



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2844, S.D. 2, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Monday, June 22, 2020

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Caron Inagaki,
Deputy Attorney General, at 586-1494)

Chair Lee and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to seek appropriations to satisfy claims against the State, its officers, or its employees, including claims for legislative relief, judgments against the State, settlements, and miscellaneous claims.

The bill contains twelve (12) claims that total \$1,160,485.00. Five (5) claims are general fund appropriation requests that total \$2,943.74 and seven (7) claims are appropriation requests from departmental funds that total \$1,157,541.26. Attachment A provides a brief description of each claim in the bill.

Since the bill was last amended, sixteen (16) new claims have been resolved for an additional \$819,720.70. Eleven (11) claims are general fund appropriation requests that total \$159,136.52, and five (5) claims are appropriation requests from departmental funds that total \$660,584.18. Attachment B provides a brief description of the new claims.

Including the new claims, the appropriation requests total \$1,980,205.70 allocated among twenty-eight (28) claims. Of this total \$162,080.26 are general fund appropriation requests, and \$1,818,125.44 are appropriation requests from departmental funds.

The Department has had a longstanding policy of advising agencies as to how to avoid claims such as those in this bill. The Department also has complied with section 37-77.5, Hawaii Revised Statutes, which requires the Attorney General to develop and implement a procedure for advising our client agencies on how to avoid future claims.

We respectfully request that the passage of this bill with amendments to add the new claims.

ATTACHMENT "A"

DEPARTMENT OF EDUCATION:

Zhang v. State of Hawaii, et al.	\$ 130,000.00
Civil No. 19-1-0824-05, First Circuit	Settlement

In June of 2017, student K.Z. participated in a summer session physical education class at Kalani High School. K.Z. has been a DOE special education ("SPED") student since kindergarten and he planned to start as a freshman at Kalani when the academic year began in August of 2017. The first PE module was swimming conducted under the supervision of a single DOE teacher. Students like K.Z. who could not swim were instructed to stay in the shallow end of the pool but there was no physical divider or demarcation in the water between the shallow and overhead depths. The non-swimmers did not have flotation devices.

Near the end of the first class and while the instructor's attention was distracted away from the pool, K.Z. walked alone and unnoticed toward the deep end. When he started to struggle, K.Z. was fully underwater and looked initially like he was playing around. This delayed his classmates' call for help. In addition, the teacher's height of eye on the pool deck kept him from noticing K.Z.'s predicament at the bottom of the pool any sooner. Based on post-accident oxygen levels noted by EMS, Plaintiffs estimate that K.Z. may have been under water for 3-4 minutes. K.Z. was revived by the instructor and transported to Kapiolani where he was treated and observed for 3 days.

The case proceeded to mediation, which resulted in the settlement.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

Ching, et al. v. Case, et al.	\$ 9,514.99
Civil No. 14-1-1085-04, First Circuit	Judgment

This civil action was filed against the State alleging a violation of the public trust doctrine in connection with the Department of Land and Natural Resources' management of State lands leased to the United States for military training purposes at Pohakuloa on the Island of Hawaii. The Circuit Court of the First Circuit, Judge Gary W.B. Chang presiding, found that the State breached its public trust duty to conduct periodic inspections of the leased land at Pohakuloa, and ordered the State to submit a management and inspection plan for approval. The Circuit Court also awarded costs to Plaintiffs in the amount of \$9,514.99, although the award of costs was stayed pending the outcome of the State's appeal. On appeal, the Hawaii Supreme Court upheld the Circuit Court's findings

(with certain modifications), including the award of costs. The total amount of the judgment for costs is \$9,514.99.

**Gold Coast Neighborhood Association v.
State of Hawaii, et al., Civil No. 07-1-1122-06,
First Circuit** **\$ 13,160.94
Judgment**

Gold Coast Neighborhood Association (GCNA) sued the State seeking a declaration that the State owns, and has a duty to repair, seawalls in front of various condominiums and co-ops along Waikiki's Gold Coast. After trial, appeal to the Intermediate Court of Appeals, and certiorari to the Hawaii Supreme Court, the Supreme Court ruled that the State owns an easement on the walls and the State shares responsibility to repair with the condominiums and co-ops. The Supreme Court held that GCNA was the prevailing party. The trial court awarded costs of \$13,160.94.

**Keauhou Canoe Club v. Department of Land
and Natural Resources, et al.
Civil No. 13-1-678K, Third Circuit** **\$ 9,918.58
Judgment**

This civil action was filed against the State to address whether an Environmental Assessment (EA) was required for a State harbor project at Keauhou Bay on the Island of Hawaii. The project involved renovations to vessel moorings in Keauhou Bay. After suit was filed, the State voluntarily agreed to prepare an EA for the renovation project if it proceeded, making the relief sought by the Plaintiff moot. The Circuit Court granted summary judgment in favor of the State and dismissed all of Plaintiffs' claims, but still awarded the Plaintiff's attorneys' fees, costs, and post-judgment interest. The State appealed.

On appeal, the Intermediate Court of Appeals upheld the award of fees and costs, finding that the suit prompted the client agency to make the determination to prepare an EA if the project were to proceed. However, the Intermediate Court of Appeals reversed the Circuit Court's award of interest thereon. Accordingly, the total amount of the judgment on appeal is \$9,918.58.

DEPARTMENT OF PUBLIC SAFETY:

**Shiira v. State of Hawaii, et al.
Civil No. 13-1-0331, Fifth Circuit** **\$ 44,946.75
Judgment**

While detained at the Kauai Community Correctional Center in January 2011, Plaintiff, a former inmate, was not allowed by staff nurses to take the pain medication prescribed to him by his personal physician because the Department of Public Safety's policy does not allow for the use of narcotics in jail. Following a bench trial in February 2019, the

Court found that the jail's conduct fell below the standard of care and found for the Plaintiff. The Court awarded \$40,000.00 in damages plus costs.

DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION:

Hayselden, et al. v. State of Hawaii, et al.	\$ 300,000.00
Civil No. 17-1-0204, Third Circuit	Settlement

This case arises out of a single vehicle accident that occurred on Sunday, February 24, 2013, at approximately 5:00 a.m. when it was still dark. Plaintiff Joan Mayo was driving and her co-worker Plaintiff Helene Hayselden was the front seat passenger in the vehicle. They allege that while traveling west at approximately .06 of a mile north of Mile Marker 21, on Route 19, the vehicle struck a large rock that was in their lane of travel. The rock had likely rolled down from the adjacent hillside shoulder of the highway. The Department of Transportation (DOT) owns the highway and shoulders. Both Plaintiffs sustained serious injuries in the accident and were out from work for months.

The subject accident occurred before the Hawaii Supreme Court decision in *O'Grady v. State*. The *O'Grady* decision determined that the State DOT's negligent failure to have an operational level rock fall hazard monitoring, maintenance, and training program was a legal cause of the accident in that case. In *O'Grady*, a large boulder from the hillside adjacent to Route 11 rolled onto the *O'Grady's* vehicle. In the subject case, a large rock had rolled from the adjacent hillside adjacent to Route 19 and was sitting on the highway in a curve on the road when Plaintiffs vehicle struck the rock. The similarities between the *O'Grady* case and the subject case make it likely that the trial judge will determine that the State is liable to Plaintiffs and award damages against the State.

With the assistance of retired Hawaii Supreme Court Justice James Duffy serving as the mediator, the parties in this case were able to reach agreement on the settlement amount, subject to administrative and legislative approvals.

Vares, et al. v. State of Hawaii, et al.	\$ 650,000.00
Civil No. 16-1-0512-03, First Circuit	Settlement

On March 20, 2014, sixteen year old Nicolette Maile Vares ("Nikki"), was riding her Vespa motor scooter on the Likelike Highway on-ramp to the H-3 Freeway, ahead of her father, Plaintiff Nick Vares, who was following Nikki on his motorcycle. As they approached a curve to the right on the on-ramp, Nikki hit her brakes, lost control of her motor scooter, and crashed into a guardrail. Nikki sustained fatal blunt force injuries to the torso. Plaintiff alleged that the signs posted on the on-ramp were inadequate to warn Nikki of the impending "hairpin turn" on the on-ramp, and failed to comply with applicable traffic engineering standards. The case proceeded to mediation, which resulted in the settlement.

MISCELLANEOUS CLAIMS:

Grace Blevins **\$ 400.28** *(General Fund)*

Claimant requests reissuance of an outdated check that was not cashed. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Kathleen A. Kehlor Harper **\$ 809.11** *(General Fund)*

Claimant requests reissuance of an outdated check that was lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

John and Deborah Mar **\$ 866.75** *(General Fund)*

Claimant requests reissuance of an outdated checks that were misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Judith Ross **\$ 578.40** *(General Fund)*

Claimant requests reissuance of an outdated check that was lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Barbara H. Ursal **\$ 289.20** *(General Fund)*

Claimant requests reissuance of an outdated check that was lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

ATTACHMENT “B”

DEPARTMENT OF EDUCATION:

Lau, et al. v. Kenui, et al.	\$ 40,000.00
Civil No. 17-1-0209, Third Circuit	Settlement

This case arises out of a two-car accident that occurred on August 2, 2015, in Hilo. Plaintiff Joseph Lau was driving his truck south on Kilauea Avenue. Defendant student driver was operating a State of Hawaii Department of Education (State DOE) vehicle east on Kahaopea Street. The DOE driving instructor was supervising the student at the time of the accident.

On the day of the accident, it had been raining heavily. The student driver reached the intersection at Kilauea Avenue and stopped at the stop line, checked both directions for approaching vehicles on Kahaopea Street, then proceeded slowly after she saw no approaching vehicles traveling on Kilauea Avenue. As the DOE vehicle slowly traveled into the intersection, the Lau truck suddenly came into view. The front of the DOE vehicle struck the front seat passenger side of the Lau truck. The DOE vehicle had a stop sign and stop bar. The Lau truck had the right-of-way on Kilauea Avenue. The DOE vehicle had to yield to the truck’s right-of-way.

Plaintiffs allege that Mr. Lau and his granddaughter minor G.L.-A., who was a passenger in the truck, sustained physical and emotions injuries. Plaintiff Anneliese Lau is Mr. Lau’s wife and the minor’s grandmother. Both Mr. Lau and his granddaughter sustained physical injuries as the result of the accident, and received medical treatment for those injuries.

DEPARTMENT OF PUBLIC SAFETY:

Firth, et al. v. County of Maui, et al.	\$ 350,000.00
Civil No. 18-1-0234(4), Second Circuit	Settlement

Plaintiff fell down in a holding cell at the Wailuku Courthouse while in the State Department of Public Safety’s custody. His head struck the metal toilet in the holding cell, causing him to need urgent brain surgery at the Queen’s Medical Center on Oahu. Plaintiff allegedly continues to suffer permanent brain damage from this incident and will require 24-hour care for the rest of his life in a facility designed for persons with cognitive deficits. Plaintiff’s mother claims that she was impacted emotionally and nearly lost her job, her house, and suffered other lost income as a result of Plaintiff’s injury and prolonged recovery.

HAWAII COMMUNITY DEVELOPMENT AUTHORITY:

Carolyn Ward Aki v. City and County of Honolulu, et al. \$ 55,000.00
Civil No. 17-1-1861-11 GWBC, First Circuit Settlement

Plaintiff tripped on a sidewalk on Ohe Street in Kaka'ako where a tree root had lifted a portion of the sidewalk. Plaintiff suffered injuries to her arm and hip that required hospitalization and rehabilitative care. At the time of Plaintiff's injury, the sidewalk was owned by the Hawai'i Community Development Authority ("HCDA") but ownership has since been transferred to the City and County of Honolulu.

The case proceeded to Court Annex Arbitration Program. The Arbitrator found Defendants State of Hawaii and HCDA collectively liable and responsible. The parties then reached a settlement.

HAWAII STATE PUBLIC LIBRARY SYSTEM:

United States Environmental Protection Agency, \$ 143,990.00
Region 9 – Hawaii State Public Library System Settlement

The Hawaii State Public Library System (HSPLS) has two Large Capacity Cesspools (LCC); one located at the Waialua Public Library and one located at the Kealahou Public Library. The Environmental Protection Agency (EPA) promulgated Underground Injection Control (UIC) regulations pursuant to the Safe Drinking Water Act. The UIC regulations required that all existing LCCs be closed by April 5, 2005. The HSPLS LCCs were not closed in accordance with those UIC regulations and were subject to substantial penalties as a result.

STATE PUBLIC CHARTER SCHOOL COMMISSION:

HGEA/AFSCME on Behalf of Ardith Renteria, and \$ 71,594.18
Charter Volcano School of Arts and Sciences Judgment

A Charter School principal was terminated. Principal was reinstated for the rest of the school year. The judgment is for back pay offset.

MISCELLANEOUS CLAIMS:

Loretta Beralas \$ 2.01 (General Fund)

Claimant requests reissuance of an outdated check that was recently discovered. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

**BVT-CAM Private Equity Global Fund II
Beteiligungs GmbH**

\$ 16,000.00 *(General Fund)*

Claimant requests reissuance of an outdated checked that was never received. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

CAM Private Equity Verwaltungs GmbH

\$ 51,300.00 *(General Fund)*

Claimant requests reissuance of an outdated checked that was never received. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

CAM Select I Beteiligungs GmbH

\$ 42,500.00 *(General Fund)*

Claimant requests reissuance of an outdated checked that was never received. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Amanda Jamieson

\$ 23,125.00 *(General Fund)*

Claimant requests reissuance of an outdated checked that was never received. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Margaret Jamieson

\$ 23,125.00 *(General Fund)*

Claimant requests reissuance of an outdated checked that was never received. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Nanci J. Merck

\$ 93.93 *(General Fund)*

Claimant requests reissuance of an outdated check that was sent to an old address. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Betty Y. Ohigashi \$ 1,023.99 *(General Fund)*

Claimant requests reissuance of an outdated check that was sent to an old P.O. Box. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

The Estate of Calvin C. Ontai \$ 578.40 *(General Fund)*

Claimant requests reissuance of an outdated check that was recently discovered. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Elaine S. Tanigawa \$ 1,000.00 *(General Fund)*

Claimant requests reissuance of an outdated check that was recently discovered. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.

Christine Woods \$ 388.19 *(General Fund)*

Claimant requests reissuance of an outdated check that was sent to the wrong address. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, Hawaii Revised Statutes.



**HAWAII COMMUNITY
DEVELOPMENT AUTHORITY**

547 Queen Street, Honolulu, Hawaii 96817
Web site: <http://dbedt.hawaii.gov/hcda/>

Telephone: (808) 594-0300
Fax: (808) 587-0299

DAVID Y. IGE
GOVERNOR

JOHN WHALEN
CHAIR

GARETT KAMEMOTO
INTERIM EXECUTIVE DIRECTOR

STATEMENT OF
GARETT KAMEMOTO, INTERIM EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

Before the
HOUSE COMMITTEE ON JUDICIARY

Monday, June 22, 2020
2:00 P.M.
State Capitol, Conference Room 325

in consideration of

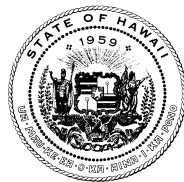
**SB 2844, SD2 MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,
ITS OFFICERS, OR ITS EMPLOYEES**

Chair Lee, Vice Chair San Buenaventure, and members of the committee.

The Hawaii Community Development Authority (HCDA) **supports SB 2844, SD2.**

However, we defer to the testimony of the Department of the Attorney General, since sixteen new claims have recently been resolved and their testimony provides details of the new claims. We support including these new claims.

Thank you for the opportunity to testify on **SB 2844, SD2.**



STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
OFFICE OF THE STATE LIBRARIAN
44 MERCHANT STREET
HONOLULU, HAWAII 96813

HOUSE COMMITTEE ON JUDICIARY
Monday, June 22, 2020
2:00pm
State Capitol, Room 325

By Stacy A. Aldrich
State Librarian

**S.B. 2844, S.D.2 Making Appropriations for Claims Against the State,
Its Officers, or Its Employees**

To: Chair Chris Lee
Vice Chair Joy A. San Buenaventura
Members of the House Committee on Judiciary

The Hawaii State Public Library System (HSPLS) supports S.B. 2844, S.D.2 which makes appropriations for claims against the state, its officers, or its employees.

HSPLS respectfully asks that S.B. 2844 S.D.2 be amended to include all claims contained in the Department of the Attorney General's testimony, which includes the claim against HSPLS entitled "United States Environmental Protection Agency Region 9 - Hawai'i State Public Library System". The proposed settlement addresses the HSPLS large capacity cesspools that were not closed as required pursuant to the Safe Drinking Water Act.

Thank you for the opportunity to testify on this measure and your continued support of the Hawaii State Public Library System.

SB-2844-SD-2

Submitted on: 6/21/2020 4:33:44 PM

Testimony for JUD on 6/22/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Eileen M Gawrys	Individual	Support	No

Comments:

TURBIN ♦ CHU ♦ HEIDT

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LATE

RE: Committee on Judiciary
Hearing on Monday, June 22, 2020 at 2:00 p.m.
SB 2844, SD2 (SSCR3056)

Dear Judiciary Committee Members,

I am submitting testimony on SB 2844, SD2 on behalf of my client, KZ, a minor, who is one of the many injured parties waiting for their settlement and judgment funds from the State of Hawaii. My client's case was against the State of Hawaii and titled *Zhang v. State of Hawaii et.al.*, with a settlement amount of \$130,000.

To give you some background, in the summer of 2017, before 9th grade, K.Z was enrolled in the summer PE program at Kalani High School, which included swim lessons. KZ did not know how to swim. While the instructor was helping another student, KZ was walking in the pool when he unwittingly walked toward the deep end and the floor dropped out from under his feet. KZ was under the water for approximately 4 minutes before another student noticed him on the bottom of the pool. KZ did not suffer a brain injury, but was painful traumatized by the experience of drowning.

We settled KZ's case in May 2019 for \$130,000, with an apology from the school for what happened to KZ, and assurances that the pool procedures have changed so no other children will suffer the same fate, or worse. KZ and his family were also informed that the settlement would be funded in June 2020. Probate court approved the minor's settlement in December 2019.

Claimants and Plaintiffs, as listed in SB2844-SD2, need their settlements and judgments funded by the State of Hawaii during this legislative session. When settling with the State, or obtaining a judgment, the injured party must wait long periods of time to receive their funds. It is not like settling with an insurance company where the funds are paid within 30 days of settlement (pursuant to the requirements of the Department of Insurance). Since the injured parties have already waited for so long, it is imperative that the State funds the settlements and judgements when expected. If the settlements and judgments are not funded during this legislative session, all of these injured parties will feel that the State of Hawaii does not care about what happened to them. Each and every settlement/judgment is extremely important to the individuals that were injured, so it is essential for the legislature to acknowledge those injured parties by funding the settlements/judgments in this legislative session.

I appreciate your consideration of KZ and his family's concerns in this matter.

Sincerely,
Janice Heidt, Esq.

