

JAN 25 2010

S.B. NO. 2820

A BILL FOR AN ACT

RELATING TO AWARDS OF ATTORNEY'S FEES OR INTEREST AGAINST THE
STATE.

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

1 SECTION 1. "[L]ike the federal government, [our state
2 government] is one in which the sovereign power is divided and
3 allocated among three co-equal branches." Trustees of OHA v.
4 Yamasaki, 69 Haw. 154, 170-71 (1987). The courts have
5 recognized that under that allocation, the legislature is
6 responsible for "clearly relinquish[ing the State's] sovereign
7 immunity" by prescribing in unequivocal, statutory text, when
8 and under what circumstances the State's sovereign immunity is
9 waived so that plaintiffs may bring suits against the State to
10 recover monetary damages, including attorney's fees and
11 interest. Office of Hawaiian Affairs v. State, 110 Hawaii 338,
12 357-58 (2006); Chun v. Board of Trustees of the ERS, 106 Hawaii
13 416, 432 (2005); Taylor-Rice v. State, 105 Hawaii 104, 110
14 (2004); Fought & Co. v. Steel Engineering & Erection, Inc., 87
15 Hawaii 37, 51 (1998). The legislature is given exclusive
16 responsibility to make this determination because "the crucial
17 inquiry under our sovereign immunity principle" is whether, and



1 to what extent the State's treasury may be impacted by the
2 waiver. Bush v. Watson, 81 Hawaii 474, 482 (1996).

3 The purpose of this Act is to:

4 (1) Expressly and unequivocally specify in statutory text
5 when the State relinquishes and waives its sovereign
6 immunity, and consents to allow awards of attorney's
7 fees to be made or interest to be recovered from the
8 State; and

9 (2) Repudiate any judicial precedent rendering the State
10 liable for attorney's fees or interest to the same
11 extent as other litigants which is not grounded in a
12 statute that expressly waives the State's sovereign
13 immunity and imposes that liability upon the State.

14 SECTION 2. Chapter 661, Hawaii Revised Statutes, is
15 amended by adding a new section to be appropriately designated
16 and to read as follows:

17 "§661- Award of attorney's fees or interest against the
18 State. Any law, including any common law principle of law, to
19 the contrary notwithstanding, no attorney's fees or interest may
20 be assessed against or recovered from the State, its agencies,
21 or its officials in any civil or administrative action or
22 proceeding unless an award or a recovery is specifically



1 authorized by a statute that both explicitly waives the State's
2 sovereign immunity and expressly permits the award or recovery
3 of attorney's fees or interest, as the case may be, irrespective
4 of whether the attorney's fees or interest are awarded or
5 assessed:

- 6 (1) As damages, costs, a reimbursement, or an offset;
- 7 (2) Pursuant to the private attorney general doctrine; or
- 8 (3) By any other means.

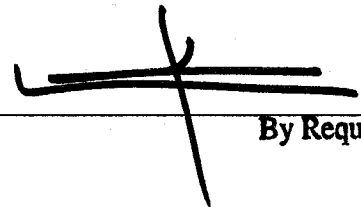
9 The provisions of this section shall not apply to
10 attorney's fees imposed as sanctions pursuant to court rules."

11 SECTION 3. New statutory material is underscored.

12 SECTION 4. This Act shall take effect upon its approval.

13

INTRODUCED BY: _____


By Request



Report Title:

Awards of Attorney's Fees and Interest Against the State

Description:

Limits awards or the recovery of attorney's fees or interest against or from the State to only those cases for which the legislature expressly waives the State's sovereign immunity and explicitly permits the award or recovery.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

