



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2014**

ON THE FOLLOWING MEASURE:

**H.B. NO. 2248, MAKING AN EMERGENCY APPROPRIATION FOR THE
DEPARTMENT OF THE ATTORNEY GENERAL.**

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, January 30, 2014 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Russell A. Suzuki, First Deputy Attorney General

Chair Luke and Members of the Committee:

The Department of the Attorney General strongly supports this measure and requests its passage.

The purpose of this bill is to secure additional funds for the Department of the Attorney General (Department) to deal with extraordinary litigation expenses that we anticipate incurring before the end of the current fiscal year ending June 30, 2014. These expenses include (1) defending against an appeal of the July 11, 2013, decision validating the State's 2012 Reapportionment Plan in the United States Supreme Court, (2) continuing to defend the State against claims for money damages in two large, one-time only class action lawsuits, and (3) investigating and assessing the possibility of filing suit to recover moneys to repair and restore damage in and around Honolulu Harbor resulting from the devastating effects of the September 2013 molasses spill. These major cases are significantly larger than normal and concern important matters that may have far reaching consequences or involve large sums of money. Thus, additional litigation expenses are warranted to properly represent and protect the interests of the State of Hawaii. The funds being requested are to supplement the normal annual litigation budget utilized by the Department to fund litigation expense. It is the intent of the Department to only draw such funds down to the extent that actual litigation expenses exceed the normal litigation budget.

The following cases may involve extraordinary litigation expenses:

(1) 2012 Reapportionment Plan. Joseph Kostick, et al., v. Scott Nago, etc., et al., U.S. S.Ct. No. 13-456, Civil No. 12-00184 MMM-JMS-LEK (Three-Judge Court (28 U.S.C. § 2284)) (U.S.D.Haw.)). On October 1, 2013, the plaintiffs filed an appeal to the United States Supreme Court from the District Court's July 11, 2013, decision validating the State's 2012 Reapportionment Plan. The Department retained Washington, D.C., counsel with experience in practicing before the U.S. Supreme Court to represent the Election Commission and the State's Chief Elections Officer in the appeal. Fortunately, before briefs needed to be prepared, the Court entered an order granting the State's motion to affirm the District Court's decision and summarily dismissed the appeal. Approximately \$180,000 in one-time expenses was incurred to secure this result.

(2) Class Action Lawsuits:

(a) State and County Retirees' Health Benefits. Dannenburg, et al v. State of Hawaii, et al, Civil No. 06-1-1141-06 (First Circuit Court, State of Hawaii). This case concerns class action claims for retirees' health plan benefits. The case is presently pending before the Circuit Court. In the event that certain rulings are made on pending motions, the case may need to be prepared for trial. Because of the complexity and highly technical nature of the case, the Department is considering hiring outside counsel, and anticipates incurring substantial discovery costs and experts' fees. The Department anticipates that over the next 18 months, such expenses may amount to \$650,000 and that some of these expenses will need to be incurred during fiscal year 2013-14.

(b) Hawaiian Home Lands Individual Claims. Kalima, et al v. State of Hawaii, Civil No. 99-4771-12 (First Circuit Court, State of Hawaii). This case deals with claims filed by 2,721 individuals against the State of Hawaii and the Department of Hawaiian Home Lands (DHHL) in connection with the management of the resources and breaches of trust of the DHHL trust under chapter 674, Hawaii Revised Statutes. To date, only the class members' waiting list claim has been tried. After a six-week trial in August and September of 2009, the State was found liable for three breaches of trust and, since then, proceedings to determine whether and how much class members' may recover as their out-of-pocket loss have been ongoing. The Department anticipates that over the next 18 months as much as \$500,000 will be

needed for discovery, experts, and organizing DHHL records to defend against the class members' damages claims, and some of these expenses will need to be incurred in fiscal year 2013-14.

(3) **Molasses Spill.** On September 9, 2013, a pipeline owned by Matson Navigation Company (Matson) ruptured and caused a spill into Honolulu Harbor of hundreds of thousands of gallons of molasses. The molasses spread throughout portions of Honolulu Harbor, Keehi Lagoon, and near the Reef Runway. The molasses had the effect of killing the coral reefs, fish, other marine life, and plants that were in the area. Because of the extensive damage to the coral reefs and ecosystem, the Department has retained counsel from the San Francisco law firm of Bingham McCutchen (Bingham) who specializes in bringing and defending claims for catastrophic losses to natural resources. Bingham will assist in the investigation and pursuit of claims for damages against Matson for such natural resource damages. Preliminary estimates for such work over the next 18 months include legal fees of up to \$900,000, possible costs for travel and other expenses of up to \$90,000, and experts' fees of approximately \$700,000, for a total of \$1,690,000 to pursue the case. Some of these expenses will need to be incurred in Fiscal year 2013-14. It is also critical that we conduct an immediate investigation. Because the spill did not occur until after the Department's biennial budget was appropriated, funds to cover these unanticipated costs need to be appropriated if we are to pursue these claims.

The above noted expenses are necessary to ensure that litigation is properly handled and the State is properly defended and represented.

If the Legislature appropriates the requested funds, we would anticipate using some of the funds to hire additional staff. We therefore, propose amending the bill, a copy of which is attached, to reflect this intention. We respectfully request that the Committee pass this bill in the form of the HB2248, Proposed HD1, attached hereto.

H.B. NO. 2248

Proposed HD1

A BILL FOR AN ACT

MAKING AN EMERGENCY APPROPRIATION FOR THE DEPARTMENT OF THE
ATTORNEY GENERAL.

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

1 SECTION 1. This Act is recommended by the governor for
2 immediate passage in accordance with section 9 of article VII of
3 the Constitution of the State of Hawaii.

4 SECTION 2. The State of Hawaii is involved in several
5 major lawsuits that could result in costly judgments against the
6 State if not defended vigorously. Some, if not all of these
7 major lawsuits will require the State to retain expert witnesses
8 and expert counsel, and to hire litigation support staff for the
9 duration of their pendency.

10 SECTION 3. There is appropriated out of the general
11 revenues of the State of Hawaii the sum of \$1,000,000, or so
12 much thereof as may be necessary, for fiscal year 2013-2014 to
13 be used by the department of the attorney general to fund
14 contracts to retain expert counsel, expert witness, and other
15 legal services, and provide additional staff support, more
16 specifically five full-time equivalent (FTE) paralegal and legal
17 assistant positions.

____.B. NO.____

1 The sum appropriated shall be expended by the department of
2 the attorney general for the purposes of this Act.

3 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

7

BY REQUEST

8

____.B. NO.____

Report Title:

Department of the Attorney General; Emergency Appropriation

Description:

Makes an emergency appropriation to the Department of the Attorney General for retention of expert witnesses and specialized legal counsel in major litigation against the State of Hawaii.

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



SCOTT T. NAGO
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TESTIMONY OF THE
CHIEF ELECTION OFFICER, OFFICE OF ELECTIONS
TO THE HOUSE COMMITTEE ON FINANCE
ON HOUSE BILL NO. 2248
RELATING TO MAKING AN EMERGENCY APPROPRIATION FOR THE
DEPARTMENT OF THE ATTORNEY GENERAL

January 30, 2014

Chair Luke and members of the House Committee on Finance, thank you for the opportunity to testify in support of House Bill No. 2248. The purpose of this bill is to make an emergency appropriation to the Department of the Attorney General for retention of expert witnesses and specialized legal counsel in major litigation against the State of Hawaii.

The Office of Elections has directly benefited from the Department of the Attorney General's retention of specialized legal counsel in the reapportionment case of *Kostick v. Nago*, in which the U.S. Supreme Court, on January 21, 2014, affirmed the decision of the U.S. District Court of the District of Hawaii. This decision removed the legal uncertainty over whether the district boundaries associated with the contested reapportionment plan would have needed to be altered in closed proximity to the 2014 Elections.

Thank you for the opportunity to testify in support of House Bill No. 2248.

NEIL ABERCROMBIE
GOVERNOR



Testimony of
GLENN M. OKIMOTO
DIRECTOR

Deputy Directors
FORD N. FUCHIGAMI
RANDY GRUNE
AUDREY HIDANO
JADINE URASAKI

IN REPLY REFER TO:

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

January 30, 2014
3:00 p.m.
State Capitol, Room 308

H.B. 2248
MAKING AN EMERGENCY APPROPRIATION FOR THE DEPARTMENT OF THE
ATTORNEY GENERAL.

House Committee on Finance

The Department of Transportation (DOT) **supports** the passage of H.B. 2248 which makes an emergency appropriation to the Department of the Attorney General for retention of expert witnesses and specialized legal counsel in major litigation against the State of Hawaii.

Thank you for the opportunity to provide this testimony.