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**A BILL FOR AN ACT**

RELATING TO CIVIL ACTIONS.

**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

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 unliquidated,  
9 or other demands whatsoever on the part of the State  
10 against any person making claim against the State  
11 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 Statutory material to be repealed is bracketed  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. King  
17 BY REQUEST

JAN 26 2009

**Report Title:**

Actions Against State

**Description:**

Clarifies that certain waivers of the State's sovereign immunity can only take place if the Legislature has in a statute unequivocally waived that sovereign immunity.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO CIVIL ACTIONS.

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 sovereign immunity must be unequivocally

expressed in statutory text; (3) a statute's legislative history cannot supply a waiver that does not appear clearly in any statutory text; (4) it is not a court's right to extend the waiver of sovereign immunity more broadly than has been directed by the Legislature; and (5) sovereign immunity is not to be waived by policy arguments. E.g., Chun v. Board of Trustees of the ERS, 106 Haw. 416, 106 P.3d 339 (Haw. 2005).

This bill specifically amends paragraph (1) of section 661-1 by adding the following wording: "and provided further that a claim founded upon a statute of the State is within the original jurisdiction of the courts only if, in the text of the separate statute upon which the claim is founded, the State has unequivocally waived its sovereign immunity for the claim."

This bill clarifies that section 661-1 is itself a jurisdictional statute under which the State may be sued in state court for violation of some other statute if and only if in the other statute the State has unequivocally waived its sovereign immunity for the claim. A common misread of the present statute by persons suing the State (and often by the circuit courts) is that the State has waived its immunity from suit for back damages for every statute.

Impact on the public: The purpose of this bill is to clarify the scope of the State's waiver of sovereign immunity. Because the bill would expressly clarify when claimants may sue the State, it has the potential to prevent needless litigation and the potential to save a considerable amount of taxpayer dollars and to prevent judicial incursion into the limited waiver of immunity provided by the Legislature.

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.