

JOSH GREEN, M.D.  
GOVERNOR



KEITH T. HAYASHI  
SUPERINTENDENT

STATE OF HAWAII  
DEPARTMENT OF EDUCATION  
KA 'OIHANA HO'ONA'AUAO  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**Date:** 02/22/2023

**Time:** 10:00 AM

**Location:** CR 211 & Videoconference

**Committee:** Senate Ways and Means

**Department:** Education

**Person Testifying:** Keith T. Hayashi, Superintendent of Education

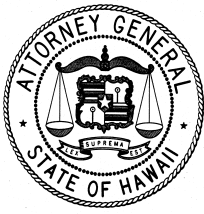
**Title of Bill:** SB 1277, SD1 MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

**Purpose of Bill:** Makes appropriations and approves payments for claims against the State, its officers, and its employees. (SD1)

**Department's Position:**

The Hawaii State Department of Education (Department) supports passage of SB 1277, SD1. The Department appreciates the Legislature's support in providing the funding to settle these claims against the Department.

Thank you for the opportunity to provide testimony on this measure.



**WRITTEN TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-SECOND LEGISLATURE, 2023**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 1277, S.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Wednesday, February 22, 2023      **TIME:** 10:00 a.m.

**LOCATION:** State Capitol, Room 211

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

(For more information, contact Caron Inagaki,  
Deputy Attorney General, at (808) 586-1494)

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Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General (Department) 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.

Senate Draft 1 of the bill contains twelve claims that total \$2,443,030.75. Of this total, \$1,943,030.75 are general funds appropriation requests allocated among eleven claims, and \$500,000.00 is an appropriation request from a departmental fund.

Attachment A provides a brief description of each claim in this bill.

Since the bill was last amended, three new claims were resolved for an additional \$844,927.00. An appropriation is needed from the general fund to satisfy these claims.

Attachment B provides a brief description of the new claims.

Including the new claims, the appropriation request totals \$3,287,957.75 allocated among fifteen claims. Of this total, \$2,787,957.75 is a general fund appropriation request and \$500,000.00 is an appropriation request from a departmental fund.

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 amendments to add the new claims.

**ATTACHMENT "A"**

**DEPARTMENT OF THE ATTORNEY GENERAL:**

**Honolulu Civil Beat Inc. v. Department of  
the Attorney General** **\$ 79,199.38 (General Fund)**  
**SCAP 21-0000057** **Judgment**  
**Civil No. 1CC-16-1-001743 JMT**

Honolulu Civil Beat Inc. brought a lawsuit against the Department of the Attorney General to force disclosure of a 2016 Attorney General Investigative Report concerning the Auditor's Office. The Hawaii Supreme Court ruled that the report should be disclosed with certain information redacted. Under section 92F-15(d), Hawaii Revised Statutes, a successful plaintiff in a public records lawsuit is entitled to reasonable attorney's fees and costs incurred in the litigation to force disclosure of the records. Final judgment in the amount of \$78,120.00 in attorney's fees and \$1,079.38 in costs, totaling \$79,199.38, was entered on September 30, 2022.

**DEPARTMENT OF EDUCATION:**

**Kristen Kam, et al. v. State of Hawaii** **\$ 250,000.00 (General Fund)**  
**Board of Education, et al.** **Settlement**  
**Civil No. 21-00211 JAO-KJM, USDC**

Plaintiff Kristen Kam alleges that from November 2018 through February 26, 2019, her daughter, K.K., was repeatedly sexually assaulted, sexually abused, harassed, or bullied at Konawaena High School (KHS) by a male high school student after school hours. K.K. was a middle school student at Konawaena Middle School, which was located adjacent to KHS and shared the same plot of land. Plaintiff claims that the State of Hawaii Board of Education, Department of Education, and KHS's principal failed to take actions to protect K.K. from the male student despite having received reports that the male student had previously engaged in misconduct prior to November 2018.

**Cipriano Millano, et al. v. State of Hawaii, et al.** **\$ 750,000.00 (General Fund)**  
**Civil No. 2CC-13-1-000031, Second Circuit** **Settlement**

A lawsuit was filed by the father of a six-year-old student, L.J.M., who injured his eye when he ran into a pedestrian gate while walking with his father on a walkway to his classroom at Lihikai Elementary School in Kahului, Maui. The Department of Education owns the school grounds and operates the school. There is a perimeter fence that surrounds the school grounds. In the fence there is a pedestrian gate that separates a classroom area from the school staff parking stalls. The gate has a common U-latch. Trial proceeded on liability only. The father testified that when he pushed the U-latch up

to open the gate, the gate swung back, the latch fell and struck his son in the left eye. As a result of the injury, L.J.M. lost sight in his eye. The trial court determined that the State was negligent, and its negligence was a legal cause of the accident and injury, and the State was 100 percent at fault. The parties settled for \$750,000.00, which is within the settlement and judgment range for cases involving the loss of vision in one eye.

**Roe No. 113 v. State of Hawaii**  
**Civil No. 1CC191000460, First Circuit**

**\$ 450,000.00** *(General Fund)*  
**Settlement**

Plaintiff alleged that in 1977, when he was a minor student at Highlands Intermediate School, he was repeatedly sexually abused by school security officer, Joseph Moisa. He alleged that the abuse occurred on school grounds, and at a camping trip allegedly arranged by Moisa for participants in the Campus Police Officer (CPO) program. Because the records retention period had long since lapsed, the State was unable to find any relevant records to confirm or refute Plaintiff's allegations other than school yearbooks that seemed to support the claim that Moisa was working at the school as a security officer and was involved in the CPO program. Due to the passage of section 657-1.8, Hawaii Revised Statutes, the statute of limitations was waived for adult survivors of child sexual abuse if they could prove gross negligence on the part of the State. All the State employees who would have been in any position to know any facts or information regarding this matter are dead. Therefore, the Department of Education was unable to offer evidence to contradict Plaintiff's claims and decided to settle for \$450,000.00 rather than risk an adverse judgment of a much higher amount if the case went to trial.

**DEPARTMENT OF HUMAN SERVICES:**

**E.F. v. State of Hawaii, Department**  
**Human Services, et al.**  
**Civil No. 1CCV-20-0000497, First Circuit**

**\$ 35,000.00** *(General Fund)*  
**Settlement**

Plaintiff filed a claim alleging that he was sexually abused by his foster parents in 1964-1967. Plaintiff had two sets of records to support his claim. One was Department of Education records, which stated that he had "foster parents," and included the names "Rose Keim" and "Mr. and Mrs. Keim." The other is a document from the then-named "Juvenile Court" regarding Plaintiff from the 1950s, but there is no remaining file at the family court. There are no documents at the Department of Human Services (from its predecessor, Department of Public Welfare, which later became the Department of Social Services), either due to the passage of time, or because there were never any records for E.F., or the Keims to begin with. Plaintiff alleges that no social worker came to check on him, and if he had been checked, he would have disclosed the abuse and the abuse would have ended. This is a case that was brought under the re-opening of the window for sexual abuse for entity liability, section 657-1.8(b)(2), Hawaii Revised Statutes.

**DEPARTMENT OF TRANSPORTATION:**

**Satya Simmons, et al. v. State of Hawaii, et al.**                      **\$ 500,000.00** (*Dept. Appropriation*)  
**Civil No. 2CC171000224, Second Circuit**    **Settlement**

On the evening of November 27, 2016, a 16-year-old female pedestrian, H.R.S., and her two teenaged male companions were crossing Piilani Highway in Maui in a marked and signalized crosswalk. The “walk” signal was on and the pedestrians had the right-of-way. A pick-up truck driver failed to yield to the pedestrians and struck H.R.S. who later died as a result of her injuries. The highway in the vicinity of the accident and at the intersection has continuous street lighting. On the evening of the accident, one of the four street lights at the intersection was not functioning. The State of Hawaii Department of Transportation (DOT) owns and operates the highway, intersection, and crosswalks. The lights are maintained and repaired by Maui Electric Company (MECO). The street lights were originally installed in the late 1980s to early 1990s as part of residential subdivisions that were developed at the time. Between the original installation and the date of the accident, there had been four highway improvement projects that included the subject intersection. However, the street lights had not been upgraded to meet illumination guidelines that were current at the time of the accident. The DOT had a statewide contract to replace the lights with Light Emitting Diode (LED) lights. DOT mistakenly believed that it owned the street lights on its highways on Maui and included the lights at this intersection in the statewide contract. DOT and MECO disputed ownership of the street lights but because DOT included the replacement of these lights in the contract, the trial court could have determined that this was indicia of control of the lights by the State. Plaintiff Simmons is the decedent’s natural mother. Ms. Simmons sued the driver for negligent operation of his vehicle as well as the State and MECO for negligent design, maintenance, repair, and operation of the street lights. After the lawsuit was filed, the driver passed away of causes unrelated to the accident. Plaintiff settled her claims against the driver’s estate in 2021. More recently, Plaintiff settled her claims with MECO.

**MISCELLANEOUS CLAIMS:**

**Kelly and Robert Armstrong**    **\$ 100,333.33** (*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.

**Community Empowerment Resources**    **\$ 153,110.25** (*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.

**Ding Jing** **\$ 118,524.00** *(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.

**Mercedes Nakaza** **\$ 94.46** *(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.

**Jyron Salamanca** **\$ 1,992.30** *(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.

**Estate of Take Yamashiro** **\$ 4,777.03** *(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”**

**HAWAII STATE FOUNDATION ON CULTURE AND THE ARTS:**

**Claim of Allison D. Wong Daniel** **\$ 55,000.00** *(General Fund)*  
**Settlement**

This is an employment dispute between the State Foundation of Culture and the Arts (SFCA) and its former Executive Director, Allison D. Wong Daniel. The SFCA is governed by a Board of Commissioners, which hired Ms. Wong to serve as the SFCA Executive Director (ED) beginning August 1, 2022. After Ms. Wong began her term, the Board received complaints and concerns about Ms. Wong’s performance as ED. These complaints and concerns made it difficult for Ms. Wong and the SFCA to fulfill their respective responsibilities. The Board decided it would be in the best interests of the SFCA, the State, and Ms. Wong to separate Ms. Wong from her position. In consideration of the agreement to pay Ms. Wong \$55,000.00 to settle the dispute, Ms. Wong resigned from the SFCA on January 31, 2023, and released the State from all claims arising from her employment with SFCA.

**MISCELLANEOUS CLAIMS:**

**Morgan Stanley Smith Barney Holdings LLC** **\$ 239,927.00** *(General Fund)*

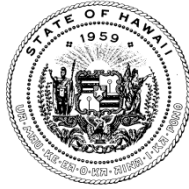
Claimant requests reissuance of an outdated check that was misplaced or lost. The legislative claim was filed with the Attorney General within six years from the date on which the claim for payment matured, within the period specified by section 37-77, HRS.

**Saltchuk Resources, Inc.** **\$ 550,000.00** *(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.



JOSH GREEN, M.D.  
GOVERNOR



**TESTIMONY BY:**  
EDWIN H. SNIFFEN  
DIRECTOR

Deputy Directors  
DREANALEE K. KALILI  
TAMMY L. LEE  
ROBIN K. SHISHIDO  
JAMES KUNANE TOKIOKA

**STATE OF HAWAII**  
**DEPARTMENT OF TRANSPORTATION**  
869 PUNCHBOWL STREET  
HONOLULU, HAWAII 96813-5097

February 22, 2023  
10:30 A.M.  
State Capitol, Room 211 & Videoconference

**S.B. 1277 SD1**  
**RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,**  
**ITS OFFICERS, OR ITS EMPLOYEES**

Senate Committee on Judiciary

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The Department of Transportation supports S.B. 1277 SD1 that authorizes judgements for claims against the State.

Thank you for the opportunity to provide testimony.