



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

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DIRECTOR

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DEPUTY DIRECTOR

**TO THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE AND THE
HOUSE COMMITTEE ON JUDICIARY
THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013**

Date: Monday, February 11, 2013

Time: 2:30 p.m.

Conference Room: 325

**TESTIMONY ON HOUSE BILL NO. 1342
RELATING TO DEBT COLLECTION**

TO THE HONORABLE ANGUS L.K. MCKELVEY AND THE HONORABLE KARL RHOADS, CHAIRS,
AND MEMBERS OF THE COMMITTEES:

Thank you for the opportunity to testify. My name is Tung Chan, Commissioner of Securities and head of the Business Registration Division of the Department of Commerce and Consumer Affairs. I am testifying on behalf of the Department. We support the intent of the bill but have concerns regarding aspects of its implementation. We believe our concerns are addressed by the Attorney General's suggested amendments as presented to you today. Although we take no position as to the proposed 15% retention amount, we support all other changes proposed by the Attorney General to you and would support the bill as amended. For the Committees' convenience, included is a hand marked copy of the amendments to the bill.

Our concerns with the bill are as follows. Section 2 of the bill amends HRS Section 40-82 so that the Attorney General becomes solely responsible for preparing a list of other

agencies' delinquent accounts. We believe this would be impractical and difficult to implement in light of the fact that the Attorney General does not administer or otherwise manage any other agencies' accounts including those of the DCCA. We propose that Section 2 of the bill be deleted.

The first paragraph of Section 3 of the bill amends HRS Section 40-82.5 by creating a new paragraph (a) and changing the law so that only three agencies can contract with a bonded collection agency for delinquent accounts. To the extent that the DCCA or any other agency in the State has debt that the Attorney General does not undertake to collect, we believe the current existing law should not be changed and that all agencies should keep the right to contract with collection agencies. Accordingly, we propose that all text changes to paragraph (a) be deleted.

The second paragraph of Section 3 of the bill amends HRS Section 40-82.5 by creating a new paragraph (b) that mandates all agencies other than the University of Hawaii and Department of Taxation to turn over all delinquent accounts to the Attorney General. Mandating all debt of the DCCA to be sent to the Attorney General regardless of status of the matter would have the potential of jeopardizing ongoing investigations and prosecutions. We believe that all the departments and the Attorney General should instead have the discretion to decide how to deal with delinquent accounts. Accordingly, we propose changing the word "shall" to "may" on page 4, ln 10, and replacing the words "except the department of taxation or University of Hawaii" with "or agency, or the judiciary" on page 4 lns 7-9.

Thank you for the opportunity to testify. I am available to answer any questions the Committees may have.

AGs + DCCA proposed
mark-up (586-2742)

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 a new section to be appropriately designated and to
3 read as follows:

4 "§28- Civil recoveries fund. (a) There is established
5 in the state treasury the civil recoveries fund into which shall
6 be deposited:

7 (1) per cent of any moneys collected by the attorney
8 general for any executive department which has turned
9 over delinquent accounts for collection pursuant to
10 section 40-82.5(b); and

11 (2) Appropriations made by the legislature.

12 (b) The civil recoveries fund shall be administered by the
13 department of the attorney general and shall be used for
14 expenditures relating to the collection of delinquent accounts
15 of executive departments, including expenditures for training or
16 educational resources, all appropriate non-litigation collection
17 methods, filing fees, and litigation costs.



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

5 ~~SECTION 2. Section 40-82, Hawaii Revised Statutes, is~~
6 ~~amended by amending subsection (a) to read as follows:~~
7 ~~"(a) [The directors, boards, or executive heads of~~
8 ~~executive departments, from time to time, may prepare and submit~~
9 ~~for the review of the attorney general a list of all~~
10 ~~uncollectible accounts in their departments. Such accounts as~~
11 ~~the attorney general finds to be] The attorney general may, from~~
12 time to time, prepare a list of delinquent accounts that are
13 uncollectable and for which the attorney general has assumed the
14 collection in accordance with section 40-82.5(b). The
15 delinquent accounts that the attorney general finds to be
16 uncollectible shall be entered in a special record and be
17 deleted from the accounts receivable records of the departments,
18 [which] and the department and the attorney general shall
19 thereupon be relieved from any further accountability for their
20 collection; provided that no account shall be so deleted until
21 it shall have been delinquent for at least two consecutive
22 years. Any account entered in the special record shall be



1 transferred back to the current accounts receivable if the
 2 attorney general finds that the facts as alleged [and presented
 3 to the attorney general] were not true, or that the account has
 4 become collectible.

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

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

19 SECTION 2. Section 40-82.5, Hawaii Revised Statutes, is
 20 amended to read as follows:

21 "§40-82.5 Delinquent accounts, collection. (a) [Any state
 22 agency] (a) The judiciary, department of taxation, or

Keep original text

keep



1 ~~University of Hawaii~~, having an account due which is delinquent,
2 may contract with a collection agency bonded under chapter 443B
3 for collection of the delinquent account. The [~~chairperson or~~

keep original text

keep original text

4 ~~director of the agency] ~~judiciary, department of taxation, or~~
5 ~~University of Hawaii~~ may make an agreement with the agency
6 regarding the amount to be retained by it for services.~~

for agency, or the judiciary

7 (b) Any executive department, ~~except the department of~~
8 ~~taxation or University of Hawaii in accordance with subsection~~

9

9 ~~(a)~~ ^{may} having an account due which is delinquent more than ninety
10 days ~~shall~~ turn the delinquent account over to the attorney

11 general for collection. For all accounts successfully collected
12 for an executive department by the attorney general, the
13 attorney general shall retain _____ per cent to be deposited in
14 the civil recoveries fund in accordance with section 28-

15 (a) (1), and the remainder of the moneys collected shall be
16 returned to the executive department to be deposited into the
17 fund or expended for the purpose for which it was originally
18 intended."

3

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



4

1 SECTION 5. This Act shall take effect on July 1, 2013.

2

INTRODUCED BY:

my [signature]

[signature]

[signature]

[signature]

[signature]

Tom Ben

[signature]

[signature]

[signature]

JAN 24 2013



H.B. NO. 1342

Report Title:

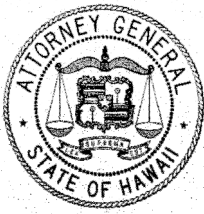
Attorney General; Loan Servicing; Delinquent Accounts

Description:

Requires the Attorney General to collect on accounts delinquent for more than ninety days for executive departments, except the Department of Taxation and University of Hawaii, and retain an unspecified per cent of moneys recovered on delinquent accounts for deposit into a newly-established fund. Allows the Department of Taxation, the University of Hawaii, and the Judiciary to contract with a collection agency to collect on delinquent accounts. Effective July 1, 2013.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.





**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

H.B. NO. 1342, RELATING TO DEBT COLLECTION.

BEFORE THE:

HOUSE COMMITTEES ON CONSUMER PROTECTION AND COMMERCE
AND ON JUDICIARY

DATE: Monday, February 11, 2013 **TIME:** 2:30 p.m.

LOCATION: State Capitol, Room 325

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

Chairs McKelvey, Kawkami, Rhoads, and Har and Members of the Committees:

The Department of the Attorney General (the "Department") supports the intent and purpose of this bill.

This bill will allow state departments and agencies to refer cases to the Attorney General for collection efforts, but we would suggest the following changes:

First, we suggest that no changes be made to section 40-82, Hawaii Revised Statutes, as proposed by this bill. Section 2 of this bill would amend section 40-82 to require the Attorney General to review delinquent accounts that are uncollectable and determine that they are uncollectable. However, the Attorney General does not administer or otherwise manage the accounts. Under the current law, these accounts are managed by the various administrative agencies and when the agencies determine they are uncollectable, refers them to the Attorney General for appropriate action or write-off. Therefore, we suggest a complete deletion of section 2 on page 2 as individual departments are in the best position to identify the cases to be written off.

Second, we suggest that the amendment to section 40-82.5, Hawaii Revised Statutes, identify the existing language as subsection "(a)" as proposed.

Third, we suggest the following changes to the new wording proposed to be subsection 40-82.5(b), Hawaii Revised Statutes:

(b) Any executive department or agency, or the Judiciary, [~~except the department of taxation or University of Hawaii in accordance with subsection (a),~~] having an account

due which is delinquent more than ninety days [~~shall~~] may turn the delinquent account over to the attorney general for collection. . . .

This change will allow the Judiciary, the Department of Taxation, the University of Hawaii, and other departments or agencies to refer cases to the Attorney General.

Finally, we also, suggest that the Committee insert fifteen percent on page 4, line 13, of the bill. We have found that our recovery expenses in the Attorney General Civil Recoveries Division vary from nine to fifteen percent (8-15%).

Fiscal Year	Total Collection	Total Costs	Ratio
2002 - 2003	\$9,397,437.00	\$1,362,960.00	15%
2003 - 2004	\$12,033,156.00	\$1,437,964.00	12%
2004 - 2005	\$16,325,147.00	\$1,226,855.00	8%
2005 - 2006	\$14,674,863.00	\$1,557,900.00	11%
2006 - 2007	\$16,084,654.00	\$1,530,434.00	10%
2007 - 2008	\$12,475,308.00	\$1,611,831.00	13%
2008 - 2009	\$14,347,134.00	\$1,712,413.00	12%
2009 - 2010	\$11,532,711.00	\$1,534,201.00	13%
2010 - 2011	\$16,529,627.00	\$1,318,438.00	8%
2011 - 2012	\$12,403,154.00	\$1,201,531.00	10%

We believe fifteen percent is an appropriate percentage that is below what the private sector would charge for similar collection activities. This percentage is not excessive, nor abusive, but is sufficient to account for all anticipated costs associated with collection.



The Judiciary, State of Hawai'i

Testimony to
The House Committee on Consumer Protection & Commerce
Representative Angus L.K. McKelvey, Chair
Representative Derek S.K. Kawakami, Vice Chair

and

The House Committee on Judiciary
Representative Karl Rhoads, Chair
Representative Sharon E. Har, Vice Chair

Monday, February 11, 2013, 2:30 p.m.
State Capitol, Conference Room 325

By
Janell M. Kim
Financial Services Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1342, Relating to Debt Collection.

Purpose: The purpose of this bill is to establish a civil recoveries fund to be used by the department of the attorney general to pursue collection of delinquent accounts, to authorize the attorney general to prepare lists of delinquent accounts, and to enable the judiciary, department of taxation, and university of Hawaii to contract with collection agencies to collect delinquent accounts.

Judiciary's Position:

The Judiciary does not take a position on House Bill 1342 and offers the following comment. Section 3 of the bill would authorize the Judiciary to contract with a collection agency to collect delinquent accounts. Pursuant to Hawaii Revised Statutes (HRS) section 601-17.5, the Judiciary already has authority to contract with a collection agency or licensed attorney to collect delinquent court-ordered penalties, fines, restitution, sanctions, and court costs. The Judiciary first executed a contract with a collection agency in 2005, and has continued to utilize the



House Bill No. 1342, Relating to Debt Collection
House Committee on Consumer Protection and Commerce and
House Committee on Judiciary
Monday, February 11, 2013
Page 2

services of a collection agency since then. Accordingly, there is no need to amend HRS section 40-82.5 to allow the Judiciary to contract with a collection agency.

Thank you for the opportunity to testify on House Bill 1342.

TESTIMONY BY KALBERT K. YOUNG
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEES ON CONSUMER PROTECTION & COMMERCE
AND JUDICIARY
ON
HOUSE BILL NO. 1342

February 11, 2013

RELATING TO DEBT COLLECTION

House Bill No. 1342 establishes the Civil Recoveries Fund into which is deposited an unspecified percent of any moneys collected by the Attorney General for any Executive department which has turned over delinquent accounts for collection and appropriations by the Legislature. The fund shall be used for expenditures relating to the collection of delinquent accounts of Executive departments.

While it is difficult to determine what type of fund is proposed to be established, as a matter of general policy, the Department of Budget and Finance does not support the creation of any special fund which does not meet the requirements of Section 37-52.3 of the HRS. 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. 1342, it is difficult to determine whether the 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, HRS.

NEIL ABERCROMBIE
Governor



RUSSELL S. KOKUBUN
Chairperson, Board of Agriculture

SCOTT E. ENRIGHT
Deputy to the Chairperson

State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

**TESTIMONY OF RUSSELL S. KOKUBUN
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON CONSUMER PROTECTION & COMMERCE
COMMITTEE ON JUDICIARY
MONDAY, FEBRUARY 11, 2013
2:30 P.M.
CONFERENCE ROOM 325**

**HOUSE BILL NO. 1342
RELATING TO DEBT COLLECTION**

Chairpersons McKelvey, Rhoads and Members of the Committee:

Thank you for the opportunity to comment on HB 1342. The Department of Agriculture opposes this bill.

The bill requires the Attorney General to collect on accounts delinquent for more than ninety days. The Department is concerned as this will adversely affect the farming community.

The Department's agricultural loan program provides financial assistance to farmers, ranchers and the aquaculture industries. Farmers and ranchers are often times affected by forces out of their control such as inclement weather, diseases and pests as well as drought. Ninety days is often an insufficient time period to recover from these issues. In order to recover the farmer needs to till the soil, replant, grow, harvest and market the crop and then wait to collect on the receivable which is often far longer than the ninety day period. In the case of banana and papaya crops it may take as long as 1 year to reach maturity and for tree crops until the next harvest season.

The agricultural loan program has a staff of loan officers with the necessary experience and expertise to determine an appropriate repayment schedule for individual crops. Loan officers work closely with each borrower to ensure collection of the debt and works to help the farm succeed and remain sustainable. With all due respect, the Attorney General lacks the

agricultural expertise to properly carry out the responsibilities required of the Department's Agricultural Loan Division.

The Department's agricultural loan program provides a vital source of capital for Hawaii's farming and ranching community and referring the delinquent accounts to the Attorney General after 90 days would be impractical, make the program ineffective and detrimentally affect the agricultural industry.

Thank you for the opportunity to testify on this measure.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Consumer Protection & Commerce
and
House Committee on Judiciary
February 11, 2013 at 2:30pm
by
Howard Todo
Vice President of Budget & Finance and Chief Financial Officer
University of Hawai'i System

HB 1342 – RELATING TO THE DEBT COLLECTION

Chairs McKelvey and Rhoads, Vice Chairs Kawakami and Har and members of the committees:

Thank you for the opportunity to provide testimony on HB 1342 which requires the Attorney General to collect on accounts delinquent for more than ninety days for executive departments, except the Department of Taxation and University of Hawai'i, and retain an unspecified per cent of moneys recovered on delinquent accounts for deposit into a newly-established fund. This bill also allows the Department of Taxation, the University of Hawai'i, and the Judiciary to contract with a collection agency to collect on delinquent accounts.

The University of Hawai'i has no objection to HB 1342.

TO: Members of the Committees on Consumer Protection & Commerce and
Judiciary

FROM: Natalie Iwasa, CPA
Honolulu, HI 96825
808-395-3233

HEARING: 2:30 p.m. Monday, February 11, 2013

SUBJECT: HB 1342 Debt Collection
OPPOSE - New Fund

Aloha Chairs and Representatives,

Thank you for allowing me to provide testimony on HB 1342, which would set up a new fund, requires the attorney general to collect certain delinquent accounts and allows a collection agency to be used to collect delinquent accounts.

Last year the state auditor reported that Hawaii has at least 729 non-general funds and 313 special funds. The accounting system behind those funds must be staggering and the time spent on keeping transactions in the correct account . . . well, I really don't even want to think about that. Simply put, we do not need, and should not create, more special funds.

Please amend this bill to remove the special fund.