

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

ON THE FOLLOWING MEASURE:

S.B. NO. 889, S.D. 1, RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT EMPLOYEES.

BEFORE THE:

SENATE COMMITTEES ON JUDICIARY AND LABOR AND ON WAYS AND MEANS

DATE: Tuesday, February 28, 2017 **TIME:** 9:50 a.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): WRITTEN TESTIMONY ONLY. (For more information, call Caron M. Inagaki, Deputy Attorney General, or Kendall J. Moser, Deputy Attorney General at 586-1494.)

Chair Keith-Agaran, Chair Tokuda, and Members of the Committees:

The Department of the Attorney General supports Senate Draft 1, with amendments.

The purpose of this bill is to mitigate the personal monetary risk of professionally licensed or certified state employees.

State employees are generally afforded a qualified privilege for torts as a result of actions taken while in the course and scope of their State employment, affording them protection from individual liability. In the case of Slingluff v. State of Hawai'i, et al., 131 Hawai'i 239, 317 P.3d 683 (App. 2013), however, the Intermediate Court of Appeals held that prison physicians are not entitled to a qualified privilege or immunity for the exercise of their professional medical judgment. The Court's reasoning that these employees exercise judgment for which they are specially licensed, therefore making their judgment separate and distinct from governmental judgment, could be argued to extend to any other professionally licensed or certified employee of the State, including nurses, attorneys, engineers, and other professionals.

In the wake of Slingluff, the State has taken steps to obtain professional liability insurance covering claims of individual liability for its physicians in the Department of

Public Safety. This comes at a cost. This cost is expected to rise over time as claims are made against such policies. The need for such insurance becomes unnecessary with the passage of this bill.

The potential for personal liability prevents good, well-qualified professionals from applying for jobs with the government. As of December 2016, there are at least 1,031 professionally licensed or certified employees employed by the State of Hawaii as physicians, engineers, architects, registered nurses, attorneys, dentists, physical therapists, clinical psychologists, as well as other professionals. Even though the State may now carry insurance for its physicians in the Department of Public Safety, providing liability insurance for every licensed or certified professional employed by the State would come at an extraordinary and unnecessary cost.

To address the ramifications of Slingluff, and in an effort to attract and retain physicians and other professionally licensed or certified state employees, it is proposed that section 662-14, Hawaii Revised Statutes, be amended to clarify that the exclusive remedy for injury or loss of property, or personal injury or death, arising from the act or omission of a professionally licensed or certified employee of the State acting within the scope of the employee's office or employment shall be against the State alone.

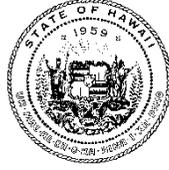
While the Department of the Attorney General prefers this bill in its original form, acknowledging the Hawaii Association for Justice's concerns regarding employers other than the State, and in order to make clear that the State is not and cannot be liable for punitive damages by deleting the word "fully", the Department requests the following amendments to subsection (b) starting at page 2, line 17:

(b) The remedy against the State provided by this chapter and section 661-11 for injury or loss of property, or personal injury or death, arising or resulting from the negligent or wrongful act or omission of any professionally licensed or certified employee of the State while acting within the scope of the employee's office or employment shall be exclusive whenever the State agrees to be ~~fully~~ liable for the injuries, losses, and damages caused by the professionally licensed or certified employee. Any civil action or proceeding for money damages arising out of or relating to the same subject matter against the

employee or the employee's estate shall thereafter be precluded without regard to when the act or omission occurred; provided that claims based on liability ~~[other than an employee's scope of employment with the State or]~~ arising from employment with an employer other than the State shall not be precluded. When an employee is named in an individual capacity, the State may notify all parties in writing that the State is invoking exclusive liability by agreeing to be ~~[fully]~~ liable for the injuries, losses, and damages caused by the professionally licensed or certified employee, and the action or proceeding shall thereafter proceed against the State alone. ~~[When the State agrees to partial responsibility for the injuries, losses, and damages of an employee, the]~~ The employee shall remain personally liable for those injuries, losses, and damages for which the State has not accepted responsibility.

We respectfully ask the Committees to pass Senate Draft 1 with the requested amendments.

DAVID Y. IGE
GOVERNOR



RODERICK K. BECKER
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN COMMENTS OF
RODERICK K. BECKER, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
SENATE COMMITTEES ON JUDICIARY AND LABOR
WAYS AND MEANS
ON
TUESDAY, FEBRUARY 28, 2017
9:50 A.M.
CONFERENCE ROOM 211

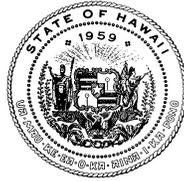
S.B. 889, S.D. 1

RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT
EMPLOYEES.

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and members of the Committees, thank you for the opportunity to submit written comments on S.B. 889, S.D. 1. The Department of Accounting and General Services (DAGS) supports the measure.

DAGS has multiple divisions and attached agencies that rely on the work of employees who are licensed professionals. This measure will help DAGS hire and/or retain professional employees by ensuring those professional employees cannot be held personally liable for actions they carry out in the course and scope of their State work. Without this provision, current and future State employees who require professional licensing to qualify for employment would find federal and private sector work that affords the proposed protection much more attractive. If the protections in this measure are not afforded to the licensed professional employees, individual employees may have to purchase their own professional liability insurance policies. This bill will help DAGS to attract, hire, and retain qualified licensed professionals.

Thank you for the opportunity to submit written comments on this measure.



STATE OF HAWAII
DEPARTMENT OF HEALTH
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**WRITTEN
TESTIMONY**

**Testimony in SUPPORT of SB889 SD1
RELATING TO PROFESSIONALLY LICENSED OR CERTIFIED GOVERNMENT
EMPLOYEES.**

SENATOR GILBERT KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: February 28, 2017

Room Number: 016

1 **Fiscal Implications:** Diminished costs to the Department of Health on additional professional
2 liability insurance.

3 **Department Testimony:** The Department of Health (DOH) supports SB889, Relating To
4 Professionally Licensed Or Certified Government Employees, which is submitted as part of
5 Governor Ige's administrative package through the Department of the Attorney General.

6 The department anticipates this measure will provide added clarification and assurance to
7 employees who are licensed or certified professional, including but not limited to physicians,
8 nurse practitioners and registered nurses, psychologists, clinical social workers, dentists, and
9 dental hygienists. In the capacity of a "provider of last resort," patients and clients whom the
10 department serves are often medically complex or fragile, to the point where the private health
11 care system is unable or unwilling to manage the liability.

12 Protections proposed by SB889 will benefit recruitment, retention, and overall risk management
13 activities, and minimize the need to purchase additional professional liability insurance for all
14 professionally licensed employees within the Department of Health.

15 **Offered Amendments:** N/A.

16

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
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NOLAN P. ESPINDA
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Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 889, SENATE DRAFT 1
RELATING TO PROFESSIONALLY LICENSED
OR CERTIFIED GOVERNMENT EMPLOYEES

by

Nolan P. Espinda, Director
Department of Public Safety

Senate Committee On Judiciary and Labor
Senator Gilbert S.C. Keith-Agaran, Chair
Senator Karl Rhoads, Vice Chair

Senate Committee On Ways and Means
Senator Jill N. Tokuda, Chair
Senator Donovan M. Dela Cruz, Vice Chair

Tuesday, February 28, 2017; 9:50 a.m.
State Capitol, Conference Room 229

Chairs Keith-Agaran and Tokuda, Vice Chairs Rhoads and Dela Cruz, and Members of the Committee:

The Department of Public Safety (PSD) **supports** Senate Bill (SB) 889, Senate Draft (SD) 1, which proposes to amend section 662-14 of the Hawaii Revised Statutes to clarify that the exclusive remedy for injury or loss of property, or personal injury or death, arising from the act or omission of a professionally licensed or certified employee of the State acting within the scope of the employee's office or employment shall be against the State alone. PSD offers the following comments.

In Singluff v. State of Hawaii, the Intermediate Court of Appeals held that PSD physicians are not entitled to qualified immunity for exercising their professional medical judgment. The Court reasoned that these physicians were subject to separate professional standards for which they were specially licensed, and were exercising their professional medical judgment separate and distinct from their

governmental judgment. The Court's ruling may be argued to apply to not just physicians, as personal liability may be imposed on any state employee who is a professional, such as advanced practice registered nurses.

PSD has always found it difficult to recruit and retain qualified physicians, psychiatrists, and advanced practice registered nurses because government salaries are generally lower than in the private sector. Knowing that their personal assets may be at risk has further discouraged qualified candidates from applying for State employment. PSD has had to obtain a malpractice insurance policy to protect PSD physicians and other medical professionals from personal financial harm and professional risk.

Thank you for the opportunity to present this testimony.

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: tax.leg@hawaii.gov
Subject: Submitted testimony for SB889 on Feb 28, 2017 09:50AM
Date: Sunday, February 26, 2017 2:39:59 PM
Attachments: [SB0889_SD1_TAX_02-28-17_JDL-WAM.pdf](#)

SB889

Submitted on: 2/26/2017

Testimony for JDL/WAM on Feb 28, 2017 09:50AM in Conference Room 211

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Zielinski	Department of Taxation	Support	Yes

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Ninth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association

February 28, 2017

S.B. 889, S.D. 1 - RELATING TO
PROFESSIONALLY LICENSED OR CERTIFIED
GOVERNMENT EMPLOYEES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 889, S.D. 1. This important legislation amends Chapter 662, Hawaii Revised Statutes, by providing professionally licensed or certified government employees the same privileges and legal immunities that other state employees currently receive.

More specifically, this bill will protect physicians, nurses, psychologists, engineers and other employees, who are employed by the State of Hawaii, when they exercise professional judgement in their capacity as public employees. Our organization represents many of these employees in various departments, statewide.

S.B. 889, S.D. 1, if enacted, will enable the State of Hawaii to attract and retain employees who are licensed to provide services that are essential to the public.

Thank you for the opportunity to testify in support of S.B. 889, S.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director