

JAN 26 2011

S.B. NO. 1238

A BILL FOR AN ACT

RELATING TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

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

1 SECTION 1. Section 28-16, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~[f]~~**S28-16**~~[f]~~ **Litigation deposits trust fund.** (a) There
4 is created in the state treasury the litigation deposits trust
5 fund. ~~[There]~~ Notwithstanding any other law to the contrary,
6 there shall be deposited into this fund all ~~[moneys received~~
7 ~~through any civil action in which the State is a party where the~~
8 ~~settlement amount is \$100,000 or higher, except for those~~
9 ~~actions involving departments able to procure their own legal~~
10 ~~services as provided for by section 28-8.3 and where no other~~
11 ~~state statute or court order specifically provides for the~~
12 ~~deposit of moneys received through the action.]~~ proceeds from
13 any civil action or settlement of a civil claim initiated or
14 prosecuted by the attorney general or where such action was
15 filed by the attorney general, except when the deposit is
16 inconsistent with the court order or settlement agreement
17 relating to the amount.

1 ~~[(b) The fund shall be administered by the department of~~
2 ~~the attorney general. The department shall maintain accounting~~
3 ~~records of fund moneys, including subsidiary records of~~
4 ~~individual litigation deposits and disbursements thereof.~~
5 ~~Moneys in the fund may be separated into subsidiary accounts;~~
6 ~~provided that one subsidiary account shall not be commingled~~
7 ~~with moneys from another account except for deposit or~~
8 ~~investment purposes under subsection (d).~~

9 ~~(c) Disbursements from each account maintained under~~
10 ~~subsection (b) may include attorney's fees and other necessary~~
11 ~~expenses that the department determines to be reasonable and~~
12 ~~directly related to prosecution of the civil action for which~~
13 ~~the account is maintained; provided that in the case of moneys~~
14 ~~deposited as a result of recoveries by an agency to which a non-~~
15 ~~general fund applies, the moneys shall be held and disbursed~~
16 ~~intact for deposit to the credit of the non-general fund. Money~~
17 ~~deposited in the fund pursuant to an order of the court shall be~~
18 ~~disbursed in accordance with the order of the court. Any~~
19 ~~residual funds remaining in an account shall be transferred to~~
20 ~~the respective non-general or general fund with which the civil~~
21 ~~action is associated no later than thirty days after the civil~~
22 ~~action for which the account is maintained is closed and all~~

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1 ~~costs of that civil action have been paid, unless otherwise~~
2 ~~provided for by statute.]~~

3 (b) This section shall not apply to recoveries for the:

4 (1) Antitrust trust fund under section 28-13;

5 (2) Tobacco enforcement special fund under section 28-15;

6 (3) Medicaid investigations recovery fund under section
7 28-91.5;

8 (4) Hawaii tobacco settlement special fund under section
9 328L-2; and

10 (5) Criminal forfeiture fund under section 712A-16.

11 (c) The fund shall be administered by the department of
12 the attorney general.

13 (1) Thirty-three per cent of any recovery is to be
14 retained by the fund to support the department's
15 investigation and prosecution efforts, including, but
16 not limited to, expenditures relating to attorney's
17 fees, operating costs relating to this fund,
18 investigation and litigation costs, participation in
19 multi-state or federal-state actions, training,
20 equipment purchases, and educational resources; and
21 (2) Of the balance remaining after such allocation, for:

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1 (A) A recovery relating to a general fund action or
2 claim, the remaining balance shall be retained by
3 the fund unless otherwise provided for by
4 statute; and

5 (B) A recovery relating to a non-general fund action
6 or claim, the attorney general shall remit to the
7 non-general fund from this amount, a sum up to
8 the amount of the loss incurred by the non-
9 general fund relating to the action or claim, as
10 determined by the attorney general; provided that
11 the residual balance after the disbursement of
12 such moneys shall be retained by the fund.

13 ~~(d) [Moneys in the fund may be invested by the department~~
14 ~~in securities as provided by section 36-21.] Investment~~
15 earnings shall be ~~[deposited in the general fund.]~~ credited to
16 the fund.

17 ~~[-(e) The department shall submit a report to the~~
18 ~~legislature no later than twenty days prior to the convening of~~
19 ~~each regular session on:~~

20 ~~(1) The transactions, by subsidiary account, that take~~
21 ~~place in the fund for each fiscal year; and~~

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1 ~~(2) A summary of the collections made in any amount on~~
2 ~~behalf of other departments and agencies specifying~~
3 ~~the appropriate number of transactions and amount~~
4 ~~collected for each department and agency.]~~

5 (e) All unencumbered and unexpended moneys in excess of
6 \$1,000,000 remaining on balance in the fund at the close of June
7 30 of each year shall lapse to the credit of the general fund.

8 (f) This section shall not apply if the application of
9 this section would cause a violation of a federal law or a
10 federal grant agreement.

11 (g) The department of the attorney general shall submit a
12 report to the legislature no later than twenty days prior to the
13 convening of each regular session to provide an accounting of
14 the receipts and expenditures of the fund."

15 SECTION 2. Section 661-22, Hawaii Revised Statutes, is
16 amended to read as follows:

17 "~~+~~**§661-22**~~+~~ **Civil actions for false claims.** The
18 attorney general shall investigate any violation under section
19 661-21. If the attorney general finds that a person has
20 violated or is violating section 661-21, the attorney general
21 may bring a civil action under this section. All recoveries by

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1 the State shall be deposited into the litigation deposits trust
2 fund."

3 SECTION 3. Statutory material to be repealed is bracketed
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect on July 1, 2011.

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INTRODUCED BY: Q.S.T.J.

8

BY REQUEST

Report Title:

Department of the Attorney General

Description:

Amend sections 28-16 and 661-22, Hawaii Revised Statutes, to enable the Attorney General to retain and deposit thirty-three percent of any recovery from any civil action or settlement of a civil claim initiated or prosecuted by the Attorney General to be used for staffing, expenses, equipment and training.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

PURPOSE: The purpose of this bill is to enable the Attorney General to have funds necessary to prosecute civil claims of the State by retaining and depositing into the existing Litigation Deposits Trust Fund thirty-three percent of any recovery from any civil action or settlement of a civil claim initiated or prosecuted by the Attorney General or where the Attorney General filed such action. Recoveries from false claim actions under section 661-22, Hawaii Revised Statutes, would be included in this trust fund.

MEANS: Amend sections 28-16 and 661-22, Hawaii Revised Statutes.

JUSTIFICATION: The Attorney General requires resources to be proactive in prosecuting claims on behalf of the state. Currently, the Attorney General must request funds to initiate litigation of major claims of the State in order to hire staff, experts, or a special deputy who will handle the litigation on a contingent fee or hourly basis. Retention of settlement recoveries in a trust fund would provide the Attorney General with the resources to pursue claims for the public good when they arise, by readily providing the funds for necessary staffing, expenses, and training. Major litigation, which is often document intensive, requires manpower that is not readily available to assign

to such cases. Enabling the Attorney General to handle such major claims within the department would develop internal expertise in these areas of the law and reduce the use of special deputy attorneys general. Any excess over \$1,000,000 would lapse to the credit of the general fund and a report would be provided to the legislature accounting for receipts and expenditures of the fund.

Impact on the public: The public would benefit because the Department of the Attorney General would have the resources and expertise to pursue civil fraud and other claims of the State.

Impact on the department and other agencies: The Department would benefit from this fund because it would provide the resources to initiate claims on behalf of the State as those claims arise. It would also provide training to staff to become proficient in proactive actions. Other agencies would benefit because the Department of the Attorney General would have the resources to pursue their claims.

GENERAL FUND: No funding is required. Eventually the general fund would benefit when the trust fund exceeds \$1,000,000.

OTHER FUNDS: None required.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: All state departments and agencies, except those authorized to procure their own legal services.

EFFECTIVE DATE: July 1, 2011.