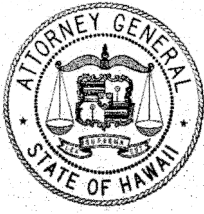


SB2704



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

ON THE FOLLOWING MEASURE:

S.B. 2704, RELATING TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Friday, February 3, 2012 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016

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

Chair Hee and Members of the Committee:

The Department of the Attorney General (The "Department") strongly supports this bill.

The purpose of this bill is to provide the Department with the resources it needs to be proactive in prosecuting claims on behalf of the State. This bill amends section 28-16, Hawaii Revised Statutes (HRS), to provide that the proceeds from any civil action or settlement of a civil claim initiated or prosecuted by the Department, including recoveries from false claims actions under section 661-21, HRS, shall be deposited into the existing Litigation Deposits Trust Fund. The fund shall retain fifteen percent of the recovery for its investigation and litigation costs, participation in multi-state or federal-state actions, training, equipment purchases, and other operating costs. The fund has a ceiling of \$1,000,000. It is intended that the fund be used to fight fraud, increase revenues, and collect moneys owed to the State.

The funds requested by this bill would provide the resources necessary for the Department to pursue state claims as they may arise. Currently, the Department's litigation fund is used primarily to defend actions, as the Department must litigate those cases. Any major plaintiff's action usually requires a supplemental request for funds or the retention of a special deputy who would handle the litigation on a contingent fee basis. This hurdle in obtaining the necessary funding to prosecute a case delays its initiation since, without funding, it is impossible to hire the requisite staff to investigate and pursue the case.

This bill enables the Department to secure the necessary staffing, experts, and training without having to wait for additional funds to be appropriated. Rather, it uses trust funds set aside for the public good. By pursuing more state claims, the Department can develop expertise

in these areas and increase revenues for the State while reducing fees paid to special deputy attorneys general in plaintiff cases.

The cases prosecuted with this funding would not overlap with the cases currently handled by the Tobacco Enforcement Special Fund, the Antitrust Trust Fund, or the Medicaid Investigations Recovery Fund. The Tobacco Enforcement Special Fund is used for the specific purposes of enforcing the Master Settlement Agreement and enforcing tobacco programs. The Antitrust Trust Fund is primarily used to fund participation in multi-state antitrust initiatives. The Medicaid Investigations Recovery Fund is used to prosecute Medicaid fraud.

This fund would also be used to pursue false claims filed with the State, collection cases initiated on behalf of the State, government fraud, and enforcement actions. Several states have already authorized special funds to handle these cases.

For instance, California (15-33% depending on whether it intervenes or pursues its own claims), the District of Columbia (up to 25%), Florida (reasonable amount set by the court), Tennessee (up to 33%), and Nevada (15-33%) have false claims funds in which the proceeds of an action or settlement are used to support its ongoing investigation and prosecution of false claims.

Cases involving false claims and government fraud tend to involve hundreds of documents and require the services of not only attorneys, but also investigators, accountants, experts, and secretarial and clerical staff. The false claims statute that was enacted in May 2000 did not provide a means for the Department to fund false claims litigation. Although the statute mandates that the Department shall investigate any violation under the false claims statute and shall be given the right of declination in any qui tam action, without funding, the Department must pull staff from other assignments to review false claims allegations. Recognizing that the government often lacks the resources to prosecute false claims actions, the Legislature allowed qui tam actions wherein a private party may prosecute a false claim case if the Department declines. The rewards to the private party range from twenty-five percent to thirty percent plus expenses and reasonable attorneys' fees and costs. The California Attorney General has used its false claims fund to annually file several multimillion dollar false claims actions and to employ fifteen attorneys, fifteen accountants and statisticians, and support staff in San Francisco and Sacramento.

Pulling staff from other responsibilities to compile, analyze, and review false claims cases means that staff's usual caseload is then delayed. Having available funds would enable the Department to become more flexible and enable it to hire temporary staff to handle new cases and reduce the staff when the caseload decreases.

The public and the State would benefit from giving the Department the resources to fight fraud, increase revenues, and collect money that belongs to the taxpayers.

We respectfully request that you pass this bill.