

Honolulu, Hawaii

FEB 13 2019

RE: S.B. No. 1170
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirtieth State Legislature
Regular Session of 2019
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 1170 entitled:

"A BILL FOR AN ACT RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify that the State is exclusively liable for claims for injury or loss of property, or personal injury or death, resulting from the negligent or wrongful act or omission of any professionally licensed or certified employee of the State while the employee is acting within the scope of the employee's office or employment;
- (2) Preclude civil actions or proceedings for money damages against the employee, except for claims based on liability other than an employee's scope of employment with the State or other employer; and
- (3) Clarify liability when the State agrees to assume full or partial responsibility in a civil action against a professional licensed or certified employee.

Your Committee received testimony in support of this measure from the Department of the Attorney General; Department of



Taxation; Department of Public Safety; and Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO. Your Committee received comments on this measure from the Hawaii Association for Justice.

Your Committee finds that state employees are generally afforded qualified immunity for tort claims arising as a result of actions taken by the employee while in the course of the employee's state employment. Your Committee further finds that in the case of *Slingluff v. State of Hawaii*, 131 Hawai'i 239, 317 P.3d 683 (App. 2013), the Intermediate Court of Appeals held that prison physicians are not entitled to qualified immunity for the exercise of their professional medical judgment. Your Committee additionally finds that the court concluded that medical diagnosis and treatment decisions "[do] not involve policy making or any other type of governmental discretion", and thus "are not entitled to qualified immunity". This measure clarifies that all decisions made by employees of the State in the course of their duties and employment are exercises of discretion that the State has hired the employee to make, and thus fall within the qualified immunity of the State.

Your Committee has amended this measure by:

- (1) Clarifying that in situations in which the State has agreed to partial responsibility for the injuries, losses, and damages caused by the employee, state employees remain partially liable for those claims for which the State has not claimed responsibility; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1170, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1170, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary,

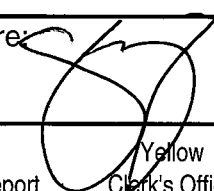
Karl Rhoads

KARL RHOADS, Chair



The Senate
Thirtieth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary
JDC

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|---|---|---------------------------------------|----------------------------------|---------|
| Bill / Resolution No.:* | Committee Referral: | Date: | | |
| SB 1170 | JDC, WAM | 2/8/19 | | |
| <input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____ | | | | |
| The Recommendation is: | | | | |
| <input type="checkbox"/> Pass, unamended 2312 | <input checked="" type="checkbox"/> Pass, with amendments 2311 | <input type="checkbox"/> Hold 2310 | | |
| <input type="checkbox"/> Recommit 2313 | | | | |
| Members | Aye | Aye (WR) | Nay | Excused |
| RHOADS, Karl (C) | ✓ | | | |
| WAKAI, Glenn (VC) | ✓ | | | |
| GABBARD, Mike | | | | ✓ |
| KIM, Donna Mercado | ✓ | | | |
| FEVELLA, Kurt | | | | ✓ |
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| TOTAL | 3 | 0 | 0 | 2 |
| Recommendation: | | | | |
| <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | | | | |
| Chair's or Designee's Signature:  | | | | |
| Distribution: | | | | |
| Original File with Committee Report | Yellow Clerk's Office | Pink Drafting Agency | Goldenrod Committee File Copy | |

*Only one measure per Record of Votes