

HB2361, HD2



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2361, H.D. 2, RELATING TO DEBT COLLECTION.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Monday, March 12, 2012 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Hee and Members of the Committee:

The Department of the Attorney General (the "Department") supports the intent and purpose of this bill, but has some suggested amendments.

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.

The Department suggests the following amendments to the bill:

Section 1, page 1, line 5. We suggest that "shall" be replaced with "may" to read ". . . general may assume the collection of" The purpose of this amendment is to allow those various state agencies that pursue their own collections under statute and other contractual arrangements to continue.

Section 2, page 2, lines 13-21. We suggest that the existing wording of the statute not be changed, as the preceding substitution of "may" in section 1 would require the agencies to prepare the lists of delinquent accounts, but still require the Department to approve them. Therefore, we recommend that the Committee leave the portion that is being deleted on lines 13-17 of page 2, and eliminate the new wording on lines 17-21 of page 2.

Page 3, line 2. We suggest that the Committee leave the existing wording and delete the proposed additional wording as this would be an amendment to conform to the prior suggested revisions.

Page 3, lines 8-9. We suggest that the Committee leave the wording in, as it will still require the Department to review accounts that agencies want to write-off as uncollectable.

Page 3, lines 20-21. We suggest that the proposed amendment is appropriate, but the portion to be deleted on line 21 should be left in as clarification that the debtor must have listed the state as a creditor, because discharge in bankruptcy alone would not necessarily mean that the State would be precluded from pursuing reimbursement. Therefore, the discharge would be necessary, but the debtor should have listed the State as a creditor before the State would be impacted by the discharge.

Section 3, page 4, lines 5-11. If the agencies will have the discretion to submit delinquent accounts to the Department, then the proposed amendments to these lines are not needed and the reference to the Department of Taxation and the University of Hawaii are not needed in Lines 13-14 of this page.

Page 4, line 16. We suggest that the Committee replace "shall" with "may" to read ". . . days may turn the delinquent . . ." Similar to the amendment in section 1, the purpose of this amendment is to allow those various state agencies that pursue their own collections under statute and other contractual arrangements to continue, but give the Department resources to pursue outstanding debts referred by other agencies

Therefore, we respectfully request that the Committee pass this measure with an S.D. 1. with the proposed amendments. The proposed S.D. 1 is attached.

A BILL FOR AN ACT

RELATING TO DEBT COLLECTION.

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

1 SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended
2 by adding two new sections to be appropriately designated and to
3 read as follows:

4 "§28-A Collection of delinquent accounts. The attorney
5 general may assume the collection of delinquent accounts for any
6 executive department, except the department of taxation and the
7 University of Hawaii, having an account due that is delinquent
8 more than ninety days in accordance with section 40-82.5. The
9 attorney general shall take appropriate action to recover
10 delinquent amounts due on an account.

11 §28-B Civil recoveries fund. (a) There is established in
12 the state treasury the civil recoveries fund into which shall be
13 deposited:

14 (1) per cent of any moneys collected by the attorney
15 general for any executive department that has turned
16 over delinquent accounts for collection pursuant to
17 section 40-82.5(b); and

1 (2) Appropriations made by the legislature.

2 (b) The civil recoveries fund shall be administered by the
3 department of the attorney general and shall be used for
4 expenditures relating to the collection of delinquent accounts
5 of executive departments, including expenditures for training or
6 educational resources, all appropriate non-litigation collection
7 methods, filing fees, and litigation costs.

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

12 SECTION 2. Section 40-82, Hawaii Revised Statutes, is
13 amended by amending subsection (a) to read as follows:

14 "(a) The directors, boards, or executive heads of
15 executive departments, from time to time, may prepare and submit
16 for the review of the attorney general a list of all
17 uncollectible accounts in their departments. Such accounts as
18 the attorney general finds to be uncollectible shall be entered
19 in a special record and be deleted from the accounts receivable
20 records of the departments, which shall thereupon be relieved
21 from any further accountability for their collection; provided
22 that no account shall be so deleted until it shall have been

1 delinquent for at least two consecutive years. Any account
2 entered in the special record shall be transferred back to the
3 current accounts receivable if the attorney general finds that
4 the facts as alleged and presented to the attorney general were
5 not true, or that the account has become collectible.

6 As used in this section, "uncollectible account" means an
7 account with regard to which:

- 8 (1) The debtor or party causing damage to property
9 belonging to the State is no longer within the
10 jurisdiction of the State;
- 11 (2) The debtor or party causing damage to property
12 belonging to the State cannot be located;
- 13 (3) The party causing damage to property belonging to the
14 State is unknown or cannot be identified;
- 15 (4) The ~~[debtor has filed for]~~ debt has been discharged in
16 bankruptcy and the debtor has listed the State as a
17 creditor; or
- 18 (5) Any other account as may be deemed by the attorney
19 general to be uneconomical or impractical to collect."

20 SECTION 3. Section 40-82.5, Hawaii Revised Statutes, is
21 amended to read as follows:

1 "§40-82.5 Delinquent accounts, collection. (a) Any state
2 agency, having an account due which is delinquent, may contract
3 with a collection agency bonded under chapter 443B for
4 collection of the delinquent account. The chairperson or
5 director of the agency may make an agreement with the agency
6 regarding the amount to be retained by it for services.

7 (b) Any executive department, having an account due that
8 is delinquent more than ninety days may turn the delinquent
9 account over to the attorney general for collection. For all
10 accounts successfully collected for an executive department by
11 the attorney general, the attorney general shall retain per
12 cent to be deposited in the civil recoveries fund in accordance
13 with section 28-B(a)(1), and the remainder of the moneys
14 collected shall be returned to the executive department to be
15 deposited into the fund or expended for the purpose for which it
16 was originally intended."

17 SECTION 4. In codifying the new sections added by section
18 1 of this Act, the revisor of statutes shall substitute
19 appropriate section numbers for the letters used in designating
20 and referring to the new sections in this Act.

21 SECTION 5. Statutory material to be repealed is bracketed
22 and stricken. New statutory material is underscored.

1 SECTION 6. This Act shall take effect on July 1, 2012.

2

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
HOUSE BILL NO. 2361, H.D. 2

March 12, 2012

RELATING TO DEBT COLLECTION

House Bill No. 2361, H.D. 2, requires the Department of the Attorney General to assume the collection of delinquent accounts for Executive departments, excluding the Department of Taxation and University of Hawaii, having an account delinquent for more than 90 days. House Bill No. 2361, H.D. 2, creates the Civil Recoveries Fund to defray costs associated with the collection of delinquent accounts that includes training and appropriate filing fees and litigation costs.

The Department of Budget and Finance takes no position on the role of the Department of the Attorney General in collecting delinquent accounts. However, as a matter of general policy, the department does not support the creation of any fund which does not meet the requirements of Section 37-52.3 of the Hawaii Revised Statutes. Special or revolving funds should: 1) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries of the program; 2) provide an appropriate means of financing for the program or activity; and 3) demonstrate the capacity to be financially self-sustaining. In regards to House Bill No. 2361, H.D. 2, it is difficult to determine if the new fund will be self-sustaining.

I encourage the Legislature to scrutinize the fiscal and operational plan for this program to ensure that it does conform to the requirements of Section 37-52.3, Hawaii Revised Statutes.



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 SENATE COMMITTEE ON JUDICIARY AND LABOR
THE TWENTY-SIXTH LEGISLATURE
REGULAR SESSION OF 2012**

Date: March 12, 2012
Time: 10:00 AM
Conference Room: 016

**TESTIMONY ON HOUSE BILL NO. 2361 H.D. 2
RELATING TO DEBT COLLECTION**

TO THE HONORABLE CLAYTON HEE, CHAIR, MAILE S.L. SHIMABUKURO, VICE-CHAIR,
AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to testify. My name is Keali'i Lopez, Director of the Department of Commerce and Consumer Affairs (Department). The Department does not support this bill in its current form, but supports an amended bill as proposed by the Office of the Attorney General in its testimony to this Committee. With the new amendments, this bill would make clear that state agencies have the option to receive collection services from the Office of the Attorney General for delinquent accounts but are not required to do so. We believe this is a valuable service that could assist the Department in collecting outstanding payments in certain appropriate circumstances.

Testimony of Keali'i Lopez
March 12, 2012
JDL Committee
H.B.2361 H.D. 2
Page 2

For the reasons above, we ask that the Committee pass a Senate Draft 1 with the amendments proposed by the Office of the Attorney General in its testimony today. Thank you again for the opportunity to testify.