

HB1001,HD2

Testimony



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2011**

ON THE FOLLOWING MEASURE:

H.B. NO. 1001, H.D. 2, MAKING APPROPRIATIONS FOR CLAIMS
AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Wednesday, March 16, 2011 TIME: 10:00 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
Caron M. Inagaki, Deputy Attorney General

Chair Hee 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.

The bill in its present form contains fifteen claims that total \$2,110,808.39. Thirteen claims are general fund appropriation requests and two claims are appropriation requests from departmental funds. Attachment A provides a brief description of each claim in the bill.

Since the last version of the bill was heard before the House Committee on Finance on February 28, 2011, one new claim has been resolved for an additional \$35,000.00. The new claim is a departmental appropriation request. Attachment B provides a brief description of the new claim in the bill. We request that the Committee amend the bill to appropriate funds to satisfy the new claim.

Including the new claims, the appropriation requests total \$2,145,808.39 allocated among sixteen claims. Of this total,

\$980,808.39 consists of general fund appropriation requests and \$1,165,000.00 consists of appropriation requests from departmental funds.

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 respectfully request passage of this measure.

On April 21, 2006, Defendant Frederick, a former State employee, fell asleep at the wheel of her rental vehicle and crossed over the center line on Highway 11 on the Island of Hawaii, into the path of Plaintiff's pickup truck and crashed into the front driver's side of Plaintiff's vehicle. Plaintiff sustained fractures to his hip and femur, requiring internal fixation, a fracture of his L4 vertebra and a nasal fracture. He was also diagnosed with Post Traumatic Stress Disorder.

HAWAII HEALTH SYSTEMS CORPORATION:

United Public Workers AFSCME, Local 646, \$ 18,851.12 (General Fund)
AFL-CIO and State of Hawaii, et al. Judgment
S.P. No. 09-1-0305, First Circuit

In 2009, the United Public Workers (UPW) and several public employers were in negotiations regarding the terms of the collective bargaining agreement for Bargaining Unit 10 beginning July 1, 2009 to June 30, 2011. The public employers were the State of Hawaii, the Judiciary, the Hawaii Health Systems Corporation, and the City and County of Honolulu. When an impasse in the negotiations was reached, the parties proceeded to an interest arbitration to resolve the disputes regarding the terms of the successor agreement pursuant to H.R.S. Chapter 89. In November 2009, the interest arbitration was completed. On January 14, 2010, the interest arbitration award was issued to the parties.

On February 19, 2010, the UPW filed motion for an order confirming the interest arbitration award and for entry of judgment in the First Circuit Court. This department opposed the motion because under HRS § 89-11(g) the award is final and binding on the parties and the statute contemplates that the Legislature retains the power to approve any cost items contained in the award. On April 14, 2010, a hearing was held on the motion. At the hearing, the Court granted the motion and allowed the UPW to later file motion for fees and costs as the prevailing party on its motion.

On May 11, 2010, the UPW filed its motion for fees and costs. On September 13, 2010, the Court filed Order Granting Motion for Allowance of Costs and Attorney's Fees. The Court awarded \$417.69 in costs and \$9,748.69 in attorney's fees and later awarded additional costs and fees in the amount of \$8,327.11. The amount requested includes post-judgment interest.

DEPARTMENT OF HUMAN SERVICES:

Robinson v. Tripler Army Medical Center, et al. Civil No. 04-00672, USDC	\$ 20,929.57 (General Fund) Settlement
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The United States District Court, District of Hawaii found that a Department of Human Services social worker violated the Plaintiffs' civil rights by interfering with their ability to make medical decisions for their son who was born premature in November 2002. The parties settled this case in April 2010 for \$12,000 and the 2010 Legislature appropriated funds in that amount. Following the close of the 2010 Legislature, the Plaintiffs' attorneys were awarded fees in the amount of \$20,929.57. This request is for an appropriation to cover the attorneys' fees.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Santiago v. County of Kauai, et al. Civil No. 08-1-0210, Fifth Circuit	\$ 18,000.00 (General Fund) Settlement
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On July 8, 2007, Plaintiff, a minor, was "sand sliding" on a boogie board along the shoreline at Poipu Beach Park, a County of Kauai beach park. As Plaintiff was sand sliding, she sustained a laceration on her right leg from a metal stake embedded in the sand. The metal stake was a fragment from a monk seal warning sign, used by the State of Hawaii in a project to protect monk seals. Plaintiff's laceration extended from her lateral knee to mid-thigh and required 18 stitches to close the wound.

DEPARTMENT OF PUBLIC SAFETY:

Tenney v. State of Hawaii , et al. Civil No. 09-1-0190-01, First Circuit	\$ 149,500.00 (General Fund) Settlement
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An inmate at Oahu Community Correctional Center (OCCC) was a passenger in a State van driven by a State employee. The State employee was traveling on Dillingham Boulevard when he claims that the vehicle in front of him suddenly stopped, causing the van to rear end the vehicle. The inmate alleges that the State had a duty to take reasonable steps to safely transport him back to OCCC. The inmate was not wearing a seatbelt and was handcuffed to a belly waist chain. His ankles were also shackled. As a result of the motor vehicle accident, the inmate underwent surgery for a three disc cervical discectomies and

foraminotomies. Settlement was reached in the amount of \$149,500.00.

MISCELLANEOUS CLAIMS:

Tom Ishigo \$ 1,852.64 (General Fund)

Claimant requests reissuance of outdated checks that were misplaced. The checks when found were 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.

Nicole T. Kelley \$ 394.74 (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.

Paulette Yoshida \$ 464.00 (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.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Labinia v. State of Hawaii, et al. \$ 900,000.00 (Department
Civil No. 07-1-0075-01, First Circuit Settlement Appropriation)

A man operating a moped was injured when a State Department of Transportation dump truck driver made a U-turn in order to pick up a dead animal along Fort Weaver Road in Ewa Beach. The moped driver suffered significant injuries, including a closed head injury, pelvic fracture, a comminuted right femur fracture that was set with a permanent rod, cervical and lumbar injuries, and post-concussion syndrome. The moped driver was certified as being medically disabled from work from the date of the accident to present. Three economists estimated his future wage loss to

be between \$356,000.00 to \$481,144.00, future medical costs/life care plans at \$786,570.00 to \$1,195,579.00, and loss of household services at \$233,000 - \$342,905. His past medical special damages total \$84,413.19. This case proceeded to mediation. The mediator recommended settlement of \$1.2 to \$1.5 million. The case settled for \$900,000.00.

Requelman v. State of Hawaii, et al. Civil No. 06-1-0366, Third Circuit	\$ 230,000.00 (Department Settlement Appropriation)
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A man was driving on Route 19 on the Big Island before dawn, and his vehicle hit a tree that was growing in the State's right of way but had fallen across Route 19. The Department of Transportation had inspected these trees the year prior and, despite noting that they needed to be trimmed or cut, failed to cut these trees. The man sustained a compression fracture of his L-3 vertebrae with permanent residual symptoms and disabilities. This case proceeded to mediation, and the mediator recommended settlement in the amount of \$230,000.00.

