



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 7, 2023 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Caron M. Inagaki, Deputy Attorney General

Chair Rhoads 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.

The bill contains nine claims that total \$1,721,396.50. Of this total, \$1,221,396.50 are general funds appropriation requests allocated among eight 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 introduced, three new claims were resolved for an additional \$721,634.25. 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 \$2,443,030.75 allocated among twelve claims. Of this total, \$1,943,030.75 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 SCAP 21-00000057 Civil No. 1CC-16-1-001743 JMT	\$ 79,199.38 (General Fund) Judgment
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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 Board of Education, et al. Civil No. 21-00211 JAO-KJM, USDC	\$ 250,000.00 (General Fund) Settlement
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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. Civil No. 2CC-13-1-000031, Second Circuit	\$ 750,000.00 (General Fund) Settlement
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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.

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.
Civil No. 2CC171000224, Second Circuit**

**\$ 500,000.00 (Dept. Appropriation)
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.

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”

DEPARTMENT OF EDUCATION:

**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.

MISCELLANEOUS CLAIMS:

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.

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 7, 2023
9:30 A.M.
State Capitol, Room 016 & Videoconference

S.B. 1277
RELATING TO JUDGEMENTS AGAINST THE STATE

House Committee on Judiciary and Culture and the Arts

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

Thank you for the opportunity to provide testimony.

SB-1277

Submitted on: 2/4/2023 1:35:47 PM

Testimony for JDC on 2/7/2023 9:30:00 AM

Submitted By	Organization	Testifier Position	Testify
Shana Wailana Kukila	Individual	Oppose	Remotely Via Zoom

Comments:

Aloha Senators,

SB1277, which appropriates funds for claims against the state and its employees, should be amended to include this language:

"The state SHALL NOT be held liable for the illegal acts done by state employees who violate their Oath of Office and who operate outside the bounds of their jurisdiction, their job description, or state policies. Notwithstanding, the state shall be held liable if a state policy or statute violated by a state employee is inconsistent with federal statute."

If government employees, including our legislators, are held personally accountable for their actions, they will not be so quick to break the law. Additionally, the taxpayers are left to pay for these crimes year after year, with money and judicial resources that are already in short supply. As a taxpayer, I myself am sick and tired of paying for the repeated abuses of power that allows the state to cover financially with our hard earned incomes. Our tax dollars need to show more of a return on investment, and public corruption and the liability it poses to the state is an unnecessary drain on our finite resources which could go to other important needs such as providing access to healthcare for our women, children, and vulnerable populations.

Therefore, it is imperative that bad government actors should be held personally accountable for their crimes, which includes financial responsibility paid directly to those whom they have harmed, especially the most vulnerable in our society.

Mahalo,

Shana W. Kukila