



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 2073, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Thursday, February 24, 2022 **TIME:** 11:00 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Luke 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 currently contains eight claims that total \$938,613.47. Attachment A provides a brief description of each claim in the current bill. However, an error was discovered in the amount of one of the claims, *Kaupiko, et al. v. Department of Land and Natural Resources*, et al., at p. 2, lines 3 and 10. The \$145,000.00 amount currently in the bill does not include \$736.28 in costs that were awarded to the plaintiffs. The amount should be amended on page 2, line 3, to reflect the corrected amount of \$145,736.28, on page 2, line 10, to reflect the corrected subtotal amount of \$145,736.28, and on page 2, line 44, to reflect the total appropriations sought in part III of the bill.

Since the bill was introduced, one new claim was resolved for an additional \$550,000.00. Attachment B provides a brief description of the new claim. Part I of the bill should be amended to include this claim.

Including the new claim and the amendment to the *Kaupiko* claim, the appropriation request totals \$1,489,349.75 allocated among nine claims.

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 passage of this bill with the additional appropriations and amendments.

ATTACHMENT “A”

AGRIBUSINESS DEVELOPMENT CORPORATION:

**Na Kia’i Kai v. Nakatani, et al.
Civil No. 18-00005, USDC**

**\$ 132,611.78 (General Fund)
Settlement**

The plaintiff filed a lawsuit against the Agribusiness Development Corporation (ADC) regarding the management of irrigation ditches in Kekaha, Kauai, that discharge into the ocean. The ADC inherited the network of ditches built by a sugar plantation that discharges into the ocean. Those discharges were regulated by the Clean Water Act under a National Pollutant Discharge Elimination System (NPDES) permit. The ADC applied to renew the permit and was informed by the Department of Health that one was not required. The ADC then withdrew its application and entered into an MOU with the Department of Health regarding the proper land management and water quality monitoring. The court found that an NPDES permit was required and discharging without a permit was a violation of the Clean Water Act. The plaintiff prevailed on summary judgment and the damages were ultimately resolved via settlement agreement. This claim is a separate settlement regarding attorney’s fees and costs. The total amount of attorneys’ fees and costs was \$263,698.30. Half of this amount, \$131,849.15, was appropriated in the 2021 Legislative Session via Act 15. The remaining balance is \$132,611.78 which represents \$131,849.15 plus interest.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

**Kaupiko, et al. v. Dept. of Land
and Natural Resources, State of Hawaii
Civil No. 20-0000125; First Circuit
Civil No. CAAP-21-0000374,
Intermediate Court of Appeals**

**\$ 145,736.28 (General Fund)
Settlement**

In a prior case, Umberger v. Dep’t of Land & Nat. Res., 140 Hawai’i 500, 403 P.3d 277 (2017), the Hawaii Supreme Court barred commercial aquarium collection using fine mesh nets under section 188-31, Hawaii Revised Statutes (HRS), holding that such collection was an “action” requiring chapter 343 review. In this lawsuit, the plaintiffs claimed that all commercial aquarium collection occurring without fine mesh nets under the general commercial marine license statute (section 189-2, HRS), which is required for all kinds of commercial fishing activities, was also an “action” that required chapter 343 review. They also argued that commercial aquarium collection was barred on several other theories: (1) a statutory interpretation of section 188-31, HRS; (2) public trust; and (3) native Hawaiian rights.

On November 27, 2020, the environmental court granted the plaintiffs' motion for summary judgment on the chapter 343 argument and denied as to all other claims and

theories, ruling that all commercial aquarium collection is barred pending chapter 343 compliance. All commercial marine licenses obtained under section 189-2, HRS, are now subject to additional special terms and conditions, regardless of the gear-type used, at least until chapter 343 review is complete. The parties agreed that plaintiffs' remaining claims would be dismissed and judgment was entered in conformity with the orders. The plaintiffs were awarded \$165,020 in attorneys' fees. The Department of Land and Natural Resources appealed the award. The parties reached a settlement through appellate mediation for \$145,000 and \$736.28 in costs for a total of \$145,736.28.

DEPARTMENT OF PUBLIC SAFETY:

**Curt K.K. Tokunaga, et al. v. Dept.
of Public Safety, State of Hawaii
Civil No. 18-1-0982-06, First Circuit**

**\$ 150,000.00 (General Fund)
Settlement**

A wrongful death lawsuit was filed after the plaintiffs' son, a former inmate, died after his release from prison. The decedent had epilepsy, substance abuse disorder, and mild cognitive impairment. He was released from prison at night wearing only disposable clothing and without any money, identification, or necessary medication. He was found dead eight days later in an abandoned vehicle. The decedent's official cause of death was heart failure due to cardiomyopathy. The plaintiffs argued that the decedent died of a seizure due to lack of medication and that the State should have released the decedent directly to the custody of a halfway house or treatment program and provided him with a supply of medication for his transition. The State disputed causation because, if the decedent died of heart failure, the failure to provide him with his seizure medication would not have caused his death. The plaintiffs sought \$1,000,000 in damages. The case settled in mediation for \$150,000.

STATE PUBLIC CHARTER SCHOOL COMMISSION:

**UPW on behalf of James Ah Sing v.
Christina Kishimoto, et al.
Case No. CE-01-539
Hawaii Labor Relations Board**

**\$ 125,275.38 (General Fund)
Judgment**

The complainant's position as a janitor at Connections, a New Century Charter School was not renewed in 2003. The United Public Workers, on behalf of the complainant, filed a prohibited practice complaint with the Hawaii Labor Relations Board. There were several appeals to the Hawaii Supreme Court but on the final remand to the Hawaii Labor Relations Board, the complainant ultimately prevailed and was awarded back pay, vacation pay, and all substantiated attorneys' fees and costs.

MISCELLANEOUS CLAIMS:

Sang Chol Bang **\$ 40.65** *(General Fund)*

Claimant requests reissuance of an outdated check that was 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, HRS.

Rodney Baculpo **\$ 1,283.01** *(General Fund)*

Claimant requests reissuance of an outdated check that was 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, HRS.

Darlene Vicente fka Darlene Baculpo **\$ 1,283.00** *(General Fund)*

Claimant requests reissuance of an outdated check that was 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, HRS.

Princeville Hotel, LP **\$ 383,119.65** *(General Fund)*

Claimant requests reissuance of an outdated check that was 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, HRS.

ATTACHMENT “B”

DEPARTMENT OF PUBLIC SAFETY:

**HELG Administrative Services, LLC,
as Special Administrator of the Estate of
Daisy L. Kasitati, deceased, et al. v.
Dept. of Public Safety, State of Hawaii
Civil No. 19-1-0348(2), Second Circuit**

\$ 550,000.00 *(General Fund)*
Settlement

A female inmate committed suicide while incarcerated at Maui Community Correctional Center in 2017. At the time of her death, she was 26-years old and the mother of four children under the age of five. She had a six-year history of repeat incarcerations along with a history of drug and alcohol abuse. She also had a history of depression and had attempted suicide at least once. She was due to be released in 2022.

In the twelve to fourteen hours before her death on October 12, 2017, her cell mates asked an adult corrections officer on duty to get medical help for the decedent because she was depressed and they felt she needed help. A few hours before her death, the decedent told the adult corrections officer that she was feeling “low” because of a family member’s recent death and suggested, in what was perceived to be a joking manner, that she be put on suicide watch. No action was taken to get her medical help or to put her on suicide watch. Her cellmates left to attend a class. Sometime between the 2:00 p.m. roll call and 2:30 p.m., she blocked the window of her cell with paper and hanged herself with a bed sheet. She was last seen alive during the routine 2:00 p.m. head count for her unit. She was discovered unconscious and cold at approximately 2:30 p.m. by her cellmates and an adult corrections officer. Resuscitation efforts were unsuccessful.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
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ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 2073

February 24, 2022
11:00 a.m.
Room 308 and Videoconference

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

The Department of Budget and Finance (B&F) offers comments on this bill.

House Bill No. 2073 appropriates a total of \$938,613.47 in general funds for FY 22 for the Department of the Attorney General for claims against the State or its officers or employees for the overpayment of taxes, or for refunds, reimbursements, payments of judgments or settlements, or other liabilities.

B&F notes that, with respect to the general fund appropriations in this bill, the federal Coronavirus Response and Relief Supplemental Appropriations Act requires that states receiving Elementary and Secondary School Emergency Relief (ESSER) II funds and Governor's Emergency Education Relief II funds must maintain state support for:

- Elementary and secondary education in FY 22 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and

- Higher education in FY 22 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

Further, the federal American Rescue Plan (ARP) Act requires that states receiving ARP ESSER funds must maintain state support for:

- Elementary and secondary education in FY 22 and FY 23 at least at the proportional level of the state's support for elementary and secondary education relative to the state's overall spending, averaged over FYs 17, 18 and 19; and
- Higher education in FY 22 and FY 23 at least at the proportional level of the state's support for higher education relative to the state's overall spending, averaged over FYs 17, 18 and 19.

The U.S. Department of Education has issued rules governing how these maintenance of effort (MOE) requirements are to be administered. B&F will be working with the money committees of the Legislature to ensure that the State of Hawai'i complies with these ESSER MOE requirements.

Thank you for your consideration of our comments.



REPRESENTATIVE SYLVIA LUKE, CHAIR
REPRESENTATIVE KYLE T. YAMASHITA, VICE CHAIR
HOUSE COMMITTEE ON FINANCE

TESTIMONY ON HOUSE BILL NO. 2073: **SUPPORT, WITH AMENDMENTS**

Thursday, February 24, 2022, 11:00 a.m.
Conference Room 308 & Via Videoconference
State Capitol
415 South Beretania Street

Aloha Chair Luke, Vice Chair Yamashita, and Honorable Committee Members,

Earthjustice is counsel of record on behalf of community plaintiffs in the lawsuits referenced in Section 1, Paragraphs 1 and 2 of HB 2073, *i.e.*, Nā Kia'i Kai v. Nakatanti, et al., Civil No. 18-00005, and Kaupiko, et al. v. Department of Land and Natural Resources, State of Hawai'i, Civil No. CAAP-21-0000374, respectively. Earthjustice **supports HB 2073, with amendments.**

Specifically, with respect to the Kaupiko lawsuit, the current version of the bill does not accurately and fully reflect the agreed-upon settlement amount. The settlement amount in Section 1, Paragraph 2 should be amended to read **\$145,736.28** instead of \$145,000.00.

Mahalo for this opportunity to testify. Please do not hesitate to reach out to us if you have any questions or need any further information.

Kylie W. Wager Cruz, Esq.
Senior Attorney
Earthjustice, Mid-Pacific Office