



**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:**

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

**DATE:** Wednesday, March 15, 2023      **TIME:** 2:15 p.m.

**LOCATION:** State Capitol, Room 325

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

---

Chair Tarnas 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 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 the professionally licensed or . . .

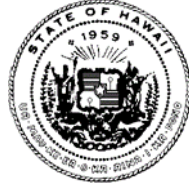
Additionally, we respectfully request that wording be added to ensure that any motion and related documents and pleadings regarding the State's decision to decline to represent an employee are kept confidential to protect sensitive information. A decision not to defend a state employee and a subsequent 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 "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 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.

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

March 14, 2023

TO: The Honorable Representative David A. Tarnas, Chair  
House Committee on Judiciary & Hawaiian

FROM: Cathy Betts, Director

SUBJECT: **SB 1490 SD1 – RELATING TO STATE EMPLOYEES.**

Hearing: March 15, 2023, 2:15 p.m.  
Conference Room 325 & 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 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. Requires that if the State refuses to defend a state or county employee from civil actions on certain grounds, that the State file a motion to be heard with the court. Effective 1/1/2050. (SD1)

The SD1 amended this measure by defecting the effective date.

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 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 EVAN OUE ON BEHALF OF THE HAWAII  
ASSOCIATION FOR JUSTICE (HAJ) IN SUPPORT OF  
SB 1490**

Date: Wednesday March 15, 2023

Time: 2:15 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 1490, Relating to Professionally Licensed or Certified Government Employees; Tort Liability; State Liability.

HAJ supports SB 1490 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.



**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 Judiciary and Hawaiian Affairs

Testimony by  
Hawaii Government Employees Association

March 15, 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