



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2661, S.D. 2, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 9, 2010 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Mark J. Bennett, Attorney General, or
Caron M. Inagaki, Deputy Attorney General

Chair Karamatsu and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to appropriate funds to satisfy claims against the State, its officers, or its employees, including claims for legislative relief, judgments against the State, settlements, and miscellaneous claims.

S.B. No. 2661, S.D. 2, contains nine claims that total \$1,791,527.35. Of this total, \$1,768,302.01 consists of general fund appropriation requests and \$23,225.34 is an appropriation request from departmental funds. Attachment A provides a brief description of each claim in the bill.

Since the bill was introduced, five new claims have been resolved for an additional \$4,110,815.29. Of this total, \$3,985,815.29 consists of general fund appropriation requests and \$125,000.00 consists of appropriation requests from departmental funds. Attachment B provides a brief description of each claim in the bill.

We request that the Committee amend the bill to appropriate funds for these claims.

In addition to the appropriation of funds for the claims described in Attachments A and B, we are requesting a new

section 3 of part II of the bill be added to reflect the Department of Transportation, Highways Division, case. The new section 3 should read as follows:

SECTION 3. The following sums or so much thereof as may be necessary for fiscal year 2009-2010 are appropriated out of the state highway fund for the purpose of satisfying claims for legislative relief as to the following named persons, for claims against the State or its officers or employees for payments of judgments or settlements, or other liabilities, in the amount set forth opposite their names:

JUDGMENTS AGAINST THE STATE AND SETTLEMENTS OF CLAIMS:	AMOUNT
DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:	
Cabrera, et al. v. State of Hawaii, et al., Civil No. 06-1-0317-02, First Circuit	\$ 75,000.00 (Department Settlement Appropriation)
D&J Ocean Farms, Inc. v. Pedro, et al., Civil No. 06-1-0373(3), Second Circuit	\$ 25,000.00 (Department Settlement Appropriation)
Morales v. Department of Transportation, et al., Civil No. 06-1-2206-12, First Circuit	\$ 25,000.00 (Department Settlement Appropriation)
SUBTOTAL:	\$125,000.00
TOTAL (SECTION 3)	\$125,000.00

The sums appropriated shall be expended by the department of transportation, highways division, for the purposes of this Act.

Sections 3 and 4 under part II should be renumbered accordingly as sections 4 and 5, and the sections in part III should also be renumbered.

Including the new claims, the appropriation request totals \$5,902,342.64 allocated among fourteen claims. Of this total, \$5,754,117.30 consists of general fund appropriation requests and \$148,225.34 consists of appropriation requests from departmental funds.

S.D. 2 does not include dollar amounts for the identified claims. We request that the bill be amended to include the dollar amounts consistent with H.B. No. 2508, H.D. 1, which was heard on February 22, 2010, before the House Committee on Finance.

The Department has had a longstanding policy of advising agencies as to how to avoid claims such as those in this bill. The Department has also 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 therefore respectfully request amendment and passage of this measure.

Fehring, et al. v. Pflueger, et al.
Civil No. 08-1-0051, Fifth Circuit

Bosma, et al. v. Pflueger, et al.
Civil No. 08-1-0052, Fifth Circuit

Midler, et al. v. Pflueger, et al.
Civil No. 08-1-0053, Fifth Circuit

These cases are based on the breach of the Ka Loko Dam on March 14, 2006, resulting in a flood that caused the death of seven persons (Fehring) and damage to numerous parcels of property (Midler, Bosma and Calisher). The State was made a party based on the allegations of negligence by PUC in regulating the irrigation system operator, by the Department of Land and Natural Resources in not inspecting the dam and requiring the owner of the dam to maintain the dam, and by the State of Hawaii generally as the landowner of the watershed above the dam allegedly having the responsibility of controlling the flow of water.

The cases proceeded to mediation resulting in the global settlement among all parties. The State of Hawaii succeeded on having all allegations of liability dismissed except for the allegations related to the State of Hawaii being the owner of the property above the private property on which the dam was located.

The settlement agreement includes an assignment of claims of any rights, privileges, claims, or any other recourse the State may have pursuant to insurance policies that provide insurance coverage to the State arising out of the released claims.

Roque v. Dickman, et al.	\$ 93,850.00	(General Fund)
Civil No. 07-1-0497-03 First Circuit	Settlement	

Claimants were defrauded of their interest in property pursuant to a forged deed. The parties who defrauded Claimants of their interest subsequently mortgaged the property. The mortgagee claims to have a superior secured interest in the property based upon the Land Court having issued a transfer certificate of title naming the defrauding parties as owners of the property. Pursuant to section 501-212, Hawaii Revised Statutes, et seq., the Claimants may recover the value of the property from the Director of Finance after exhausting all other remedies. All other remaining defendants are insolvent.

DEPARTMENT OF PUBLIC SAFETY:

Botelho, et al. v. State of Hawaii, et al. \$ 30,454.33 (General Fund)
Civil No. 06-00096 DAE-BMK, USDC Judgment

Inmates at the Hawaii Community Correctional Center in Hilo were injured while the prison was being evacuated during a fire on July 24, 2004. The judgment in favor of the inmates for their injuries (\$20,500.00) was paid with funds appropriated by the 2009 Legislature. Thereafter, the court awarded \$30,454.33 to the inmates' attorney for fees.

DeJesus, et al. v. State of Hawaii, \$ 80,000.00 (General Fund)
et al., Civil No. 06-1-1070-06, Settlement
First Circuit

This case involves the discharge of eight employees of the Department of Public Safety who were on workers' compensation leave for one year or more and had no foreseeable return to work date. Former Director of Public Safety John Peyton made the decision to discharge the employees to address staffing issues at the correctional facilities, i.e., to fill the positions with people who could work.

**DEPARTMENT OF TRANSPORTATION,
HARBORS DIVISION:**

Flores, et al. v. Department of \$ 23,225.34 (Department
Transportation, et al., Judgment Appropriation)
Civil No. 07-1-0204, Fifth Circuit

A roll-up door at the Pier 3 warehouse at Nawiliwili Harbor on Kauai suddenly and unexpectedly came down and struck Claimant on the head while he was picking up freight from Young Brothers on August 4, 2005. The roll-up door, which is approximately 20 feet high, had been in an open position before it unexpectedly fell and struck Claimant. Claimant's alleged injuries include a closed head injury, cervical strain, right shoulder strain and impingement, and chronic and constant headaches. This case proceeded to the Court Annexed Arbitration Program. The arbitrator found the State of Hawaii 100 percent liable and co-defendant Young Brothers not liable. Plaintiff was awarded \$88,332 in damages. The State appealed and the case went to trial. The trial court found that both Young Brothers and the State were liable. The State's share of damages was \$27,298.93. Because the State was able to substantially improve on the arbitration award, Plaintiff was required to pay for the State's trial costs, reducing the total amount of the State's liability

to \$22,661.59. With interest, the total amount of the appropriation is \$23,225.34.

MISCELLANEOUS CLAIMS:

Kathy M. Gillett

\$ 1,379.31 (General Fund)

Claimant requests tax refunds for amended tax returns for 2003 through 2005. 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, Hawaii Revised Statutes.

June S. Hashizaki

\$ 150.00 (General Fund)

Claimant requests reissuance of an outdated check that was misplaced. The check when found was outdated and could no longer be cashed. 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, Hawaii Revised Statutes.

property during rainy weather causing flooding and damage to D&J's aquaculture ponds.

**Morales v. Department of Transportation, \$ 25,000.00 (Department
et al., Civil No. 06-1-2206-12, Settlement Appropriation)
First Circuit**

This case arises out of a single-vehicle accident that occurred on December 27, 2004, at approximately 2:30 p.m. Prior to the accident, Plaintiff was driving her 2000 Isuzu northbound on the Likelike Highway (Wilson Tunnel) to Kaneohe. Plaintiff was wearing her seat belt at the time of the accident. The Plaintiff alleges that when her vehicle came out of the tunnel, her car slid on road grime that was on the roadway, making her vehicle spin and slam into the right wall of the highway. She further alleges that the accident was the result of the State's failure to reasonably inspect, maintain, and repair the roadway. This case proceeded to the Court Annexed Arbitration Program, and the arbitrator found the State of Hawaii 100 percent liable and awarded the Plaintiff \$28,198.25. The case later settled for \$25,000.00.

MISCELLANEOUS CLAIM:

DB Structured Products Inc. \$ 499,999.91 (General Fund)

Claimant requests reissuance of an outdated check that was never received. 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, Hawaii Revised Statutes.