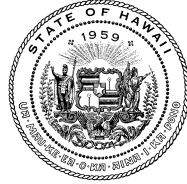


DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
P.O. BOX 259  
HONOLULU, HAWAII 96809  
PHONE NO: (808) 587-1540  
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

JOSEPH K. KIM  
DEPUTY DIRECTOR

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Senate Committee on Judiciary and Labor

The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: February 24, 2016  
Time: 10:00 A.M.  
Place: Conference Room 211, State Capitol

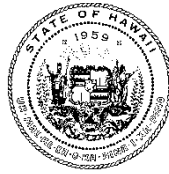
From: Maria E. Zielinski, Director  
Department of Taxation

Re: S.B. 2815, S.D. 1, Relating to Professionally Licensed or Certified Government Employees.

The Department of Taxation (Department) supports S.B. 2815, S.D. 1, and offers the following comments for your consideration.

The Department has numerous employees who are also professionals and who are directly affected by the holding in *Slingluff v. State of Hawaii*. This measure will help the Department recruit and retain professional employees by ensuring those professional employees cannot be held personally liable for actions they carry out in the course and scope of their government employment.

Thank you for the opportunity to provide comments.



**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
DOUGLAS MURDOCK, COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
SENATE COMMITTEE  
ON  
WAYS AND MEANS  
ON  
FEBRUARY 24, 2016

S.B. 2815, SD1

RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

Chair Tokuda and members of the Committee, thank you for the opportunity to submit written testimony on S.B. 2815, SD1.

The Department of Accounting and General Services (DAGS) strongly supports this bill and offers the following comments for your consideration.

DAGS has multiple divisions and attached agencies who rely on the work of employees that are licensed professionals who are directly affected by the holding in *Slingluff v. State of Hawaii*. This measure will help DAGS recruit and retain professional employees by ensuring those professional employees cannot be held personally liable for actions they carry out in the course and scope of their government employment. Without this provision, current and future State employees who require professional licensing to qualify for employment would find federal and private sector work that affords the proposed protection much more attractive. This bill will help DAGS to attract, hire, and retain qualified licensed professionals.

Thank you for the opportunity to submit written testimony on this matter.



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

**NOLAN P. ESPINDA**  
DIRECTOR

**Cathy Ross**  
Deputy Director  
Administration

**Jodie F. Maesaka-Hirata**  
Deputy Director  
Corrections

**Shawn H. Tsuha**  
Deputy Director  
Law Enforcement

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

TESTIMONY ON SENATE BILL 2815, SENATE DRAFT 1  
RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED  
GOVERNMENT EMPLOYEES

By  
Nolan P. Espinda, Director

Senate Committee on Judiciary and Labor  
Senator Gilbert S. C. Keith-Agaran, Chair  
Senator Maile S. L. Shimabukuro, Vice Chair

Senate Committee on Ways and Means  
Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair

Wednesday, February 24, 2016; 10:00 a.m.  
State Capitol, Conference Room 211

Chairs Keith-Agaran and Tokuda, Vice Chairs Shimabukuro and Dela Cruz, and  
Members of the Committee

The Department of Public Safety (PSD) **strongly supports** Senate Bill (SB) 2815, Senate Draft (SD) 1, which would amend HRS Chapter 662 to allow the State to invoke exclusive liability in actions or proceedings naming a State employee individually. The action or proceeding would then proceed against the State alone.

In the *Slingluff v. State of Hawaii* decision, the Intermediate Court of Appeals (ICA) withheld qualified privileges and immunities from PSD physicians and ruled that the qualified privilege did not apply to the named physicians, since these physicians are subject to separate professional standards and were exercising their professional medical discretion and not their governmental discretion. The analysis set forth by the ICA does not limit its application to just physicians, as personal liability may be imposed on any state employee who is also a professional. In this decision, the ICA created an artificial distinction between medical discretion and governmental discretion that did not previously exist in Hawaii law.

PSD has always found it difficult to recruit and retain qualified physicians, psychiatrists, and advance practice registered nurses because of typically lower government salaries than in the private sector. In addition, knowing that their personal assets may be at risk has further discouraged candidates from even applying for positions

Testimony on SB 2815, SD1  
February 24, 2016  
Page 2

with the State. A malpractice insurance policy had to be obtained to ensure that PSD physicians and other medical professionals would not be personally harmed.

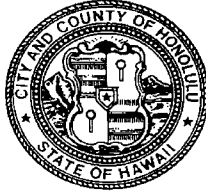
It is critical that this bill be passed to counter the harsh and unfair results of the *Slingluff* decision by the ICA, which, by ignoring existing Hawaii law, unnecessarily puts the PSD physicians at personal financial and professional risk. This bill would return the law to its original state before *Slingluff* by providing for the State's exclusive liability.

Thank you for the opportunity to testify on this measure.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
TELEPHONE: (808) 768-8500 • FAX: (808) 768-5563 • INTERNET: www.honolulu.gov/hr

KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR  
  
NOEL T. ONO  
ASSISTANT DIRECTOR

February 24, 2016

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee on  
Judiciary and Labor  
The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on  
Ways and Means  
The Senate  
State Capitol, Room 211  
415 South Beretania Street  
Honolulu, Hawaii 96813

Dear Chairs Keith-Agaran and Tokuda, and Members of the Committees:

Subject: Senate Bill No. 2815  
Relating to Professionally Licensed or Certified Government  
Employees

The City and County of Honolulu ("City"), Department of Human Resources ("DHR"), supports SB 2815, and requests a further statutory amendment, clarifying that professional employees of the City, when exercising professional judgment, are likewise deemed to be exercising governmental discretion as employees of the City. DHR believes the same privileges and immunities should be extended to professionally-licensed employees of the City, so that the City is not disadvantaged in attracting and hiring employees who are specially-licensed or certified to perform services that are essential to good government.

Chapter 46, Hawaii Revised Statutes, should be amended by adding a new section to be appropriately designated and to read as follows:

**§46- Professionally licensed or certified government employees. Any action against a county for injury or loss of property, or personal injury or death, arising or resulting from the negligent or wrongful act or omission of any professionally licensed or certified employee of the county while acting within the scope of the employee's office or employment shall be exclusive of any other civil action or proceeding for money damages by reason of the same subject matter against the professionally**

The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Committee on  
Judiciary and Labor

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on  
Ways and Means

The Senate

February 24, 2016

Page 2

licensed or certified employee whose act or omission gave rise to the claim or against the estate of such employee. Any civil action or proceeding for money damages arising out of or relating to the same subject matter against the employee or the employee's estate shall be precluded without regard to when the act or omission occurred. When an employee is named in an individual capacity, the county may notify all parties in writing that the county is invoking exclusive liability; and the action or proceeding shall thereafter proceed against the county alone.

Thank you for the opportunity to testify.

Sincerely,



Carolee C. Kubo  
Director