and insurance premiums. There's going to be a ripple-down effect and unfortunately the public will suffer."



From left, Honolulu Mayor Kirk Caldwell, Honolulu City Council Vice Chair Ikaika Anderson, Kauai County Council Chair Mel Rapozo, Kauai Mayor Bernard Carvalho Jr. and Maui Mayor Alan Arakawa held a press conference last month to urge the Legislature to extend liability protections for lifeguards.

While there is no longer talk of [pulling the lifeguards](#) from beaches in response, county officials are researching the ramifications and considering buying additional liability insurance. But that option may be unaffordable, especially since the state is cutting the counties' share of hotel-tax revenue next year by \$10 million.

Still, Caroline Sluyter, a spokeswoman for the Hawaii Government Employees Association, said Monday the union is formally asking the

counties to take some action on behalf of the lifeguards, perhaps even buying limited liability insurance or passing local legislation.

There's concern that lifeguard morale will take a hit as a result of increased exposure to frivolous lawsuits, county officials said. Mayors, ocean safety chiefs and council members are working to reassure the lifeguards that they've got their backs as they prepare to lose immunity.

Wil Okabe, managing director for Hawaii County Mayor Harry Kim, said their attorneys are looking into it.

"It's like the Legislature is trying to micromanage the situation," Okabe said. "There's a lot of apprehension."

Rapozo also underscored the "human element" that the decision will have on the lifeguards. He said they already put their lives on the line and now they will have to do so knowing they could get sued and suffer significant financial consequences if something goes wrong.

The counties are regrouping and remain committed to fighting for the liability protection.

Kauai Mayor Bernard Carvalho Jr. said he called a meeting with the county attorney, fire chief, ocean safety chief and others to underscore that his administration remains committed to supporting the lifeguards in the work they do.

"There was a lot of uncertainty and they were afraid for their families," Carvalho said. "Hopefully the Legislature will rethink this next session."

Honolulu Mayor Kirk Caldwell said there has been no decision to remove lifeguards from beaches and no decision has been made on the purchase of additional insurance, according to Andrew Pereira, his spokesman.

"Mayor Caldwell will continue to advocate for limited liability protection for our hard-working lifeguards here on Oahu as well as the neighbor islands,"

he said.

Maui Mayor Alan Arakawa has asked Maui County Council Chair Mike White to refer the issue to the appropriate council committee so they can discuss any potential ramifications and all the options available to address the matter.

Nishimoto said in a statement last month that the amended bill treats all first-responders equally.

“No other first-responders, such as firefighters, police officers, or EMT ambulance personnel have statutory immunity to perform their duties at a level below reasonable care,” he said.

The Oahu lawmaker also said the amended bill gives the public greater recourse to seek justice should a loved one die or become injured as a result of a lifeguard’s actions.

Ralph Goto, a longtime ocean safety administrator in Honolulu who now co-chairs the Hawaii Drowning and Aquatic Injury Prevention Advisory Committee, refuted that argument.

“We’re dealing with an ocean environment. It’s totally different. It could kill you at any time,” he said. “Are we special? Yeah, I think we are.”

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