



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

H.B. NO. 2361, H.D. 1, RELATING TO DEBT COLLECTION.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 23, 2012 **TIME:** 6:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Michael S. Vincent, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General (the "Department") supports the intent and purpose of this bill, but would like to make a few suggestions.

The purpose of this bill is to provide that the Department collect delinquent accounts for executive departments, excepting the Department of Taxation and the University of Hawaii. The bill also creates a fund to be used for collection-related expenditures, as well as for training, education, and appropriate non-litigation collection methods, filing fees, and litigation costs. This bill's provisions are similar to those of H.B. No. 2442. The main difference, however, is the provision that requires the Department to assume the collection of all delinquent accounts for any executive department, excepting the Department of Taxation and the University of Hawaii, that are delinquent more than ninety days.

The Department would like to have all new debt referred to us for collection, with some discretion given to the Department, and would support including this additional provision in H.B. No. 2442, but only if the other provisions of that measure are implemented as these provisions would ensure that additional resources will be available to properly pursue those outstanding debts.

NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR



FREDERICK D. PABLO
DIRECTOR OF TAXATION

RANDOLF L. M. BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

To: The Honorable Marcus R. Oshiro, Chair
and Members of the House Committee on Finance

Date: Thursday, February 23, 2012
Time: 6:00 p.m.
Place: Conference Room 308, State Capitol

From: Frederick D. Pablo, Director
Department of Taxation

Re: H.B. No. 2361 H.D. 1 Relating to Debt Collection

The Department of Taxation (Department) defers to the Department of the Attorney General on the merits of H.B. 2361 HD1, and offers the following comments.

This measure provides that executive departments, other than the Department and the University of Hawaii, must refer accounts that are more than 90 days delinquent to the Attorney General, which then has responsibility to collect the accounts. An unspecified portion of any monies recovered will be deposited in a to-be-established fund to be used to pay for the costs of collection, with the balance being returned to the department from which the claim arose. The measure also allows the Attorney General to determine and to write off accounts deemed uncollectable based upon certain criteria.

The measure provides that the Department, along with the judiciary and the University of Hawaii, may contract with a bonded collection agency for collection of delinquent accounts. However, the Department already has authority under section 231-13, Hawaii Revised Statutes, to retain bonded collection agencies, licensed attorneys, accountants, auditors or other persons for the purposes of assessment, enforcement, or collection of taxes. The Department suggests that the reference to the Department be removed in section 3 of the measure.

This measure also provides that an account is deemed uncollectible if the debtor has filed for bankruptcy protection and has listed the State as a creditor. However, it is important to note that the mere filing of a petition in bankruptcy and the listing of a creditor does not discharge the debtor from a debt. The debt must first be a dischargeable debt under the bankruptcy code and the debtor must also receive a discharge of debtor.

Not all debts are dischargeable, including a debt that is a fine, penalty, or forfeiture payable to a governmental unit which is not compensation for an actual pecuniary loss. In addition, in a "no

asset" bankruptcy case for which no claims deadline has been set, a discharge of debtor will discharge all dischargeable debts, whether or not the creditor is listed in the bankruptcy. The Department suggests changing the language of section 2, in defining "uncollectible account" to read:

(4) The [debtor has filed for] debt has been discharged in bankruptcy [and has listed the State as a creditor]; or

Thank you for the opportunity to provide comments.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P. O. Box 541
HONOLULU, HAWAII 96809
Phone Number: 586-2850
Fax Number: 586-2856
www.hawaii.gov/dcca

KEALI'I S. LOPEZ
DIRECTOR

TO THE
HOUSE COMMITTEE ON
FINANCE

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2012

Thursday, February 23, 2012
6:00 p.m.

TESTIMONY ON H.B 2361, H.D.1
RELATING TO DEBT COLLECTION

WRITTEN TESTIMONY ONLY

**TESTIMONY ON HOUSE BILL NO. 2361, H.D. 1 – RELATING TO DEBT
COLLECTION**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Keali'i Lopez, Director of the Department of Commerce and Consumer Affairs ("DCCA). I am providing comments on behalf of DCCA regarding House Bill No. 2361, H.D.1.

This bill provides that executive departments other than the department of taxation and the University of Hawaii, must refer accounts that are more than 90 days delinquent to the Department of the Attorney General, which then has responsibility to collect the accounts. An unspecified portion of any monies recovered will be deposited into a new fund to be used to pay for the costs of collection, with the balance being returned to the department from which the claim arose. The measure also allows the Department of the Attorney General to determine and to write off accounts deemed uncollectible.

While the department understands the intent of this measure, it offers the following comments:

(1) The bill provides on page 1 line 8 and page 4 line 15 that an executive department with an account that is delinquent more than ninety days shall turn the delinquent account over to the attorney general for collection. DCCA enforces a wide variety of laws within its jurisdiction through both administrative actions and circuit court actions. Many of those actions result in orders and judgments that include a combination of license sanctions, injunctions, monetary sanctions, restitution, and the like. A number of those actions may involve multiple actions against the same respondent or licensee. DCCA is concerned that requiring all delinquent accounts to be turned over to the Department of the Attorney General will unduly complicate DCCA's efforts to bring non-compliant respondents and defendants into compliance with all aspects of its enforcement action, and not just the fine provisions. In addition, there are defendants that are deterred from returning to this state because of an outstanding judgment and DCCA would like to retain the discretion in determining whether to deem such judgments uncollectible. DCCA therefore requests that the bill provide that DCCA may refer matters for collection.

(2) The bill on page 4 line 19 provides for the retention of the Department of the Attorney General of an unspecified amount to be deposited into the civil recoveries fund. DCCA requests that to the extent this amount may impact DCCA, the amount be set at no more than fifteen per cent (15%) of the amount recovered.

I will be happy to answer questions the committee may have. Thank you for this opportunity to testify.

To: Representative Marcus Oshiro, Chair
Representative Marilyn Lee, Vice-Chair
Members of the House Committee on Finance

From: Lisa Yoshimura

Date: February 23, 2012

Re: Testimony Supporting HB 2361, Relating to Debt Collection

My name is Lisa Yoshimura. I strongly support HB 2361. I am grateful to my State Representative, Mark Hashem, for introducing this bill.

Collecting debts owed to the government is a tried and true means of raising revenue. I worked in the U.S. Attorney's Office, Financial Litigation Unit, for 20 years. The primary responsibility of this Unit is to collect criminal judgments and defaulted civil debts owed to the Federal Government. These Units were established throughout our country to reduce our national deficit.

While I acknowledge our country is still heavily in debt, billions of dollars have been successfully collected nationwide under this debt collection program. The monies collected in criminal judgments assist victims of crime and the civil monies continue to support civil agency programs, such as farm, housing, education and small business.

Two examples of our practices which were effective in our collection efforts include:

1. Obtaining court judgments in civil cases. Debtors incline to be more cooperative when faced with potential court ordered collection remedies.

2. Recording civil and criminal judgments with the Bureau of Conveyances. A surprising number of collectible judgments and those deemed uncollectible are partially or fully satisfied as a result of the real property judgment liens.

Additionally, there is a rising number of fraud cases involving State related funds. I think it would be profitable to increase the number of fraud investigators for agencies involving money, such as education, welfare and Medicaid, and add any resulting debts to the collection portfolio.

Finally, it is essential that the State dedicate funding for a fulltime permanent staff and attorney to effectively carry out its debt collection objectives. The knowledge and experience acquired by the U.S. Attorney's fulltime permanent staff during the 20 years, provided not only continuity, but also enabled my co-workers and me to improve and expand our collections program.

Establishing a comprehensive debt collections unit to raise State revenue is well worth the time and resources. I strongly urge you to support HB 2361. Thank you.