



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1309, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 6, 2025 **TIME:** 9:15 a.m.

LOCATION: State Capitol, Room 016

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

Chair Rhoads 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 eight claims that total \$2,338,335.75. To satisfy this total amount, the following appropriations are needed:

- An appropriation in the amount of \$998,335.75, allocated among five 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 introduced, seven new claims were resolved that total \$2,547,898.47. To satisfy these additional claims, the Department requests that the bill be amended to increase the requested appropriation by the amount of \$2,547,898.47, allocated among seven 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 \$4,886,234.22 allocated among fifteen claims, with the updated appropriation request as follows:

- An appropriation in the amount of \$3,546,234.22, allocated among twelve 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.

ATTACHMENT “A”

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 TRANSPORTATION:

Juan Jimmie Aldeguer v. State of Hawaii **\$ 1,075,000.00** *(Dept. Appropriation)*
Civil No. 1CCV-21-000052, First Circuit **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. Perdue was driving in excess of the posted speed when he drove off the travel portion of the highway, off the paved shoulder, and struck a utility pole. He died as the result of the injuries he sustained in the accident. At the time of his death, he was employed with the National Guard. Plaintiffs include Mr. Perdue's parents and two siblings, in addition to the estate. The State of Hawaii (State) owns Kuhio Highway. Kaua'i Island Utility Cooperative and Hawaiian Telcom owned the utility pole. Plaintiffs sued the State for negligent design and operation of the highway and for maintenance of hazards conditions on the highway including the utility pole. Plaintiffs dismissed their claims against the utility companies. The subject utility pole was within the State's highway right-of-way/paved shoulder. Plaintiffs' experts opined that the shoulder should have been free of hazardous conditions such as the utility pole, that the State should have moved the subject pole after two prior utility pole accidents, had a guardrail installed along the highway to prevent vehicles from striking the pole, and/or used other traffic control devices such as plastic delineators to highlight the presence of the pole. The State's experts opined that the highway was designed in conformance with applicable engineering guidelines, that guardrail installation might increase the occurrence of different types of accidents at the site, and that the entire utility line and a number of

ATTACHMENT "B"

DEPARTMENT OF THE ATTORNEY GENERAL:

Billy Peter v. Anne E. Lopez
Civil No. 24-cv-00508 MWJS-RT, USDC

\$ 28,500.00 (*General Fund*)
Settlement

Plaintiff Billy Peter (Peter) is a citizen of the Federated States of Micronesia (FSM). He resides in the United States pursuant to the Compact of Free Association (COFA) between the United States and FSM. Peter sought a permit to acquire a firearm, but was informed by the Honolulu Police Department that he could not be issued a firearm permit because of his immigration status as a COFA migrant. Peter then filed a lawsuit asserting that section 134-2(d)(1), HRS, violates the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment to the extent that it prohibits COFA migrants from acquiring or possessing firearms on the basis of their COFA status. The parties agreed to a stipulated judgment.

DEPARTMENT OF EDUCATION:

B.R., M.A., and F.R. v. State of Hawaii
Civil No. 1CCV-20-0000549, First Circuit

\$ 330,000.00 (*General Fund*)
Settlement

Plaintiffs B.R., M.A., and F.R. sued the Department of Education (DOE) seeking damages for gross negligence pursuant to section 657-1.8, HRS, alleging that the DOE failed to protect them from sexual abuse perpetrated by a school security guard while they were students at the Highlands Intermediate School in the mid-1970s. The security guard led and supervised two school programs, an "Indian Dance Program" and a "Campus Police Officer Program." Both programs included activities conducted at the Highlands Intermediate School premises as well as activities conducted off-campus with the permission of DOE. The Plaintiffs alleged that the school security guard sexually assaulted them and other students on and off-campus during their participation in these programs. Plaintiffs B.R. and M.A. settled their claims in this lawsuit. Plaintiff F.R. voluntarily dismissed his claims before the case settled.

Child Evangelism Fellowship of Hawaii, Inc. v.
Hawaii State Department of Education
Civil No. 24-cv-00034 MWJS-WRP, USDC

\$ 100,000.00 (*General Fund*)
Settlement

This lawsuit was filed by Child Evangelism Fellowship of Hawaii, Inc. (CEF) against the Department of Education (DOE) alleging violations of the Free Exercise clause in the First Amendment and the Equal Protection clause in the Fourteenth Amendment to the United States Constitution. CEF is a Christian, nonprofit organization that uses DOE facilities pursuant to chapter 8-39, Hawaii Administrative Rules, to host its after-school Good News Clubs. Unlike other similarly situated organizations, the DOE required CEF to pay rental fees to use DOE facilities. As a result of this lawsuit, the DOE has agreed to stop charging CEF rental fees.

**Brenda Persinger, Individually and as a
Personal Representative of the Estate of
Michael Ambrose, Deceased v. State of Hawaii,
Department of Education
Civil No. 3CCV-22-0000337, First Circuit**

**\$ 1,750,000.00 (General Fund)
Settlement**

On June 13, 2022, a Department of Education (DOE) special education teacher was asked by her supervisor to bring supplies from a DOE office to a park to help set up a DOE-run summer camp for special needs students. The teacher was driving to the park along Highway 19 on Hawaii Island when she realized that she had missed her turn. The teacher then made a turn on the highway crossing over the double yellow line to head back in the other direction. Although the teacher had intended to make a U-turn, the highway was too narrow. Unable to complete the U-turn, the teacher then had to make a three-point turn, which caused her vehicle to partially block both lanes of the highway. At this time, a motorcyclist who was traveling on the highway struck the teacher's vehicle and died as a result of the accident. Police found the teacher at fault. The motorcyclist's widow filed a wrongful death lawsuit against the teacher and the DOE alleging that the teacher negligently caused the accident while in the course and scope of her employment for the DOE and that the DOE was vicariously liable for the teacher's negligence.

**Jake Ferreira v. State of Hawaii,
Department of Education
Civil No. 1CCV-23-0000874, First Circuit**

**\$ 75,000.00 (General Fund)
Settlement**

On October 22, 2021, Plaintiff Jake Ferreira (Ferreira) was a student at Castle High School. That day, Ferreira and another student were asked by a DOE teacher to assist with setting up a mechanical log splitter during an agriculture class. The log splitter was going to be used to split wood for the school's annual Thanksgiving imu fundraiser. 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.

MISCELLANEOUS CLAIMS:

Mark Lloyd

\$ 111,733.08 (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.