

H .B. NO. 1250

A BILL FOR AN ACT

RELATING TO ACTIONS BY AND AGAINST THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 661-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§661-1 Jurisdiction.** The several circuit courts of the
4 State and, except as otherwise provided by statute or rule, the
5 several state district courts shall, subject to appeal as
6 provided by law, have original jurisdiction to hear and
7 determine the following matters, and, unless otherwise provided
8 by law, shall determine all questions of fact involved without
9 the intervention of a jury[-]:

10 (1) All claims against the State founded upon any statute
11 of the State; or upon any regulation of an executive
12 department; or upon any contract, expressed or
13 implied, with the State, and all claims which may be
14 referred to any such court by the legislature;
15 provided that no action shall be maintained, nor shall
16 any process issue against the State, based on any
17 contract or any act of any state officer which the
18 officer is not authorized to make or do by the laws of

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1 the State, nor upon any other cause of action than as
 2 herein set forth[-]; and provided further that a claim
 3 founded upon a statute of the State is within the
 4 original jurisdiction of the courts only if, in the
 5 text of the separate statute upon which the claim is
 6 founded, the State has unequivocally waived its
 7 sovereign immunity for the claim.

8 (2) All counterclaims, whether liquidated or
 9 unliquidated, or other demands whatsoever on the part
 10 of the State against any person making claim against
 11 the State under this chapter."

12 SECTION 2. Statutory material to be repealed is bracketed
 13 and stricken. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

15
 16 INTRODUCED BY: Calvin K. Day
 17 BY REQUEST

JAN 22 2007

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO ACTIONS BY AND AGAINST THE STATE.

PURPOSE: The purpose of this bill is to clarify the limits of the State of Hawaii's waiver of sovereign immunity for claims asserted against the State founded upon any statute under section 661-1, Hawaii Revised Statutes, and to preserve the separation of powers principle that only the Legislature may waive the State's inherent sovereign immunity from suits for retrospective money damages.

MEANS: Amend section 661-1, Hawaii Revised Statutes.

JUSTIFICATION: Section 661-1, Hawaii Revised Statutes, contains the Legislature's waiver of the State of Hawaii's sovereign immunity for "All claims against the State founded upon any statute of the State; or upon any regulation of an executive department; or upon any contract, expressed or implied, with the State"

This bill affects only the "claims founded upon any statute of the State" portion of section 661-1. The Hawaii Supreme Court has repeatedly held that the State's liability is limited by its sovereign immunity, except where there has been a "clear relinquishment of immunity and the State has consented to be sued." E.g., Pele Defense Fund v. Paty, 73 Haw. 607, 837 P.2d 1247, 1365 (1992). As to a waiver of immunity for a claim founded upon any statute, the Hawaii Supreme Court has repeatedly recognized the following principles: (1) a waiver of the government's sovereign immunity will be strictly construed, in terms of its scope, in favor of the sovereign; (2) a waiver of

Impact on the department and other agencies:
This bill would prevent the State and its agencies from having to defend itself from lawsuits based upon statutes from which the State has not waived its immunity. It would thus promote greater departmental efficiency, and may save the State and its client agencies from having to pay for judgments against the State.

GENERAL FUND: None.
OTHER FUNDS: None.
PPBS PROGRAM DESIGNATION: None.
OTHER AFFECTED AGENCIES: Judiciary.
EFFECTIVE DATE: Upon approval.