



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2023**

ON THE FOLLOWING MEASURE:

S.B. NO. 1277, S.D. 2, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, March 16, 2023 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Tarnas 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.

Senate Draft 2 of the bill contains fifteen claims that total \$3,287,957.75. Of this total, \$2,787,957.75 are general funds appropriation requests allocated among fourteen claims, and \$500,000.00 is an appropriation request from a departmental fund.

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

Since the bill was last amended, nine new claims were resolved for an additional \$4,283,437.67. An appropriation is needed from the general fund to satisfy these claims. Attachment B provides a brief description of the new claims.

Including the new claims, the appropriation request totals \$7,571,395.42 allocated among twenty-four claims. Of this total, \$7,071,395.42 is a general fund appropriation request and \$500,000.00 is an appropriation request from a departmental fund.

The Department has had a longstanding policy of advising agencies as to how to avoid claims such as those in this bill. The Department also has complied with section 37-77.5, Hawaii Revised Statutes, 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 THE ATTORNEY GENERAL:

**Honolulu Civil Beat Inc. v. Department of
the Attorney General** **\$ 79,199.38 (General Fund)**
SCAP 21-0000057 **Judgment**
Civil No. 1CC-16-1-001743 JMT

Honolulu Civil Beat Inc. brought a lawsuit against the Department of the Attorney General to force disclosure of a 2016 Attorney General Investigative Report concerning the Auditor's Office. The Hawaii Supreme Court ruled that the report should be disclosed with certain information redacted. Under section 92F-15(d), Hawaii Revised Statutes, a successful plaintiff in a public records lawsuit is entitled to reasonable attorney's fees and costs incurred in the litigation to force disclosure of the records. Final judgment in the amount of \$78,120.00 in attorney's fees and \$1,079.38 in costs, totaling \$79,199.38, was entered on September 30, 2022.

DEPARTMENT OF EDUCATION:

Kristen Kam, et al. v. State of Hawaii **\$ 250,000.00 (General Fund)**
Board of Education, et al. **Settlement**
Civil No. 21-00211 JAO-KJM, USDC

Plaintiff Kristen Kam alleges that from November 2018 through February 26, 2019, her daughter, K.K., was repeatedly sexually assaulted, sexually abused, harassed, or bullied at Konawaena High School (KHS) by a male high school student after school hours. K.K. was a middle school student at Konawaena Middle School, which was located adjacent to KHS and shared the same plot of land. Plaintiff claims that the State of Hawaii Board of Education, Department of Education, and KHS's principal failed to take actions to protect K.K. from the male student despite having received reports that the male student had previously engaged in misconduct prior to November 2018.

Cipriano Millano, et al. v. State of Hawaii, et al. **\$ 750,000.00 (General Fund)**
Civil No. 2CC-13-1-000031, Second Circuit **Settlement**

A lawsuit was filed by the father of a six-year-old student, L.J.M., who injured his eye when he ran into a pedestrian gate while walking with his father on a walkway to his classroom at Lihikai Elementary School in Kahului, Maui. The Department of Education owns the school grounds and operates the school. There is a perimeter fence that surrounds the school grounds. In the fence there is a pedestrian gate that separates a classroom area from the school staff parking stalls. The gate has a common U-latch. Trial proceeded on liability only. The father testified that when he pushed the U-latch up

to open the gate, the gate swung back, the latch fell and struck his son in the left eye. As a result of the injury, L.J.M. lost sight in his eye. The trial court determined that the State was negligent, and its negligence was a legal cause of the accident and injury, and the State was 100 percent at fault. The parties settled for \$750,000.00, which is within the settlement and judgment range for cases involving the loss of vision in one eye.

Roe No. 113 v. State of Hawaii
Civil No. 1CC191000460, First Circuit

\$ 450,000.00 *(General Fund)*
Settlement

Plaintiff alleged that in 1977, when he was a minor student at Highlands Intermediate School, he was repeatedly sexually abused by school security officer, Joseph Moisa. He alleged that the abuse occurred on school grounds, and at a camping trip allegedly arranged by Moisa for participants in the Campus Police Officer (CPO) program. Because the records retention period had long since lapsed, the State was unable to find any relevant records to confirm or refute Plaintiff's allegations other than school yearbooks that seemed to support the claim that Moisa was working at the school as a security officer and was involved in the CPO program. Due to the passage of section 657-1.8, Hawaii Revised Statutes, the statute of limitations was waived for adult survivors of child sexual abuse if they could prove gross negligence on the part of the State. All the State employees who would have been in any position to know any facts or information regarding this matter are dead. Therefore, the Department of Education was unable to offer evidence to contradict Plaintiff's claims and decided to settle for \$450,000.00 rather than risk an adverse judgment of a much higher amount if the case went to trial.

DEPARTMENT OF HUMAN SERVICES:

E.F. v. State of Hawaii, Department
Human Services, et al.
Civil No. 1CCV-20-0000497, First Circuit

\$ 35,000.00 *(General Fund)*
Settlement

Plaintiff filed a claim alleging that he was sexually abused by his foster parents in 1964-1967. Plaintiff had two sets of records to support his claim. One was Department of Education records, which stated that he had "foster parents," and included the names "Rose Keim" and "Mr. and Mrs. Keim." The other is a document from the then-named "Juvenile Court" regarding Plaintiff from the 1950s, but there is no remaining file at the family court. There are no documents at the Department of Human Services (from its predecessor, Department of Public Welfare, which later became the Department of Social Services), either due to the passage of time, or because there were never any records for E.F., or the Keims to begin with. Plaintiff alleges that no social worker came to check on him, and if he had been checked, he would have disclosed the abuse and the abuse would have ended. This is a case that was brought under the re-opening of the window for sexual abuse for entity liability, section 657-1.8(b)(2), Hawaii Revised Statutes.

consideration of the agreement to pay Ms. Wong \$55,000.00 to settle the dispute, Ms. Wong resigned from the SFCA on January 31, 2023, and released the State from all claims arising from her employment with SFCA.

MISCELLANEOUS CLAIMS:

Kelly and Robert Armstrong **\$ 100,333.33** *(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.

Community Empowerment Resources **\$ 153,110.25** *(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.

Ding Jing **\$ 118,524.00** *(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.

Morgan Stanley Smith Barney Holdings LLC **\$ 239,927.00** *(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.

Mercedes Nakaza **\$ 94.46** *(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.

Jyron Salamanca **\$ 1,992.30** *(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.

Saltchuk Resources, Inc.

\$ 550,000.00 *(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.

Estate of Take Yamashiro

\$ 4,777.03 *(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.

ATTACHMENT "B"

DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES:

Frances Kaluhiwa v. State of Hawaii **\$ 275,000.00** *(General Fund)*
Civil No. 1CCV-20-0000638, First Circuit **Settlement**

Plaintiff, then age 75, tripped and fell on an uneven spot in the sidewalk between the Iolani Palace grounds and the State Capitol Building. Plaintiff broke her hip and underwent partial hip replacement surgery. She complains of ongoing pain and disability. The case went through the Court Annexed Arbitration Program where the arbitrator found for the Plaintiff and awarded \$113,511.44 in special damages and \$284,778.60 in general damages for a total of \$397,290.04. The State appealed the arbitration award and settled for \$275,000.00.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Mary Chang, et al. v. State of Hawaii; et al. **\$ 830,000.00** *(General Fund)*
Civil No. 1CCV-21-0000913, First Circuit **Settlement**

On March 1, 2021, Plaintiffs, a 59-year-old nurse and a 71-year-old, retired bank manager, were traveling on Kamehameha Highway in Kaawa when a large ironwood tree fell and landed on their vehicle smashing the top of the passenger compartment and trapping them in the car. The ironwood tree was located on State property managed by the Department of Land and Natural Resources (DLNR). DLNR believed the tree was located on a Department of Transportation right-of-way so it did not monitor, inspect, or maintain the tree. The driver sustained closed fractures to her sternum and thoracic spinal endplates. The passenger sustained a closed fracture to a lumbar endplate. Both plaintiffs complain of daily pain. Their spouses made loss of consortium claims.

DEPARTMENT OF PUBLIC SAFETY:

Eric Yoshioka v. State of Hawaii **\$ 37,500.00** *(General Fund)*
Civil No. 17-1-1435-09, First Circuit **Settlement**

Plaintiff, who is a former inmate at Oahu Community Correctional Center, was over-detained by 69 days due to the miscalculation of Plaintiff's pre-sentence credits. Plaintiff was immediately released when the miscalculation was discovered and corrected by the Department of Public Safety.

STATE PUBLIC CHARTER SCHOOL COMMISSION:

**Beth Bulgeron v. The Hawaii State Public
Charter School Commission, et al.
Civil No. 1CCV-20-0001620, First Circuit**

\$ 58,000.00 *(General Fund)*
Settlement

Plaintiff is a former employee of the Charter School Commission (CSC). Immediately after resigning from the CSC, she started a school improvement consultant business. After obtaining a written opinion from the State Ethics Commission that she could contract with the CSC, she contracted with the CSC through its former Executive Director, Sione Thompson. Mr. Thompson entered into contracts with Plaintiff without the knowledge of the CSC staff or its commissioners, and without review by the Department of the Attorney General. After Mr. Thompson resigned from the CSC, the CSC unilaterally cancelled the contract with two months remaining on the contract. The stated basis for the cancellation was the Governor's Executive Memorandum 20-01 allowing for the cancellation or deferring of contracts and other expenditures of low priority. However, the contract was not cancelled in accordance with its 60-day written notice of termination provision. Plaintiff filed a lawsuit alleging breach of contract, assumpsit, unjust enrichment, and promissory estoppel against the CSC. Plaintiff also sued the current Interim Executive Director and the former CSC Chair for tortious interference with contract and the CSC, infliction of emotional distress, and libel and slander. Based on the unilateral cancellation, Plaintiff claims that she is owed final payments in the amount of \$67,500.00 plus attorneys' fees pursuant to section 607-14, Hawaii Revised Statutes. The parties reached a settlement in a judicially supervised settlement conference for \$58,000.00.

MISCELLANEOUS CLAIMS:

Garry A. Harsanyi and Kimberly M. Harsanyi

\$ 406.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was damaged and unable to be deposited. After requesting a reissuance, claimant's request 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.

Interval International Inc.

\$ 3,078,145.74 *(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.

Kailua Local Cab Inc.

\$ 2,019.71 *(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.

Michael Shiira

\$ 902.00 *(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.

Tamura Enterprises, Inc.

\$ 1,464.22 *(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.

Written Only

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: 03/16/2023

Time: 02:00 PM

Location: 325 VIA VIDEOCONFERENCE

Committee: House Judiciary & Hawaiian
Affairs

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Title of Bill: SB 1277, SD2 MAKING APPROPRIATIONS FOR CLAIMS
AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

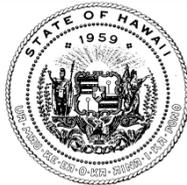
Purpose of Bill: Makes appropriations and approves payments for claims against
the State, its officers, and its employees. Effective 7/1/2050.
(SD2)

Department's Position:

The Hawaii State Department of Education (Department) supports passage of SB 1277, SD2. The Department appreciates the Legislature's support in providing the funding to settle these claims against the Department.

Thank you for the opportunity to provide testimony on this measure.

JOSH GREEN, M.D.
GOVERNOR



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR

Deputy Directors
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO
JAMES KUNANE TOKIOKA

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 16, 2023
2:00 P.M.
State Capitol, Room 325 & Videoconference

S.B. 1277 SD2
RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,
ITS OFFICERS, OR ITS EMPLOYEES

Senate Committee on Judiciary

The Department of Transportation supports S.B. 1277 SD2 that authorizes judgements for claims against the State.

Thank you for the opportunity to provide testimony.

SB-1277-SD-2

Submitted on: 3/15/2023 6:00:10 PM

Testimony for JHA on 3/16/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dara Carlin, M.A.	Individual	Support	Written Testimony Only

Comments:

Stand in Support