



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

ON THE FOLLOWING MEASURE:

S.B. NO. 3046, MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, February 03, 2022 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
John H. Price, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this bill.

The purpose of this bill is to appropriate funds for expert witnesses and specialized legal representation of the State of Hawai'i in major litigation.

There are currently major ongoing lawsuits that require the retention of expert witnesses and specialized legal counsel. These lawsuits include Dannenberg v. State of Hawai'i, Civ. No. 06-1-1141-06, a case that involves a class action lawsuit brought on behalf of State and County retirees alleging that the Hawai'i Employer-Union Health Benefits Trust Fund has diminished or impaired their health care benefits; Kalima v. State of Hawai'i, Civ. No. 99-4771-12 LWC, involving a class action lawsuit brought on behalf of beneficiaries of the Department of Hawaiian Home Lands (DHHL) against the State of Hawai'i, DHHL, and the DHHL Individual Claims Review Panel for damages due to delays in receiving homestead and other property; and D. W. Aina Le'a v. State of Hawai'i, Civ. No. 17-00113 SOM-WRP, in which a property developer seeks damages for financial losses allegedly caused by the Land Use Commission reverting land from an urban to agricultural classification. The plaintiffs in these cases are alleging that they are entitled to damages from the State in nine figures.

Vigorous, expert legal representation, with the judicious use of necessary expert witnesses, can save the State costly judgments or benefit the State with positive outcomes in some instances. For example, last year, the Department of the Attorney

General resolved a case that was initiated against the State by a computer implementation contractor alleging breach of contract (Ciber, Inc. v. State of Hawai'i, Department of Transportation, Civ. No. 15-1881-09). The contractor sought \$17,000,000. We counter-claimed against the contractor for losses and damages the State incurred as a result of the contractor's failure to meet the terms of its contract. Through the tenacious efforts of Special Deputy Attorneys General and the retention of appropriate expert witnesses, the final outcome was that the contractor recovered nothing, and the State recovered more than \$30,000,000 from the contractor's insurance companies. The result could not have been attained without the retention of experienced, specialized, private counsel and top flight expert witnesses. While not inexpensive, the return on investment was outstanding; the results, spectacular.

Funding for expert witnesses and specialized legal counsel is needed to allow the defending State entities to continue mounting an effective defense in the lawsuits against the State. Having the necessary funds to aggressively defend cases with expert witnesses and specialized legal counsel will likely result in smaller payouts in cases where the State is liable. It will also enhance the State's opportunity to recover damages when a meritorious counterclaim exists.

Fortunately, high-value cases against the State are fairly rare. They also vary greatly in subject matter. Because of these factors, it is not financially feasible to maintain such specialized legal talent in-house. Further, whether the State is defended by in-house counsel or a retained Special Deputy Attorney General, experienced, qualified, and credible expert witnesses are crucial in many cases, even those cases with less damage exposure than those mentioned above. Resources for such expertise are a necessary and routine part of litigation.

We respectfully request passage of this bill to provide funds appropriated out of the general revenues of the State of Hawai'i in the sum of \$1,000,000 for fiscal year 2021-2022 to be used by the Department of the Attorney General in major litigation involving the State.

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
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

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 SENATE COMMITTEE ON JUDICIARY
ON
SENATE BILL NO. 3046

February 3, 2022
9:30 a.m.
Via Videoconference

**MAKING AN EMERGENCY APPROPRIATION TO THE DEPARTMENT OF THE
ATTORNEY GENERAL**

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

Senate Bill No. 3046 appropriates \$1,000,000 in general funds for FY 22 for the Department of the Attorney General for major litigation involving the State.

B&F notes that 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.