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# A BILL FOR AN ACT

RELATING TO THE STATUTE OF LIMITATIONS.

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

1       SECTION 1. In the decision of DW Aina Le'a Development,  
2       LLC, v. State of Hawai'i Land Use Comm'n, SCCQ-19-0000156 (Haw.  
3       Dec. 17, 2020), the Hawai'i Supreme Court held that the statute  
4       of limitations for an inverse-condemnation claim brought  
5       pursuant to section 20 of article I of the Constitution of the  
6       State of Hawaii, is six years pursuant to section 657-1, Hawaii  
7       Revised Statutes.

8       The purpose of this Act is to clarify that the statute of  
9       limitations for an inverse-condemnation claim brought against  
10      the State founded upon section 20 of article I of the  
11      Constitution of the State of Hawaii is two years pursuant to  
12      section 661-5, Hawaii Revised Statutes, by amending the  
13      jurisdiction of the state circuit and district courts under  
14      section 661-1, Hawaii Revised Statutes, to expressly include  
15      claims against the State founded upon section 20 of article I of  
16      the State Constitution.

17      SECTION 2. Section 661-1, Hawaii Revised Statutes, is  
18      amended to read as follows:

1       **"§661-1 Jurisdiction.** The several circuit courts of the  
2 State and, except as otherwise provided by statute or rule, the  
3 several state district courts, subject to appeal as provided by  
4 law, shall have original jurisdiction to hear and determine the  
5 following matters, and, unless otherwise provided by law, shall  
6 determine all questions of fact involved without the  
7 intervention of a jury:

8       (1) All claims against the State founded upon any statute  
9 of the State; upon any rule of an executive  
10 department; upon section 20 of article I of the  
11 Constitution of the State of Hawaii; or upon any  
12 contract, express or implied, with the State, and all  
13 claims [~~which~~] that may be referred to any such court  
14 by the legislature; provided that no action shall be  
15 maintained, nor shall any process issue against the  
16 State, based on any contract or any act of any State  
17 officer that the officer is not authorized to make or  
18 do by the laws of the State, nor upon any other cause  
19 of action than as herein set forth; and

20       (2) All counterclaims, whether liquidated or unliquidated,  
21 or other demands whatsoever on the part of the State  
22 against any person making claim against the State  
23 under this part."

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1       SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

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

6       SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



9

BY REQUEST

JAN 25 2021

# H.B. NO. 898

**Report Title:**

Statute of Limitations; Inverse Condemnation; State Liability

**Description:**

Clarifies that the statute of limitations for an inverse-condemnation claim brought pursuant to section 20 of article I of the Constitution of the State of Hawaii is two years, pursuant to section 661-5, Hawaii Revised Statutes, by amending section 661-1 and making the claim cognizable under chapter 661.

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

JUSTIFICATION SHEET

DEPARTMENT: ATTORNEY GENERAL

TITLE: A BILL FOR AN ACT RELATING TO THE STATUTE OF LIMITATIONS.

PURPOSE: To clarify that the statute of limitations for an inverse-condemnation claim brought against the State founded upon section 20 of article I of the Constitution of the State of Hawaii is two years pursuant to section 661-5, Hawaii Revised Statutes (HRS), by amending the jurisdiction of the state circuit and district courts under section 661-1, HRS, to expressly include claims against the State founded upon section 20 of article I of the State Constitution.

MEANS: Amend section 661-1, HRS.

JUSTIFICATION: Section 20 of article I of the Constitution of the State of Hawaii states: "Private property shall not be taken or damaged for public use without just compensation." This provision is traditionally associated with eminent-domain actions initiated by the State or its political subdivisions to condemn private property for public use under chapter 101, HRS. The United States Supreme Court and the Hawaii Supreme Court, however, have also recognized that a private-property owner may bring a claim for "inverse condemnation" where private property is taken by government action outside of the scope of an eminent-domain proceeding, either through the physical occupation of property or by certain regulations that severely diminish the value of the property via restrictions on the use of such property. Private-property owners can assert inverse-condemnation claims against the State based upon actions taken by all three branches of government.

On December 17, 2020, the Hawaii Supreme Court ruled in DW Aina Le'a Development, LLC,

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v. State of Hawai'i Land Use Comm'n, SCCQ-19-0000156 (Haw. Dec. 17, 2020), that the statute of limitations for an inverse-condemnation claim based upon section 20 of article I of the Constitution of the State of Hawaii is six years pursuant to section 657-1(4), HRS, which is the "catch-all" statute of limitations applicable where no other statute of limitations applies. The Supreme Court held that an inverse-condemnation claim is a "direct constitutional claim" and is, therefore, not cognizable under chapter 661, HRS, which governs the vast majority of non-tort monetary claims brought against the State.

Inverse-condemnation claims have perhaps the highest exposure of all claims that can be brought against the government, often ranging in the millions or tens of millions of dollars. Because the legal boundaries of takings law and the requirement to pay just compensation are constitutional in nature, that exposure cannot be capped. Inverse-condemnation claims, however, can be subject to statutes of limitations, like other claims.

Requiring private parties to file suit within two years provides the State and its departments with the ability to take corrective action, if necessary, to address concerns and limit its liability with respect to claims. For instance, after the Intermediate Court of Appeals ruled that Act 73, Session Laws of Hawaii 2003, may have effected a taking of certain accreted land in Maunalua Bay Beach Ohana 28 v. State, 122 Hawai'i 34, 222 P.3d 441 (Haw. Ct. App. 2009), the legislature enacted Act 56, Session Laws of Hawaii 2012, in response, which addressed the matter and therefore limited the State's potential monetary exposure. A six-year statute of limitations greatly limits the ability of the State to take timely corrective action, if necessary, and provides an incentive for potential

claimants to wait, as the State's monetary exposure to grows, before taking action. Further, because inverse-condemnation claims require a showing that the value and use of property have been seriously harmed by government regulation, there is no substantial reason why private property owners need six years to determine whether the filing of an inverse condemnation claim is justified. A six-year statute of limitations, in turn, allows the threat of substantial litigation to linger for an unreasonable amount of time.

Making inverse-condemnation claims expressly subject to a two-year statute of limitations is consistent with the two-year statute of limitations for other claims against the State, whether based upon a statute, a rule, a contract, or tort. See sections 661-5 and 662-4, HRS.

Impact on the public: Private property owners who wish to assert inverse-condemnation claims against the State will have to bring suit within two years after the claim first accrues, rather than wait six years, with the circuit court retaining sole jurisdiction over such claims pursuant to chapter 661, HRS.

Impact on the department and other agencies: The Department of the Attorney General will be able to analyze inverse-condemnation claims within two years of the accrual of a claim, which will allow it to advise the State and its agencies of the claims asserted and potential mitigation measures. The Department will be able to move to dismiss inverse-condemnation claims that accrue more than two years prior to the filing of a complaint, rather than six years.

GENERAL FUND: None.

OTHER FUNDS: None.

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PPBS PROGRAM  
DESIGNATION:

None.

OTHER AFFECTED  
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.