



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 886, H.D. 1, RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON LABOR, CULTURE, AND THE ARTS

DATE: Wednesday, March 16, 2022 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 225 and Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Taniguchi and Members of the Committee:

The Department of the Attorney General strongly supports this bill.

The purpose of this bill is to clarify that qualified privilege or immunity for torts applies to the negligent acts of a professionally licensed or certified employee of the State acting within the scope of the employee's office or employment and precludes civil actions or proceedings for money damages against the individual employee. The employee would remain exclusively liable for those injuries, losses, and damages for which the State has not accepted responsibility.

State employees are generally afforded qualified privilege or immunity for torts as a result of actions taken while in the course and scope of their State employment, affording them protection from individual liability. In the case of *Slingsluff v. State of Hawai'i, et al.*, 131 Hawai'i 239, 317 P.3d 683 (App. 2013), however, the Intermediate Court of Appeals held that prison physicians are not entitled to a qualified privilege or immunity for the exercise of their professional medical judgment. The Court's reasoning, that these employees exercise judgment for which they are specially licensed therefore making their judgment separate and distinct from governmental judgment, could be argued to extend to any other professionally licensed or certified employees of the State, including nurses, attorneys, engineers, and other professionals. For example, plaintiffs in civil lawsuits have attempted to apply the reasoning in *Slingsluff* to deputy public defenders who had represented criminal defendants. Other state

employees who hold professional licenses could also be affected and potentially be held personally liable for doing their jobs.

We disagree with the holding in *Slingluff*. An employee who is employed by the State to perform tasks for which he or she is professionally licensed or certified, is exercising judgment for which the State hired the employee and is therefore exercising governmental judgment and discretion. There is no reason to provide less protection from individual liability to some government employees merely because they hold professional licenses.

To address the ramifications of *Slingluff*, and in an effort to attract and retain its doctors, the State has taken steps to obtain professional liability insurance covering claims of individual liability for its physicians in the Department of Public Safety. This comes at a cost. This cost is expected to rise over time as claims are made against such policies. The need for such insurance would become unnecessary with the passage of this bill.

The potential for personal liability, putting personal assets at risk, prevents good, well-qualified professionals from applying for jobs with the government. Even though the State may now carry insurance for its physicians in the Department of Public Safety, providing liability insurance for every licensed or certified professional employed by the State would come at an extraordinary, and unnecessary, cost.

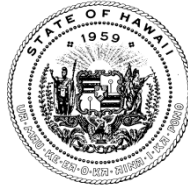
This bill would amend section 662-14, Hawaii Revised Statutes, to clarify that the exclusive remedy for injury or loss of property, or personal injury or death, arising from the act or omission of a professionally licensed or certified employee of the State shall be against the State and not the individual, so long as the State agrees that the employee was acting within the course and scope of the employee's office or employment.

Because the State Tort Liability Act already obligates the State to accept liability for the acts or omissions of their employees who were acting within the course and scope of their employment, this bill does not impose any additional obligations on the State. And, because a plaintiff may still sue professionally licensed or certified

employees in their personal capacities if they act outside the course and scope of their employment, plaintiffs would not be prevented from seeking available remedies.

We respectfully ask that the Committee pass this bill.

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
ROSS M. HIGASHI
EDUARDO P. MANGLALLAN
PATRICK H. MCCAIN
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 16, 2022
3:00 p.m.
State Capitol, Teleconference

H.B. 886, H.D. 1
RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT
EMPLOYEES.

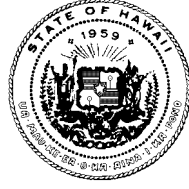
House Committee on Labor, Culture and Arts

The Department of Transportation (DOT) **supports** this bill to ensure that our professionals, particularly our licensed professional engineers, are not personally liable for decisions and actions they take that are within the course and scope of their duties and responsibilities.

In such situations, we believe that the appropriate party and the remedy sought by an injured party should be against the State and not the State employee. As with another testimony in support of this bill, the DOT may also potentially experience challenges in retaining and attracting professional engineers as a result of the Slingshuff case.

Thank you for the opportunity to provide testimony.

DAVID Y. IGE
GOVERNOR



CATHY BETTS
DIRECTOR

JOSEPH CAMPOS II
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339
Honolulu, Hawaii 96809-0339

March 15, 2022

TO: The Honorable Senator Brian T. Taniguchi, Chair
Senate Committee on Labor, Culture and the Arts

FROM: Cathy Betts, Director

SUBJECT: **HB 886 HD1 - RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED
GOVERNMENT EMPLOYEES.**

Hearing: March 16, 2022, 3:00 p.m.
Via videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration measure and provides comments.

PURPOSE: The purpose of this bill is to clarify that the State shall be 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 acting within the course and scope of the employee's office or employment. Precludes civil actions or proceedings for money damages against the employee, except for claims based on liability other than an employee's course and scope of employment with the State or other employer. Clarifies liability when the State agrees to assume full or partial responsibility in a civil action against a professional licensed or certified employee. Effective 7/1/2050. (HD1)
The HD1 defected the effective date.

The Department relies on the professional advice of licensed professionals who may assist on policy decisions and in individual cases. The individual cases are often complex health care or protective services matters. The Department is fortunate to have the services of social

work, medical, nursing, and mental health professionals dedicated to the care and well-being of Hawaii's most vulnerable residents. Also, the Department's administrative appeals office is staffed with licensed attorneys who preside over the Department's administrative appeals according to federal and State law and regulations.

Thank you for the opportunity to testify on this measure.



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
The Senate
Committee on Labor, Culture and the Arts

Testimony by
Hawaii Government Employees Association

March 16, 2022

H.B. 886, H.D. 1 – RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES

The Hawaii Government Employees Association, AFSCME, Local 152, AFL-CIO **supports the intent of H.B. 886 H.D. 1, however we respectfully raise serious concerns over the impact** of the legislation. H.B. 886 seeks to clarify that the State shall be exclusively liable for civil tort claims for loss of property, personal injury, or death, resulting from the negligent or wrongful act or omission of any professionally licensed or certified employee of the State while acting within the scope of the employee's job.

As the state's largest union, we represent many of the professionally licensed or certified employees who will be impacted by the passage of this measure, including physicians, nurses, psychologists, and engineers, among others. While we believe that employees are generally afforded qualified immunity for performing within the scope of their duties, the Intermediate Court of Appeals' decision in Slingluff v. State of Hawaii, et al. created a separate distinction for professionally licensed employees. Although the intent of H.B. 886 is to clarify the State's exclusive liability, the current language creates confusion by allowing the State to determine when it will or will not be fully liable. Intended or not, H.B. 886 does not provide a complete resolution to Slingluff as it creates a loophole where licensed and certified employees could still be held personally liable when acting within the scope of their employment. Since employees would be personally liable for those injuries, losses, and damages that the State determined it will not be fully liable for, the State is obligated to provide professional liability insurance coverage, and we respectfully disagree with the Attorney General's assertion that "the need for such insurance would become unnecessary with the passage of this bill ..."

We respectfully contend that all employees, regardless of the distinction between professionally licensed or not, should be granted qualified immunity and not be held personally liable for performing within the scope of their employment. Therefore, we request H.B. 886, H.D. 1 be amended to clarify the State's exclusive liability, including when and under what circumstances the State would not agree to be fully liable for acts done within the course and scope of a professionally licensed or certified employee's employment.

Respectfully submitted,

Randy Perreira
Executive Director

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF HB 886
HD1**

Date: Wednesday March 16, 2022

Time: 3:00 p.m.

My name is Evan Oue and I am presenting this testimony on behalf of the Hawaii Association for Justice (HAJ) in **SUPPORT** of HB 886 HD1, Relating to Professionally Licensed or Certified Government Employees; Tort Liability; State Liability.

HAJ is stands in support of this measure as it offers an avenue of recourse for the 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 State while acting within the course and scope of the employee's office or employment. HB 886 HD1 appropriately balances the protection of resident's rights to recovery while offering protection to our hardworking professionally licensed or certified state employees.

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.