



**WRITTEN 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, RELATING TO STATE EMPLOYEES.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND WAYS AND MEANS

DATE: Friday, March 3, 2023 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Amanda Weston,
Deputy Attorney General, at (808) 586-1300)

Chairs Rhoads and Dela Cruz and Members of the Committees:

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 underscored 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; provided further that that professionally licensed or

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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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The Thirty-Second Legislature, State of Hawaii
The Senate
Committee on Judiciary
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association

March 3, 2023

S.B. 1490, S.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 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, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director

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

Date: Friday March 3, 2023

Time: 10:00 a.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.