

JOSH GREEN, M.D.
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KE KIA'ĀINA



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STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 25, 2025
12:00 p.m.
State Capitol, Room 308 VC

H.B. 990 H.D. 1
RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,
ITS OFFICERS, OR ITS EMPLOYEES

House Committee on Finance

The Hawaii Department of Transportation (HDOT) supports H.B. 990 H.D. 1 that authorizes judgements and settlements for claims against the State.

We want to thank the State Attorney General office for all their support and hard work on completing these cases for the HDOT.

Thank you for the opportunity to provide testimony.

JOSH GREEN, M.D.
GOVERNOR



KEITH T. HAYASHI
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
KA 'OIHANA HO'ONA'AUAO
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/25/2025

Time: 12:00 PM

Location: 308 VIA VIDEOCONFERENCE

Committee: House Finance

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Bill Title: HB 0990, HD1 MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

Purpose of Bill: Makes appropriations and approves payments for claims against the State, its officers, and its employees. Effective 7/1/3000. (HD1)

Department's Position:

The Hawaii State Department of Education (Department) supports HB990, HD1, which appropriates funds to satisfy claims against the State. This measure enables timely resolution of legal obligations, preventing unnecessary litigation and financial burdens.

By settling claims efficiently, this bill allows the Department to focus on its core mission of educating Hawaii's students. Appropriating these funds ensures fiscal responsibility and protects essential educational resources.

Thank you for the opportunity to provide testimony in support of this measure.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2025**

ON THE FOLLOWING MEASURE:

H.B. NO. 990, H.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, February 25, 2025 **TIME:** 12:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Skyler G. Cruz, Deputy Attorney General

Chair Yamashita and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

The purpose of this bill is to seek appropriations to satisfy claims against the State, its officers, or its employees, including claims for legislative relief, judgments against the State, settlements, and miscellaneous claims.

The bill contains seventeen claims that total \$5,911,234.22. To satisfy this total amount, the following appropriations are needed:

- An appropriation in the amount of \$4,571,234.22, allocated among fourteen claims to be paid from the general fund; and
- An appropriation in the amount of \$1,340,000.00, allocated among three claims to be paid from departmental funds.

Attachment "A" provides a brief description of each claim in this bill.

Since the bill was last amended, four new claims were resolved that total \$587,632.85. To satisfy these additional claims, the Department requests that the bill be amended to increase the requested appropriation by the amount of \$587,632.85, allocated among nine claims to be paid from the general fund.

Attachment "B" provides a brief description of the new claims.

Including the new claims, the appropriation request totals \$6,498,867.07 allocated among twenty-one claims, with the updated appropriation request as follows:

- An appropriation in the amount of \$5,158,867.07, allocated among eighteen claims to be paid from the general fund; and
- An appropriation in the amount of \$1,340,000.00, allocated among three claims to be paid from departmental funds.

The Department has a longstanding policy of advising agencies as to how to avoid claims such as those in this bill. The Department has complied with section 37-77.5, Hawaii Revised Statutes (HRS), which requires the Attorney General to develop and implement a procedure for advising our client agencies on how to avoid future claims.

We respectfully request passage of this bill with amendments to add the new claims.

While Ferreira and the other student were attempting to set-up the log splitter, Ferreira's left pinky finger got caught in a pinch point on the machine causing his finger to be severed. Ferreira filed a lawsuit against the DOE and the teacher alleging that their negligent actions and/or omissions caused Ferreira's injury.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Jennifer Reber v. State of Hawaii **\$ 450,000.00** *(General Fund)*
Civil No. 5CCV-23-000053, Fifth Circuit **Settlement**

On May 20, 2021, Plaintiff Jennifer Reber (Reber) slipped and fell onto a piece of rebar protruding from the ground while hiking on a trail leading to Waipoo Falls, which is located at Kokee and Waimea Canyon State Park on Kauai, Hawaii. The rebar spike impaled Reber's lower right thigh. First responders transported Reber to the nearest hospital where she was treated and released. After returning to her home in Utah, Reber underwent reconstructive surgery and physical therapy.

Brenda Osmer **\$ 100,000.00** *(General Fund)*
Tort Claim **Settlement**

Brenda Osmer (Osmer) was visiting Waimea Canyon State Park on June 15, 2023. She was with her husband when they headed down the walkway from the Waimea Canyon lookout. Around the middle of the walkway, Osmer slipped on a steel diamond plate that was covering a small drainage ditch. Osmer fell and fractured her femur in the mid-thigh area of her right leg. According to Osmer, her husband, and two witnesses, there was a light sprinkling of rain prior to the incident. The two witnesses provided a statement that another person had fallen in the same area right before this incident. Osmer was taken by ambulance to the Wilcox Medical Center. Surgery was done the following day where a metal plate and screws were used to repair the fracture. The Department of Land and Natural Resources had no notice of anyone falling on the steel plate prior to June 15, 2023. After this incident, the steel plate was coated with a paint and sand mixture to make it less slippery and anti-slip tape was applied to the top of the steel plate to make it safer.

DEPARTMENT OF LAW ENFORCEMENT:

Cresencia Espejo v. State of Hawaii **\$ 750,000.00** *(General Fund)*
Civil No. 1CCV-21-0000192, First Circuit **Settlement**

On February 18, 2019, Defendant Deputy Sheriff Gregory Bergman (Deputy Bergman) was patrolling the Hawaii State Capitol grounds when he encountered Delmar Espejo (Espejo) drinking vodka in public in violation of state law. Espejo refused to comply with Bergman's requests to pour out the vodka. A physical altercation ensued, which led to Deputy Bergman fatally shooting Espejo. Espejo's estate, mother, brothers, and sister brought this lawsuit against Deputy Bergman and the State asserting state law claims

and civil rights claims pursuant to 42 U.S.C. § 1983. Plaintiffs alleged that Deputy Bergman's use of force against Espejo was excessive force and the State did not properly train or supervise Deputy Bergman.

DEPARTMENT OF TRANSPORTATION:

Juan Jimmie Aldeguer v. State of Hawaii
Civil No. 1CCV-21-0000052, First Circuit

\$ 1,075,000.00 (*Dept. Appropriation*)
Settlement

This case arises out of a pedestrian and motor vehicle accident that occurred on January 18, 2019, at approximately 6:36 p.m. at the Farrington Highway and Linakola Street intersection crosswalk in Maili along the west coast of Oahu. Juan Jimmie Lee Wills-Aldeguer, Jr., and his female companion entered the crosswalk from the parking lot of the Maili-Pink Market located on mauka side of the highway and were walking toward the Maili Beach Park when they were struck by a northbound-Waianae-bound vehicle. Mr. Wills-Aldeguer landed over the center line where he was then struck by a southbound-Honolulu-bound vehicle. Mr. Wills-Aldeguer died as the result of the injuries he sustained in the accident. The driver of the northbound vehicle settled with Plaintiff, the decedent's father. The driver of the southbound vehicle is a Japanese national against whom Plaintiff obtained default. The complaint alleged, among other things, that the crosswalk presented a hazard to pedestrians, and that the Department of Transportation (DOT) was negligent in the design and maintenance of the crosswalk. Prior to the subject accident, DOT had its private engineering consultant study pedestrian safety along the Farrington Highway corridor from the Kahe Power Plant to the end of Makaha. In April 2017, DOT's consultant determined that there were thirteen marked but unsignalized crosswalks in the corridor, including the subject crosswalk. Many of these crosswalks had between one to three prior crossing accidents and had very low pedestrian usage. The consultant recommended that the crosswalks be removed as part of a comprehensive redesign and resurfacing the corridor that would also include the consolidation and relocations of some bus stops and bus stop facilities. Because of the comprehensive scope of the project and the traffic control-contra-flow necessary during construction, the project was divided into Phases 1 and 2. Phase 1 included the Nakakuli area. Phase 2 included the Maili, Waianae, and Makaha areas, including the Farrington Highway and Linakola Street intersection site of the accident. Phase 1 began in 2018. Phase 2 began after the completion of Phase 1. The subject accident occurred while work on Phase 1 was being completed and before work on Phase 2 had begun.

Estate of Bruce Perdue v. State of Hawaii
Civil No. 5CC131000351, Fifth Circuit

\$ 175,000.00 (*Dept. Appropriation*)
Settlement

This case arises out of a single motor vehicle accident that occurred in the early morning hours on May 21, 2012, in Kapaa, Lihue, Kauai. Bruce Perdue was driving north on the Kuhio Highway toward Kapaa town when he was involved in an accident. The post-accident police investigation indicated that, as he approached Mile Post 7, Mr.

**Maui Kuponu Builders, LLC
(Check No. S0057589)**

\$ 442,504.75 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

**Maui Kuponu Builders, LLC
(Check No. S0001176)**

\$ 152,665.39 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

**Sarah Ann D. Pacheco
f/k/a Sarah Ann D. Taylor**

\$ 460.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

Kiyoji Tanimura

\$ 5,371.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS, or claimant has shown good cause for any delay.

DEPARTMENT OF HAWAIIAN HOME LANDS:

**Royal Contracting Company, Ltd. v.
Department of Hawaiian Home Lands
Civil No. 1CCV-16-1760-09, First Circuit**

\$ 400,000.00 *(General Fund)*
Settlement

This case involved a highly technical dispute regarding the quantity of non-expansive coral fill required for grading a Department of Hawaiian Home Lands (DHHL) subdivision in Kapolei. Royal Contracting Company, Ltd. (Royal) alleged that DHHL's bid documents did not clearly state the amount of fill required, which allegedly caused Royal to import additional fill at its expense. The parties settled this case after multiple rounds of mediation over the course of several years.

DEPARTMENT OF TAXATION:

**Deborah Kwan v. State of Hawaii
Civil No. 1CCV-21-0000424, First Circuit**

\$ 32,632.85 *(General Fund)*
Settlement

Plaintiff Deborah Kwan (Kwan) is a former Public Information Officer (PIO) for the Department of Taxation (DoTax). Kwan held a limited term appointment as an exempt employee, and her appointment had been renewed annually upon its expiration. Kwan was also enlisted in the Air National Guard. On December 31, 2019, Kwan requested military leave from DoTax so that she could fulfill duties for the Air National Guard. The leave request was not approved and eventually her contract for the PIO position within DoTax was not renewed. Kwan filed this lawsuit against DoTax alleging violations of the State's employment practices laws, section 378-2(a)(4), HRS, and the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301. She claimed that she was terminated because of her membership in the National Guard, she was retaliated against because of her membership in the military and/or her making a complaint, and she should have been returned to her position within DoTax upon the completion of her military training.