



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2520, RELATING TO THE DEFENSE OF STATE EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON LABOR AND TECHNOLOGY

DATE: Friday, February 9, 2024 **TIME:** 3:15 p.m.

LOCATION: State Capitol, Room 224 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
David N. Matsumiya, Deputy Attorney General

Chair Aquino and Members of the Committee:

The Department of the Attorney General provides the following comments.

The purposes of this bill are to: (1) establish that the State shall have a duty to defend professionally licensed or certified state employees in civil actions when their actions were within the scope of their employment and not grossly negligent or wanton, as long as they are cooperating with the State's defense; (2) clarify that the employees may employ their own attorney at their own expense; and (3) require that, if the State declines to defend an employee, on certain grounds, then the Attorney General shall file a motion to withdraw as counsel.

As written, subsection (c) of the new section proposed to be added to chapter 662, Hawaii Revised Statutes, by section 2 of the bill, on page 3, lines 5-14, appears to only allow the Attorney General to withdraw as counsel for the employee by filing a motion to withdraw as counsel. The bill does not appear to allow the Attorney General and the employee to amicably transfer representation to the replacement counsel.

In addition, because subsection (d) of the new section, on page 3, lines 15-19, of the bill seeks to restrict the public's access to the Attorney General's motion to withdraw as counsel, it is important that the Legislature include its finding that the prejudice that the employee will suffer from the public disclosure of the reasons for the Attorney General's withdrawal outweighs the public's right to access the information.

In order to rectify these issues, we are respectfully recommending that the following amendments be made to the bill:

Page 1, line 16: Delete the word “and.”

Page 2, line 4: Delete “shall file a motion to withdraw as counsel” and replace with:

shall work with the professionally licensed or certified state employee to amicably transfer representation to the replacement counsel chosen by the professionally licensed or certified state employee;

- (4) Require that, if the attorney general and the professionally licensed or certified state employee cannot amicably transfer representation to the replacement counsel and the attorney general determines that a motion to withdrawal as counsel is required to be filed, the attorney general shall file a motion to withdraw as counsel in a manner that will not prejudice the professionally licensed or certified state employee in the action or proceeding;
- (5) Establish a procedure that allows the attorney general to withdraw from representing a professionally licensed or certified state employee without prejudicing the professionally licensed or certified state employee in the action or proceeding; and
- (6) Confirm that the legislature finds that the prejudice that the professionally licensed or certified state employee will suffer from the public disclosure of the reasons why the attorney general is withdrawing from representation outweighs the public’s right to access said information.

Page 3, lines 12-14: Delete “the attorney general shall file a motion to withdraw as counsel not less than thirty days before the close of discovery in the action or proceeding.” and replace with:

the attorney general shall work with the professionally licensed or certified state employee to amicably transfer representation to the replacement counsel chosen by the professionally licensed or certified state employee.

- (d) If the attorney general and the professionally licensed or certified state employee cannot amicably transfer representation to the replacement counsel and the attorney general determines that

a motion to withdraw as counsel is required to be filed, the attorney general shall file a motion to withdraw as counsel not less than thirty days before the close of discovery in the action or proceeding.

Page 3, line 15: Delete “(d)” and replace with “(e).”

Page 4, line 1: Delete “(e)” and replace with “(f).”

Page 4, line 4: Delete “(f)” and replace with “(g).”

Page 4, line 8: Delete “(g)” and replace with “(h).”

Thank you for the opportunity to comment.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Thirty-Second Legislature, State of Hawaii
The Senate
Committee on Labor and Technology

Testimony by
Hawaii Government Employees Association

February 9, 2024

S.B. 2520 — RELATING TO THE DEFENSE OF STATE EMPLOYEES.

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 2520 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 or wanton, or failing to cooperate. Clarifies that the employee may employ their own attorney at the employee's own expense. Requires that if the State refuses to defend a state employee from civil actions on certain grounds, the Attorney General shall file a motion to withdraw as counsel.

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. 2520.

Respectfully submitted,

Randy Perreira
Executive Director

**TESTIMONY OF EVAN OUE ON BEHALF OF THE HAWAII
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF
SB 2520**

Date: Friday, February 9, 2024

Time: 3:15 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 SB 2520, Relating to Professionally Licensed or Certified Government Employees; Tort Liability; State Liability.

HAJ supports SB 2520 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.