

STAND. COM. REP. NO.

1110

Honolulu, Hawaii

MAR 03 2023

RE: S.B. No. 1490
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2023
State of Hawaii

Sir:

Your Committees on Judiciary and Ways and Means, to which was referred S.B. No. 1490, S.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO STATE EMPLOYEES,"

beg leave to report as follows:

The purpose and intent of this measure is to require the State to:

- (1) Defend professionally licensed or certified state employees from civil actions when the employee was acting within the scope of their employment and was not grossly negligent or wanton; and
- (2) File a motion to be heard with the court when the State refuses to defend a state or county employee from civil actions on certain grounds.

Your Committees received testimony in support of this measure from the Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO and Hawaii Association for Justice. Your Committees received comments on this measure from the Department of the Attorney General.

Your Committees find that in *Slingluff v. State*, 131 Hawai'i 239, 317 P.3d 683 (Haw. Ct. App. 2013), the Intermediate Court of Appeals held that physicians employed by the State exercising



purely medical discretion in diagnosing and treating patients, were not protected from medical malpractice claims under the doctrine of qualified immunity. Thus, to override the Intermediate Court of Appeals' holding, the Legislature enacted Act 44, Session Laws of Hawaii 2022 (Act 44), which clarified, among other things, that when a professionally licensed or certified employee of the State acts within the scope of their employment, the State will be exclusively liable for civil tort claims resulting from the negligent or wrongful acts or omissions should the State agree to be exclusively liable and that any civil actions for money damages against the state employee thereafter would be precluded.

However, your Committees find that Act 44 did not clarify the circumstances in which the State has a duty to defend its professionally licensed or certified employees deemed to be acting within the scope of their employment when it chooses not to invoke exclusive liability for civil tort claims. Therefore, this measure provides the missing protection needed for professionally licensed or certified state employees.

As affirmed by the records of votes of the members of your Committees on Judiciary and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of S.B. No. 1490, S.D. 1, and recommend that it pass Third Reading.

Respectfully submitted on
behalf of the members of the
Committees on Judiciary and
Ways and Means,



DONOVAN M. DELA CRUZ, Chair

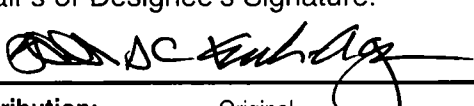


KARL RHOADS, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Ways and Means
WAM

Bill / Resolution No.:* SB1490 SDI	Committee Referral: LBT, JDC/WAM	Date: 3/2/23		
<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 checked="" type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> ^{PA} Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
DELA CRUZ, Donovan M. (C)	X			
KEITH-AGARAN, Gilbert S.C. (VC)	X			
AQUINO, Henry J.C.	X			
DECOITE, Lynn	X			
INOUYE, Lorraine R.	X			
KANUHA, Dru Mamo	X			
KIDANI, Michelle N.	X			
KIM, Donna Mercado	X			
LEE, Chris	X			
MORIWAKI, Sharon Y.	X			
SHIMABUKURO, Maile S.L.	X			
WAKAI, Glenn	X			
FEVELLA, Kurt				X
TOTAL	12			1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes