

**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, RELATING TO STATE EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON LABOR AND TECHNOLOGY

DATE: Monday, February 6, 2023 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 224

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

Chair Moriwaki 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 cooperates with the defense. We suggest adding the following wording after "omission" at page 2, line 17:

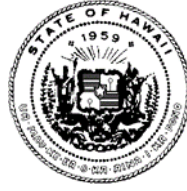
. . . provided further that the attorney general shall have no obligation to defend the employee if the employee does not cooperate with the defense.

Additionally, we request that wording be added to ensure that any motion and related pleadings regarding the State's refusal 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 not to defend would include sensitive and personal information that could potentially damage the employee's case if it is made public. We suggest adding the following wording after "that civil action or proceeding" at page 3, line 13:

Any motion and related pleadings, records, notices, exhibits, and other evidence regarding the State's refusal to represent an employee shall be filed under seal, and any hearings and proceedings regarding the State's decision not to represent an employee shall not be open to the public.

Thank you for the opportunity to comment.

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

February 5, 2023

TO: The Honorable Senator Sharon Y. Moriwaki, Chair
Senate Committee on Labor & Technology

FROM: Cathy Betts, Director

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

Hearing: February 6, 2023, 3:00 p.m.
Conference Room 224 & 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 State to defend professionally licensed or certified state employees from civil actions when the employee was acting within the scope of their employment and the employee's action(s), or omission was not grossly negligent or wanton. Requires that if the State refuses to defend a state or county employee from civil actions on certain grounds, the State must file a motion to be heard with the Court.

The Department 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 on 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 presented by the Attorney General's office.

Thank you for the opportunity to provide comments 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-Second Legislature, State of Hawaii
The Senate
Committee on Labor and Technology

Testimony by
Hawaii Government Employees Association

February 6, 2023

S.B. 1490 — RELATING TO STATE EMPLOYEES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 1490 which requires the State to 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.

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 for performing within the scope of their duties, 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.

Respectfully submitted,

Randy Perreira
Executive Director

TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF SB1490

Date: Monday February 6, 2023

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 SB1490, Relating to Professionally Licensed or Certified Government Employees; Tort Liability; State Liability.

HAJ supports SB1490 as it prevents professionally licensed state employees from being forced to secure private counsel at great expense for an event which is ultimately the financial responsibility of the State of Hawaii. Presumably many of these professionals do not maintain insurance because their professional actions are on behalf of the State of Hawaii.

Moreover, HAJ stands in support of this measure as it offers an avenue of recourse for the injury or loss of property, or personal injury or death, arising or resulting from the wrongful acts or omissions of any professionally licensed or certified employee of the State while acting within the course and scope of the employee's office or employment.

This measure 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.