



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-THIRD LEGISLATURE, 2026**

**ON THE FOLLOWING MEASURE:
S.B. NO. 2311, RELATING TO CLAIMS AGAINST THE STATE.**

**BEFORE THE:
SENATE COMMITTEE ON JUDICIARY**

DATE: Tuesday, February 3, 2026 **TIME:** 9:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFER(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) provides the following comments with recommendations.

The purposes of this bill are to: prohibit claims for refunds, reimbursements, or other payments, for which authorization is sought from the Legislature, that exceed the time limitations in section 40-68, Hawaii Revised Statutes (HRS); require the Attorney General to include in the Attorney General's annual report of claims recommended for approval as required under section 37-77, HRS, a total dollar value of possible judgments against the State that have not yet settled; require additional information to be provided in the Attorney General's report to the Legislature required under section 37-77.5, HRS; and amend section 37-77.5 to require the Attorney General to submit a report every five years to certain members of the Legislature stating whether there were any further incidents that occurred in an agency that led to a similar claim after recommended actions were implemented and state why recommended actions were inadequate to prevent the incident.

The proposed wording on page 2, lines 10-11, of the bill would require the Attorney General to include "a total value of possible judgments against the State that have not yet settled" in addition to the claims recommended for approval by the Legislature. While the Department understands that the Legislature may find it useful to have notice of potential future judgments and/or settlements, the proposed wording

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seeks information from the Attorney General that cannot be provided. The Department cannot predict or ascertain with any level of confidence or accuracy which, if any, pending lawsuits will be reduced to a judgment against the State, the dollar value that a Court or jury may award, when such a judgment may be entered, whether the judgment will be appealed, or what the outcome of the appeal will be. Nor can the Department anticipate which, if any, possible judgments may be later settled or when those settlements may occur. Thus, in the Department's view, there is no practical or reliable way to comply with this proposed requirement. An additional concern is that even if it were possible for the Department to determine which cases and claims it believes are likely to settle or be reduced to a judgment, such a list should not be made publicly available. A list of this nature could be interpreted or viewed as a list of cases that the Attorney General believes are likely to have unfavorable outcomes. This would significantly compromise the Department's ability to obtain favorable settlements and defend the State in those cases.

In light of the foregoing concerns, the Department recommends that the proposed wording on page 2, lines 10-11, of the bill be omitted.

Section 37-77.5, HRS, currently requires the Attorney General to submit a report to certain members of the Legislature that describes the claims and attendant circumstances therein and the advice for corrective action rendered to the agency twenty days before the convening of the legislative session. The proposed wording on page 3, lines 17-21, of the bill would require the Attorney General to consult with each department as to each settled claim on the bill and recommend timelines for the departments to complete the Attorney General's recommended actions. The Department is concerned that, even with the consultation of the affected departments, the Attorney General would be unable to recommend a realistic timeline due to circumstances that may be beyond an agency's control or that may be unforeseeable, including compliance with applicable procurement laws, collective bargaining agreements, departmental budgets, and staffing limitations, among other things. These concerns would also make it difficult to determine whether a department implemented a recommended action in a timely fashion. Instead of stating whether the Department

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believes that a department implemented the recommended action in a timely fashion, it may be more useful to require the Attorney General to indicate whether the recommended action has been completed and, if not, provide a status regarding the department's implementation of the recommended action.

In light of the foregoing concerns, the Department recommends that the proposed wording on page 3, lines 17-21, be revised to require the Attorney General to indicate whether the Attorney General's recommended action has been completed and, if not, provide a status regarding the department's implementation of the recommended action.

The proposed wording on page 4, lines 7-15, of the bill would require the Attorney General to submit a report to certain members of the Legislature twenty days before the convening of the legislative session in 2027 and prior to each regular session every five years thereafter stating "whether there were any further incidents that occurred in an agency that led to a claim after the actions were implemented and why recommended actions were inadequate to prevent the incident." This wording is overly broad and, therefore, would include meritless claims, claims that fall below the threshold for Legislative approval, and claims that have already been reported to the Legislature as required under section 37-77.5, HRS.

The Department recommends that the proposed wording on page 4, lines 7-15, be omitted.

We thank the Committee for this opportunity to submit our comments and proposed revisions.