

Honolulu, Hawaii

FEB 15 2017

RE: S.B. No. 889

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Commerce, Consumer Protection, and Health,
to which was referred S.B. No. 889 entitled:

"A BILL FOR AN ACT RELATING TO PROFESSIONALLY LICENSED OR
CERTIFIED GOVERNMENT EMPLOYEES,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Clarify that the State shall be exclusively liable for claims for injury or loss of property, or personal injury or death, resulting from the negligent or wrongful act or omission of any professionally licensed or certified employee of the State acting within the scope of the employee's office or employment; and
- (2) Preclude civil actions or proceedings for money damages against the employee.

Your Committee received testimony in support of this measure from the Department of the Attorney General; Department of Health; Department of Taxation; Department of Accounting and General Services; Department of Public Safety; Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO; and one individual. Your Committee received testimony in opposition to this measure from the Hawaii Association for Justice.

Your Committee finds that state employees are generally afforded qualified immunity for torts as a result of actions taken



while in the course and scope of their state employment, which affords these employees protection from individual liability. However, in the recent case of Slingluff v. State, 317 P.3d 683 (Haw. Ct. App. 2013), the Intermediate Court of Appeals held that "physicians employed by the State, including prison doctors, exercising purely medical discretion in the diagnosis and treatment of potentially injured or sick people, are not protected from medical malpractice claims by the doctrine of qualified immunity under Hawai'i law."

According to testimony received by your Committee, since 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, although this comes at a cost. Furthermore, the potential for personal liability can have a negative impact on hiring and retention of well-qualified professionals who are interested in working for the State. This measure seeks to clarify the issue of state defense and indemnification of professionally licensed or certified employees.

Your Committee has amended this measure by:

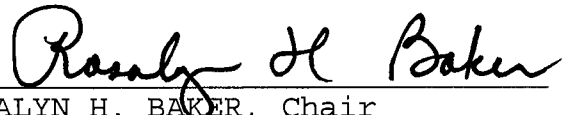
- (1) Clarifying that the State's liability shall be exclusive whenever the State agrees to be fully liable for the injuries, losses, and damages caused by a professionally licensed or certified employee;
- (2) Clarifying that civil actions or proceedings for money damages against an employee are precluded, except for claims based on liability other than an employee's scope of employment with the State or other employer;
- (3) Clarifying the liability of the State and employee when the State assumes full and partial assumption of responsibility;
- (4) Inserting an effective date of July 1, 2050, to encourage further discussion;
- (5) Updating the purpose section; and
- (6) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.



Your Committee notes that the Department of the Attorney General and the Hawaii Association for Justice are currently working on additional compromise language regarding the liability of state employees, and requests that interested stakeholders continue to work on this consensus language. Your Committee notes that this amended measure is a work in progress and additional consideration of the compromise language may be warranted by your Committees on Judiciary and Labor and Ways and Means.

As affirmed by the record of votes of the members of your Committee on Commerce, Consumer Protection, and Health that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 889, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 889, S.D. 1, and be referred to your Committees on Judiciary and Labor and Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Commerce, Consumer
Protection, and Health,



ROSALYN H. BAKER, Chair



