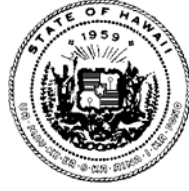


JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

April 1, 2023

TO: The Honorable Representative Kyle T. Yamashita, Chair
House Committee on Finance

FROM: Cathy Betts, Director

SUBJECT: [SB 1490 SD1 HD1](#) – RELATING TO STATE EMPLOYEES.

Hearing: April 2, 2023, 2:30 p.m.
Conference Room 308 & Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates this measure and provides comments. DHS defers to the Department of the Attorney General.

PURPOSE: This bill requires the Attorney General to defend professionally licensed or certified state employees from civil actions or proceedings, subject to certain circumstances. Establishes certain filing and hearing requirements for when the Attorney General refuses to defend a state employee. Requires that if the State refuses to defend a state employee from civil actions on certain grounds, that the State file a motion to be heard with the court. Effective 1/1/2050. (HD1)

The SD1 amended this measure by defecting the effective date. The HD1 amended the measure by:

- (1) Deleting references to county employees; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity, consistency, and style.

DHS relies on the professional advice of licensed professionals who may assist in policy decisions and 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 hearings officers are licensed attorneys who preside over the Department's administrative appeals according to federal and State laws and regulations. These licensed professionals are entitled to qualified immunity from civil liability while acting in the course of their employment.

This bill improves upon Act 44, Session Laws of Hawaii 2022, as it requires the State to file a motion for the Court to determine that the employee is not protected by qualified immunity and engaged in either wanton or grossly negligent acts or omissions while acting in the scope of employment. The measure also clarifies that a state employee can elect to be represented by counsel at the employee's expense should the state employee choose not to be represented by the Department of the Attorney General.

Thank you for the opportunity to provide comments on this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1490, S.D. 1, H.D. 1, RELATING TO STATE EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Monday, April 3, 2023

TIME: 2:30 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Amanda Weston, Deputy Attorney General

Chair Yamashita and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purpose of this bill is to clarify (1) when the State should provide a legal defense for professionally licensed or certified state employees and (2) what should happen in the event that the Attorney General refuses a defense.

We respectfully request that wording be added to the second section of the bill to clarify that the Attorney General shall defend any professionally licensed or certified employee of the State in a civil action or proceeding so long as the employee provides all information and assistance regarding the legal defense when requested by the Department of the Attorney General. We suggest adding the following underscored wording after "omission;" at page 2, line 15:

. . . provided further that the attorney general shall have no obligation to defend the employee if the employee does not cooperate with the defense; provided further that the professionally licensed or. . . .

Additionally, we respectfully request that wording be added to ensure that any motion and related documents and pleadings regarding the State's decision to decline to represent an employee are kept confidential to protect sensitive information. A decision not to defend a state employee and a subsequent motion explaining the decision would include sensitive and personal information that could potentially damage the employee's case if that information is made available to opposing parties or to the public. The information in the motion and any related documents is also likely to involve

personnel matters that are protected from disclosure by section 92F-14, Hawaii Revised Statutes. Moreover, the research, conclusions, and opinions that led to the decision to defend or not defend are protected by the attorney-work-product privilege and should not be disclosed to the public or opposing counsel. To protect the interests of state employees, we suggest adding the following wording after "action or proceeding." at page 3, line 11:

Any motion and related pleadings, records, notices, exhibits, and other evidence regarding the State's refusal to represent an employee shall be viewed in camera by the judge, and any hearings and proceedings regarding the State's decision not to represent an employee shall be with the judge, employee, and State only.

Thank you for the opportunity to comment.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808 543.0011 • Fax: 808.528 0922

The Thirty-Second Legislature, State of Hawaii
The House of Representatives
Committee on Finance

Testimony by
Hawaii Government Employees Association

April 3, 2023

S.B. 1490, S.D. 1, H.D. 1 — RELATING TO STATE EMPLOYEES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 1490, S.D. 1, H.D. 1 which requires the Attorney General to defend professionally licensed or certified state employees from civil actions or proceedings and establishes certain filing and hearing requirements for when the Attorney General refuses to defend a state employee.

As the State's largest public sector union, we represent many of the professionally licensed or certified employees who will be impacted by the passage of this measure, including physicians, nurses, psychiatrists, and engineers, among others. While we believe that employees are generally afforded qualified immunity, this measure will further strengthen their legal protections when exercising their professional judgment in their capacity as public employees. It will also enable the State to attract and retain qualified employees who are licensed to provide services that are essential to the public with a reduced fear of legal recourse at the personal and financial expense of an employee.

Thank you for the opportunity to testify in strong support of S.B. 1490, S.D. 1, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director