



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

H.B. NO. 189, RELATING TO CLAIMS AGAINST THE STATE.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Friday, January 30, 2015 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): RUSSELL A. SUZUKI, Attorney General, or
CARON INAGAKI, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill amends section 41D-4, subsection (f), and section 662-11, Hawaii Revised Statutes, to adjust for inflation the maximum amount that may be paid by the state risk management revolving fund for claims arbitrated, compromised, or settled by the Attorney General. The maximum amount under section 662-11 is currently \$10,000. In this bill, the Comptroller is to use \$10,000 as the base figure for the first year and apply the United States Department of Labor Consumer Price Index for All Urban Consumers for Honolulu for the previous year to determine the new base figure, and use the resulting figure as the new base figure each year thereafter. This bill also requires the Comptroller to publish the adjusted amount and notify the Legislature and the Attorney General of the adjusted amount.

There seems to be no rational basis to tie the maximum amount that can be paid for claims by the risk management revolving fund to the inflation rate that rises and falls based on the level of consumer spending. All claims are evaluated on the specific circumstances of each case and settlements are reached by mutual agreement between the parties. The value of a claim is unrelated to, and is not contingent upon, the health of the economy.

If the purpose of this bill is merely to raise the amount that can be paid through the risk management revolving fund without legislative approval, requiring the Comptroller to update and publish new figures every year based on the inflation rate does not seem to be the most efficient or logical way to achieve that goal. In addition, because the amounts would change every year, some litigants may be confused or unaware of the applicable amount at any given

time during the litigation or settlement negotiations, especially because litigation can often span several years.

Moreover, this bill amends section 662-11, but does not amend section 41D-3(c) or (d), which allows the Comptroller to compromise or settle claims involving vehicles self-insured by the State for an amount not exceeding \$15,000, and tort claims for \$10,000 or less and paid out of the state risk management revolving fund, but without the Attorney General's involvement. Therefore, claims under section 662-11 would be subject to adjustment for inflation, but claims under section 41D-3 would not. It is not clear whether a distinction was intended to be made between claims paid by the risk management revolving fund that are settled by the Comptroller and claims that are settled by the Attorney General.

The bill also does not specify in what manner and at what point in time the Comptroller is to notify the Legislature and the Attorney General of the adjusted amount.

We respectfully request that this bill be held.



STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
JUDICIARY
ON
JANUARY 30, 2015

H.B. 189

RELATING TO CLAIMS AGAINST THE STATE

Chair Rhoads and members of the Committee, thank you for the opportunity to testify on H.B. 189. The Department of Accounting and General Services does not support H.B. 189 and offers the following comments.

When applying the methodology outlined in the measure, we calculate that the claim's settlement amount within the Comptroller's authority from 2008 through 2015 would range from \$10,000 to \$11,572, or an average annual increase of \$197 over the eight (8) year period which is insignificant (see attached worksheet). We have also analyzed the claims paid in the Attorney General's Settlement Acts for the five (5) year period from 2010 through 2015 and found that if the Comptroller's settlement authority were raised from \$10,000 to \$50,000, the average annual number of claims would increase by 12 with an aggregate value of \$226,000. This would not result in any significant operational changes to either the Department of the Attorney General or the Department of Accounting and General Services.

There are several other sections of the measure that require clarification or revision to be valid.

1. The Comptroller's settlement authority, section 41D-3(d), Hawaii Revised Statutes (HRS), is not revised in H.B. 189 which may affect the validity of this measure. H.B. 189 revises section 41D-4(f), HRS, which describes the reporting requirements. If this measure is implemented as written, section 41D-3(d), HRS, will conflict with section 662-11, HRS.
2. H.B. 189 does not define which Consumer Price Index (CPI) to use. From our research there are two annualized CPI indexes, one for the first half of the year and the second for the second half of the year. Due to the timing of the state's fiscal year, it is conceivable that the CPI index to be used in a current fiscal year is that from the first half of the prior calendar year, however, this is not identified in H.B. 189.
3. The publishing requirements are not defined and there is no publishing deadline specified.
4. There is no timeframe in the measure which specifies when the Legislature and Attorney General are to be notified of changes in the Comptroller's settlement authority limit.
5. H.B. 189 does not address negative changes to the CPI index and its methodology would reduce the Comptroller's settlement authority for negative changes. For example, in 2009, the CPI index was -1.0% for the first half of the year.

Thank you for the opportunity to testify on this matter.

Attachment

Submitted By	Organization	Testifier Position	Present at Hearing
Kari Benes	Individual	Oppose	No