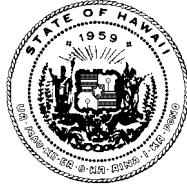


JOSH GREEN, MD.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

TRISTA SPEER
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

April 2, 2024

TO: The Honorable Senator Donovan Dela Cruz, Chair
Senate Committee on Ways & Means

FROM: Cathy Betts, Director

SUBJECT: **HB 2340 HD2 SD1 – MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE
STATE, ITS OFFICERS, OR ITS EMPLOYEES.**

Hearing: April 3, 2024, 10:30 a.m.
Conference Room 211, State Capitol & Video Conference

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports this administration measure and the Department of the Attorney General's proposed amendment to add the settlement of CK, et al. v. Kipapa, et al., Civil No. 1CCV-20-0000641 and a general fund appropriation of \$1,800,000 to Part II, Section 2, paragraph 8 related to the Department of Human Services.

PURPOSE: This bill makes appropriations and approves payments for claims against the State, its officers, and its employees. (SD1)

Thank you for the opportunity to provide testimony in support of this measure.

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: 04/03/2024

Time: 10:30 AM

Location: CR 211 & Videoconference

Committee: Senate Ways and Means

Department: Education

Person Testifying: Keith T. Hayashi, Superintendent of Education

Bill Title: HB 2340, HD2, 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 the passage of HB 2340, HD2, SD1.

The Department appreciates the Legislature's support in providing the funding to settle these claims against the Department. The Department requests that the funding source identified in this administration proposal remain as the state's general fund.

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

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
RYAN K.P. KANAKA'OLE
FIRST DEPUTY
DEAN UYENO
ACTING DEPUTY DIRECTOR - WATER
AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE
MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES
ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Testimony of
DAWN N.S. CHANG
Chairperson

Before the Senate Committee on
WAYS AND MEANS

Wednesday, April 3, 2024
10:30 AM

Via Video Conference, State Capitol, Conference Room 211

In consideration of
HOUSE BILL 2340, HOUSE DRAFT 2, SENATE DRAFT 1
MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR
ITS EMPLOYEES

House Bill 2340, House Draft 2, Senate Draft 1 makes appropriations and approves payments for claims against the State, its officers, and its employees. **The Department of Land and Natural Resources (Department) supports this measure.**

If the Department absorbs responsibility to pay the full and original settlement amount in *Ledford v. Ferguson, et al.*, there would be a drastic negative impact to the operational viability of the Department's Division of Conservation and Resources Enforcement's (DOCARE) budget including, but not limited to the following:

- Inability to hire, train and equip new Conservation and Resources Enforcement Officers.
- Diversion of funds needed to maintain and keep DOCARE's vehicle and marine vessel fleet serviceable to respond to emergencies, complaints and service calls.
- Inability to purchase of law enforcement equipment, including equipment that the Department is contractually obligated to provide to employees.
- Diversion of funds needed for other operational expenses including: officer training, payment of utilities, including electricity and information technology infrastructure.
- Potential restriction to the payment of cost differentials such as night shift differential, limiting the periods of work for Conservation and Resources Enforcement Officers.

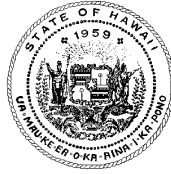
Given these serious concerns, the Department prefers the current version of this bill as it will lessen the negative impact on DOCARE's current level of funding.

The Department encourages the Legislature to pass this measure to ensure DOCARE can maintain its ability to respond and provide its statutorily mandated services.

Mahalo for the opportunity to testify in support of this measure.

JOSH GREEN, M. D.
GOVERNOR
KE KIA'ĀINA

SYLVIA LUKE
LT. GOVERNOR
KA HOPE KIA'ĀINA



BRENN A H. HASHIMOTO
DIRECTOR
KA LUNA HO'OKELE

RYAN YAMANE
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
KA 'OIHANA HO'OMŌHALA LIMAHANA
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

Statement of
BRENN A H. HASHIMOTO
Director, Department of Human Resources Development

Before the
SENATE COMMITTEE ON WAYS AND MEANS
Wednesday, April 3, 2024
10:30 AM
State Capitol, Conference Room 211

In consideration of
**HB2340, HD2, SD1 MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE
STATE, ITS OFFICERS, OR ITS EMPLOYEES**

Chair Dela Cruz, Vice Chair Moriwaki, and the members of the committee.

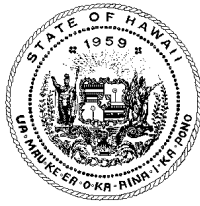
The purpose of HB2340, HD2, SD1 is to seek appropriations to satisfy claims against the state, its officers, or its employees, including claims for legislative relief, judgments against the state, settlements, and miscellaneous claims.

The Department of Human Resources Development (DHRD) supports the intent of this bill; however, we note that Senate Draft 1 includes an amendment which would require DHRD to contribute \$250,000 from its FY24 operating funds toward the settlement of the *Courtney Ledford v. Ethan Ferguson* claim. DHRD does not anticipate having sufficient remaining operating funds within its other current expenses to satisfy that requirement. In fact, it is unlikely that DHRD will lapse any significant amount of such operating funds this fiscal year.

As such, we respectfully request that the bill be amended to remove that provision and to appropriate the full amount of the settlement to the Department of the Attorney General. Or, alternatively, that \$250,000 be appropriated to DHRD to fund our portion of the settlement.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAII
**DEPARTMENT OF CORRECTIONS
AND REHABILITATION**
*Ka 'Oihana Ho'omalu Kalaima
a Ho'oponopono Ola*
1177 Alakea Street
Honolulu, Hawaii 96813

TOMMY JOHNSON
DIRECTOR

Melanie Martin
Deputy Director
Administration

Pamela J. Sturz
Deputy Director
Correctional Institutions

Sanna Muñoz
Deputy Director
Rehabilitation Services
and
Programs

No. _____

TESTIMONY ON HOUSE BILL 2340, HOUSE DRAFT 2, SENATE DRAFT 1
RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,
ITS OFFICERS, OR ITS EMPLOYEES.

By

Tommy Johnson, Director
Department of Corrections and Rehabilitation

Senate Committee on Ways and Means
Senator Donovan M. Dela Cruz, Chair
Senator Sharon Y. Moriwaki, Vice Chair

Wednesday, April 3, 2024; 10:30 a.m.
State Capitol, Conference Room 211 & via Videoconference

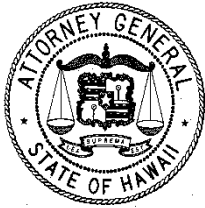
Chair Dela Cruz, Vice Chair Moriwaki, and Members of the Committee:

The Department of Corrections and Rehabilitation (DCR) **supports** the intent of House Bill (HB) 2340, House Draft (HD) 2, Senate Draft (SD) 1 and would like to offer the following comments. DCR supports this bill as it relates to Part II, Section 2 under the Department of Public Safety in *Civil Beat Law Center for Public Interest v. Department of Public Safety, and Kevin A. Lifofoi v. State of Hawaii, Department of Public Safety* identified on Page 4, lines 32-40 in the amount of \$60,401 general funds appropriated to the Department of the Attorney General. However, we respectfully **oppose** the part of the bill under *Leinette Reyes, et. al v. Eric Tanaka* identified on page 5, lines 1-2 that only appropriates \$1,200,000 out of the \$2,000,000 settlement to the Department of the Attorney General with the provision on Page 6, lines 17-21 and Page 7, lines 1-6 that prohibits the attorney general to satisfy the settlement unless DCR expends the sum of \$800,000 from its available general fund appropriation for the fiscal year 2023-2024.

HB 2340, HD 2, SD 1 Relating to Making Appropriations for Claims Against the State,
its Officers, or its Employees
Senate Committee on Ways and Means
April 3, 2024
Page 2

DCR is committed to improving its operations to minimize cases that burden the State and to work with the attorney general in closing cases that are currently active. The \$800,000 that SD 1 mandates DCR to pay, will jeopardize the settlement of this case because DCR lacks the financial resources to make the payment. We urge the Committee on Ways and Means to restore the appropriation of the entire \$2,000,000 (in general funds) settlement payment to the Department of the Attorney General.

Thank you for the opportunity to provide testimony on HB 2340, HD 2, SD1.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2340, H.D. 2, 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, April 3, 2024 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 211 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Skyler G. Cruz, Deputy Attorney General, at 808-586-1494)

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.

The bill, in its current draft, contains 36 claims that total \$13,867,302.37. Of this total, \$6,517,302.37 are general funds appropriation requests allocated among thirty claims, and \$7,350,000.00 are appropriation requests from a departmental fund, allocated among six claims. The amount of the appropriations in the bill differs from the total claims that have been made against the State, which as of the date of the last committee hearing on this bill, totaled \$15,167,302.37. The discrepancy was caused when the last committee amended two of the claims to be paid out of existing departmental funds. Attachment A provides a brief description of each claim that has been made against the State and should be included in this bill.

Since the bill was last amended, five new claims were resolved for an additional \$3,636,226.64. Appropriations totaling \$3,600,265.00 are needed from the general fund and an appropriation of \$35,961.64 is needed from a departmental fund to satisfy these claims. Attachment B provides a brief description of these additional claims.

Including the new claims, the appropriation request totals \$18,803,529.01 allocated among 41 claims. Of this total, \$11,417,567.37 is a general fund appropriation request and \$7,385,961.64 is an appropriation request from a departmental fund.

As introduced, this bill requested that the appropriations in part II be made as a general fund expenditure. However, as mentioned above, part II of this bill has been amended to require the Department of Human Resources Development to expend the sum of \$250,000.00 from its departmental funds for fiscal year 2023-2024 and the Department of Land and Natural Resources to expend the sum of \$250,000.000 from its departmental funds for fiscal year 2023-2024 to satisfy a portion of the settlement in *Courtney Ledford v. Ethan Ferguson, et al.*, Civil No. 17-1-0416, Third Circuit, and to require the Department of Corrections and Rehabilitation to expend the sum of \$800,000.000 from its departmental funds for fiscal year 2023-2024 to satisfy a portion of the settlement in *Leinette Reyes, et al. v. Eric Tanaka*, Civil No. 17-cv-00143 JAO-KJM, USDC. It is the Department's strong position that all amounts appropriated to satisfy the claims in part II of this bill be made as a general fund expenditure. We request that the amounts that were subtracted from the general fund requests for the *Ledford* and *Reyes* cases be restored to this bill as general fund appropriations. With these amounts restored to this bill, the appropriation request totals \$18,803,529.01 allocated among 41 claims. Of this total, \$11,417,567.37 is a general fund appropriation request and \$7,385,961.64 is an appropriation request from a departmental fund.

The Department has 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 request a correction to the name of the Department listed at p 4, line 32. Instead of the Department of Public Safety, it should be the Department of Corrections and Rehabilitation.

We respectfully request passage of this bill with amendments to add the new claims and to make the appropriation as a general fund expenditure for all claims in part II.

ATTACHMENT "A"

AGRIBUSINESS DEVELOPMENT CORP:

Ohana Best LLC v. State of Hawaii
Civil No. 1CC-19-1001640, First Circuit

\$1,250,000.00 *(General Fund)*
Settlement

The Agribusiness Development Corporation (ADC) acquired the former Galbraith Estates (Estates) in December 2012. ADC advertised for farmers to license the Estates in February 2013, despite knowing that there was insufficient water available for all the properties. Ohana Best LLC submitted a farming application to ADC requesting a large parcel of land. In January 2014, ADC granted Ohana Best a license to farm 160 acres of the Estates. The Executive Director of ADC, James Nakatani (Nakatani), assured Ohana Best that water for farming would shortly be available. Based on these assurances, Ohana Best prepared the land, purchased irrigation infrastructure, installed farm buildings, and incurred other expenses while waiting for water delivery. Each time Ohana Best asked ADC when water would be delivered, Nakatani told them "soon." By August 2016, Ohana Best abandoned the farm when it became apparent that water would not be provided as promised.

DEPARTMENT OF THE ATTORNEY GENERAL:

Rodney Pagba v. Anne E. Lopez
Civil No. 22-cv-00521 JMS-KJM USDC

\$ 5,707.00 *(General Fund)*
Settlement

Plaintiff was convicted of third-degree assault, a misdemeanor under Hawaii law, in 1988. In 2022, he applied for a permit to acquire a firearm under section 134-2, Hawaii Revised Statutes (HRS), and was denied. Section 134-7, HRS, imposes an indefinite prohibition on persons convicted of crimes of violence from owning or possessing firearms. Plaintiff sued the City and County of Honolulu and the Attorney General, arguing that the denial of his application violated the Second Amendment to the United States Constitution. The parties agreed to stay this case pending the Legislature's consideration of Act 52 of 2023 (S.B. No. 1230) which, among other things, adopted a twenty-year disqualification from firearms possession, rather than an indefinite disqualification, for persons convicted of misdemeanor crimes of violence. The parties agreed to a nominal settlement in order to provide for an orderly resolution of this case and to avoid further litigation.

Michael Santucci v. City & County of Honolulu
Civil No. 22-cv-00142 DKW-KJM, USDC

\$ 28,000.00 *(General Fund)*
Judgment

This lawsuit sought declaratory relief and an injunction against enforcement of section 134-7(c), HRS, which prohibits the possession of firearms by a person who "[i]s or has been diagnosed as having a significant behavioral, emotional, or mental disorders (sic)

as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes[.]” The complaint raised a Second Amendment claim in addition to other legal challenges, including equal protection, vagueness, and due process. Plaintiff, a naval officer, moved to Hawaii in 2021. According to the Complaint, Plaintiff saw a medical provider because he was feeling depressed and homesick. When Plaintiff sought to register his firearms, he indicated on the relevant form that he had “been diagnosed as having a behavioral, emotional, or mental disorder(s)” and indicated that his diagnosis was “not serious.” The City and County of Honolulu denied Plaintiff’s application to register his firearms. The district court determined that the City and County of Honolulu had wrongly denied Plaintiff’s application, and all parties subsequently entered into a stipulated injunction. Judgment was entered against the City and County of Honolulu for \$102,500.00 and the State for \$28,000.00 for attorneys’ fees. Subsequently the form was amended and the relevant provision of the statute was revised via Act 52, Session Laws of Hawaii 2023.

**Smith and Wesson v. Hawaii State Department
of the Attorney General
Civil No. 1CCV-22-000353, First Circuit**

**\$ 70,468.07 (General Fund)
Judgment**

Plaintiff filed suit alleging a violation of chapter 92F, HRS, the Uniform Information Practices Act (UIPA). Before the lawsuit was filed, Plaintiff submitted nine requests to the Department of the Attorney General (Department) for records regarding “firearms litigation, firearms marketing practices, firearm safety, firearm violence, firearm violence prevention, gun law reform, or gun control.” The Department reviewed the requests and provided Plaintiff with an estimate of the amount of time it would need to review, redact, and segregate the relevant documents and an estimate of the total fees and costs for review and segregation of the relevant documents. The Department then notified Plaintiff of the estimated fees and costs and requested a fifty percent down payment before the Department started the process. Plaintiff brought this suit against the Department claiming that it violated the UIPA, on the basis that the estimate was designed to prohibit Plaintiff access to the records it sought. The Court entered summary judgment in favor of Plaintiff and awarded Plaintiff its attorneys’ fees and costs.

**Todd Yukutake v. Anne E. Lopez
Civil No. 22-cv-00323 JAO-WRP, USDC**

**\$ 50,000.00 (General Fund)
Judgment**

Plaintiffs Todd Yukutake and Justin Solomon asserted that Hawaii’s ban on carrying billy clubs in section 134-51(a), HRS, violated the Second Amendment. Plaintiffs sued the Attorney General in her official capacity. The Attorney General moved to dismiss Plaintiffs’ claims, but the motion was denied. Subsequently, to avoid the need for, and risks associated with, further litigation, the parties entered into a stipulated judgment which included \$50,000.00 in attorneys’ fees.

DEPARTMENT OF EDUCATION:

Ralphielyn L.M. Gaston-Lovell v. State of Hawaii, **\$ 550,000.00 (General Fund)**
Department of Education **Settlement**
Civil No. 3CCV-22-0000163, Third Circuit

Plaintiff Ralphielyn L.M. Gaston-Lovell brought this lawsuit on behalf of herself and her son, “B.G.L.”, a minor. B.G.L. was born with a health condition – congenital hydrocephalus – which severely limits his speech and mobility and has him mostly confined to a wheelchair or a non-motorized standup wheelchair. On November 5, 2021, B.G.L.’s Educational Assistant took B.G.L. to the school parking lot for his morning exercise routine in which the Educational Assistant would push B.G.L. in his standup wheelchair and have B.G.L. steer himself at certain points. On the day of the incident, the Educational Assistant gave B.G.L. a push and the wheelchair fell over causing B.G.L. to hit his head on the ground. B.G.L. was unable to brace himself for the impact because of the nature of the wheelchair. B.G.L. suffered a subdural hematoma as a result of the accident, which required him to be flown from Hawaii Island to Oahu for treatment and surgery. B.G.L. was released from the hospital on November 11, 2021. B.G.L. was 11 years old when the accident occurred.

John Roe No. 122 v. State of Hawaii **\$ 450,000.00 (General Fund)**
Civil No. 1CCV-19-0002046, First Circuit **Settlement**

Plaintiff alleged that in 1976-1977 when he was a minor student at Highlands Intermediate School, he was repeatedly sexually abused by a school security officer, Joseph Moisa. Plaintiff alleged that the abuse occurred on school grounds, at a camping trip allegedly arranged by Moisa for participants in the Campus Police Officer (CPO) program, and in a hotel room. 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. The State was able to find 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 during the relevant period of time. Due to the enactment of section 657-1.8, HRS, in 2018, 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 (DOE) was unable to offer evidence to contradict Plaintiff’s claims and decided to settle the case to avoid the risk of an adverse judgment.

Amanda Kelly v. Debra Farmer **\$ 50,000.00 (General Fund)**
Civil No. 1CCV-20-0000825, First Circuit **Settlement**

Plaintiff provided private services as a Board Certified Behavior Analyst to DOE students while employed as a private contractor. Plaintiff commonly participated in

special education Individualized Education Plan (IEP) meetings with her clients. Defendants are current or former DOE employees. Plaintiff asserted defamation claims against the Defendants, in their individual capacities, for allegedly disseminating written and oral statements to Plaintiff's employer and supervisors complaining of Plaintiff's "aggressive" or "negative" conduct, some of which included the threat of withholding future DOE contracts unless Plaintiff was transferred or removed from all DOE-related work. Plaintiff claimed that the Defendants' statements caused her to suffer significant damage to her reputation for which she sought damages.

DEPARTMENT OF HUMAN SERVICES:

**Sherri-Ann Garrett v. State of Hawaii,
Department of Human Services
Civil No. 19-1-008K, Third Circuit**

**\$ 750,000.00 (General Fund)
Settlement**

Plaintiffs Sheri-Ann Garrett and Juben Garcia, biological parents of the deceased child, F.G., brought this lawsuit against the Department of Human Services, State of Hawaii (State), alleging damages stemming from the death of F.G. on July 25, 2017, while F.G. was in foster custody. Plaintiffs alleged that the State was negligent in its supervision and monitoring of the foster home while F.G., along with his two siblings, A.G. and P.G., were placed in the home. On July 25, 2017, F.G. was found unresponsive in his crib in the foster home and was declared dead at the hospital later that day. The foster parents claimed that F.G.'s death was the result of an accident where F.G. lost his balance and fell from a 3-foot-high bench onto his face while wearing virtual reality goggles. The County Coroner determined the cause of death to be "blunt force trauma to the head." Plaintiffs asserted that the State fell below a reasonable standard of care in that its negligent supervision of F.G. and his siblings led to F.G.'s death at the foster home. Plaintiffs requested special damages for funeral/burial expenses, past and future medical expenses, conscious pain and suffering, severe emotional distress and mental anguish, loss of future enjoyment of life, consortium, filial care, and other general damages. F.G. was 3 years old at the time of his death.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

**Courtney Ledford v. Ethan Ferguson
Civil No. 17-1-0416, Third Circuit**

**\$1,250,000.00 (General Fund)
Settlement**

Plaintiff brought this lawsuit against the State of Hawaii and Ethan Ferguson, a former Department of Land and Natural Resources Conservation and Resources Enforcement Officer, alleging that she had been sexually assaulted by Ferguson at the Lalakea Beach Park on Hawaii island. Ferguson was prosecuted and convicted on five counts of sexual assault. In a Second Amended Complaint, Plaintiff claimed that the State should not have hired Ferguson based upon information disclosed in his employment application relating to his termination from the Honolulu Police Department. Plaintiff

asserted claims against the State for negligent hiring, retention, and supervision, and negligent infliction of emotional distress.

Pamela Ann Flanagin (Personal Representative) v. State of Hawaii, **\$ 300,000.00** *(General Fund)*
Civil No. 1CCV191000173, First Circuit **Settlement**

Plaintiff Paul T. Beyer (Beyer) alleged that on July 2, 2017, he contracted a flesh-eating bacterium after he was forced to walk through standing water at the Ke‘ehi Boat Harbor (Ke‘ehi Harbor) to reach a boat docked at a slip that he rented at the Ke‘ehi Harbor. Beyer sued the State of Hawaii (State) alleging that the State knew, or should have known, that the water in and/or around Ke‘ehi Harbor contained dangerous levels of harmful bacteria, should have warned citizens about the dangerous levels of harmful bacteria in the water, and failed to post visible and/or effective warnings in the part of Ke‘ehi Harbor where it knew, or reasonably should have known, that Beyer would be walking. After the lawsuit was filed, Beyer passed away from unrelated causes and Plaintiff Pamela Ann Flanagin was substituted in as Personal Representative of the Estate of Paul T. Beyer. A Court Annexed Arbitration Program (CAAP) hearing was held on June 15, 2021. The CAAP Arbitrator found the State to be 100 percent liable and awarded Beyer \$469,126.50 in damages. The State appealed the award and thereafter settled this matter for \$300,000.00.

DEPARTMENT OF CORRECTIONS AND REHABILITATION (fka DEPARTMENT OF PUBLIC SAFETY):

Civil Beat Law Center for the Public Interest v. Department of Public Safety **\$ 401.00** *(General Fund)*
Civil No. 1CCV-23-0000943, First Circuit **Settlement**

In April 2023, Civil Beat Center for the Public Interest (Civil Beat) requested records from the Department of Public Safety (PSD), referred to in the request as “data dictionaries,” that are maintained by PSD’s Intake Service Center (ISC) in the Offendertrak program PSD uses to keep track of its inmates. PSD denied the records request because the Offendertrak’s “data dictionaries” are part of a commercial proprietary computer program purchased by PSD in 1993 from a company that was later taken over by Motorola and a program that ISC developed in-house. PSD also denied the records request pursuant to section 92F-13(3), HRS, on the basis that the disclosure of the ISC and Offendertrak “data dictionaries” would jeopardize the security of the programs and increase the risk of a computer hack. Civil Beat filed this suit alleging that PSD improperly denied its records request.

**Kevin A. Lifoifoi v. State of Hawaii, Department
of Public Safety
Civil No. 2CCV-21-0000067(2), Second Circuit**

**\$ 60,000.00 (General Fund)
Settlement**

Plaintiff alleged that he suffered a broken jaw due to an assault by another inmate during a riot that occurred on March 11, 2019, at the Maui Community Correctional Center. Plaintiff alleged that four or five Adult Correction Officers were about fifty to sixty feet away at the time of the incident, but did nothing to control the situation. Due to multiple fractures being discovered in Plaintiff's jaw, Plaintiff was required to undergo a surgical stabilization procedure and his jaw was wired shut to minimize nerve injury.

**Leinette Reyes, et al. v. Eric Tanaka
Civil No. 17-cv-00143 JAO-KJM, USDC**

**\$2,000,000.00 (General Fund)
Settlement**

Plaintiffs are current and former female inmates at the Women's Community Correctional Center (WCCC) who asserted civil rights claims under 42 U.S.C. § 1983 and state law claims alleging that they were sexually assaulted by four Adult Corrections Officers (ACOs). The State prosecuted the ACOs on sexual assault charges, and two of the ACOs pleaded guilty or no contest to the charges. Plaintiffs alleged that Eric Tanaka, who was the warden at WCCC during the relevant time period, failed to supervise the ACOs and condoned a culture, pattern, and policy of sexual abuse.

HAWAII PUBLIC HOUSING AUTHORITY:

**Edwin Kalamau, Sr. v. State of Hawaii
Civil No. 1CCV-22-0000701, First Circuit**

**\$ 107,695.12 (General Fund)
Judgment**

Plaintiff slipped and fell in a puddle of water in the underground parking garage of the Pumehana Federal Housing Project, where he was a resident. The property is managed by the Hawaii Public Housing Authority. Plaintiff suffered injuries to his cervical spine. The arbitrator found that Plaintiff sustained damages in the amount of \$205,405.23 but reduced the amount by fifty percent for Plaintiff's contributory negligence. With costs, Plaintiff was awarded a total of \$103,313.50. Neither party appealed and judgment was entered. With interest, the total appropriation amount is \$107,695.12.

DEPARTMENT OF TRANSPORTATION:

**Michelle Banks v. State of Hawaii
Civil No. 1CCV-22-0000089, First Circuit**

**\$ 3,900,000.00 (Dept. Appropriation)
Settlement**

This case arose out of a single motor vehicle accident fatality that occurred on the H-3 freeway beyond Exit 11 in Kaneohe. Joshua Banks was heading northeast toward Marine Corps Base Hawaii and drove off the freeway and into the guardrail.

Approximately 18 months prior to Mr. Banks' accident, there had been another accident where a driver drove off the freeway and into the guardrail. At that time, there was an ET-Plus terminal system on the guardrail. ET-Plus complies with Federal Highway Administration crash test criteria and the driver survived. A DOT crew cut away the damaged guardrail and terminal and put a temporary end on the guardrail that is referred to as a "boxing glove," which is a curved or rounded guardrail end. The "glove" is not an approved crashworthy guardrail end treatment for the speed of the site. The DOT Oahu District had a contract with GP Roadway Solutions for guardrail repairs and replacements, but the district did not make a request to GP Roadway Solutions to repair the subject guardrail or replace the ET-Plus terminal. The DOT's temporary repair and "glove" remained on the subject guardrail when Mr. Banks' accident occurred. His vehicle was speared by the "glove" and the guardrail. The ET-Plus terminal and other approved crashworthy guardrail terminals prevent the type of "spearing" accidents that "glove" end treatments are unlikely to prevent. Mr. Banks died of his injuries at the scene. He was 21 years old.

**Bianca Chavez v. Department of
Transportation
Civil No. 1CC191001542, First Circuit**

\$ 125,000.00 (Dept. Appropriation)
Settlement

The DOT owns and operates Kamehameha Highway. On one side of the highway is a City and County of Honolulu driveway that leads to the Pali Golf Course (PGC) and on the other side is a private driveway that leads to the Hawai'i Pacific University Hawaii Loa (HPU) windward campus parking lot. There is a crosswalk between the PGC side of the highway and the HPU side of the highway. A bus stop is located on the PGC side of the highway. The speed limit is 35 mph in that location. There is a history of student-pedestrian versus motor vehicle accidents in the crosswalk. In addition, prior to this accident, the area neighborhood board notified the DOT of their concerns that the crosswalk was "dangerous." The DOT was proactive in its response and installed a Rectangular Rapid Flashing Beacon (RRFB) system at the crosswalk in August 2011. After testing, the system went into operation in October 2011.

Approximately one month after the installation of the RRFB in 2011, an HPU student walking across the highway in the crosswalk was struck and killed by a hit-and-run driver. There was no evidence that she had activated the RRFB before she began to cross the highway. There were no other reported pedestrian versus motor vehicle incidents at the subject crosswalk until the evening of October 8, 2017, when the plaintiff, Bianca Chavez, an HPU student, was walking in the crosswalk with a friend to her dormitory. Unlike the prior accident, the plaintiff had activated the RRFB before crossing the highway. A driver of a van hit both pedestrians and the plaintiff was severely injured. The driver claimed that he did not see the pedestrians until "a second" before he hit them, and he also claimed that the "flashing yellow lights" from the RRFB "confused" him. Although the driver was primarily liable to the plaintiff, and the RRFB system is known to be effective in getting driver compliance to stop or yield to pedestrians, the adequacy of the lighting in the vicinity of the subject site became an

issue when the plaintiff's lighting expert opined that the street lighting was inadequate and did not meet the current engineering standards. Virginia Tech Transportation Institute (VTTI) was hired to study the highway street lighting by collecting illumination data and performing analyses that included a comparison of the illumination prior to and after the replacement of High Pressure Sodium light fixtures with Light Emitting Diodes (LED) fixtures in 2013. The VTTI report showed that the illumination had decreased rather than increased in some areas along the highway after the LED fixtures were installed.

Violet Fontes-Ringor v. State of Hawaii,
Department of Transportation
Civil No. 1CCV-23-0000768, First Circuit

\$ 150,000.00 *(Dept. Appropriation)*
Settlement

On July 23, 2021, Plaintiff Violet Fontes-Ringor was operating her Sport Utility Vehicle (SUV) on South Kamehameha Highway in Wahiawa town. Plaintiff alleges that she was at a complete stop in traffic. State of Hawaii (State) Department of Transportation (HDOT) employee Darnell Lane was on duty and operating an HDOT owned Ford pickup truck heading back to a highways division field office. The HDOT truck rear-ended Plaintiff's SUV which was then pushed into the rear of a rented vehicle that had also been at a complete stop in traffic. Plaintiff sued both the State and employee Mr. Lane. She claimed that the State is liable under the doctrine of respondeat superior as the employer of Mr. Lane and for negligent supervision and training. She also claimed that Mr. Lane was negligent in his operation of the HDOT truck. Plaintiff claimed that she sustained multiple injuries as the result of the accident and considerable damage to her SUV, as well as incurred considerable medical expenses for treatment of her injuries and her lost earnings.

David Lawrence v. State of Hawaii
Civil No. 2CCV-22-0000273, Second Circuit

\$ 2,950,000.00 *(Dept. Appropriation)*
Settlement

Plaintiff David Lawrence was injured when he encountered a "bump and crack" in the pavement surface created by tree roots while he was bicycling southbound on Kekaulike Avenue in Kula, Maui. Mr. Lawrence sustained a traumatic brain injury as well as fractures and loss of earnings and will incur future medical care expenses. Plaintiffs, Mr. Lawrence and his wife, Sandra Lawrence, brought this lawsuit against the State claiming, among other things, that the State had notice of the condition described, that the condition was hazardous, that the State had negligently breached its duty to inspect, repair, or maintain the highway in a reasonably safe condition or warn of defects in the road. Mrs. Lawrence made claims for loss of consortium and emotional distress.

Patrick Mitchell v. State of Hawaii
Civil No. 3CCV-20-000024, Third Circuit

\$ 125,000.00 (Dept. Appropriation)
Settlement

Defendants Goodfellow Bros., Inc. (GBI) and DOT had a design-build contract for the "Queen Kaahumanu Highway Widening Phase 2" (Contract). Under the Contract, GBI contracted with and hired its own design engineer and all subcontractors through the completion of the project. GBI was to manage traffic control during construction in compliance with standards and guidelines as well as other federal and state guidelines, including those pertaining to safety. On May 20, 2018, Patrick Mitchell was riding his bicycle northbound on Queen Kaahumanu Highway approaching Honokōhau Street. A pick-up truck driver was making a left turn from Honokōhau Street onto the highway southbound. As Mr. Mitchell approached the intersection, the truck driver accelerated from the stop line into Mr. Mitchell's path. Mr. Mitchell and his bicycle impacted the left driver side rear door of the truck. There was no liability insurance covering the truck. Mr. Mitchell sustained severe and permanent injuries that resulted in permanent disability and extensive health care costs. The plaintiffs, Mr. Mitchell and his wife, filed a lawsuit against GBI, the pick-up truck driver, and the owner of the pick-up truck. One of the claims was that the left turns should have been eliminated early in the project, and then the subject accident would not have occurred. The plaintiffs also claimed that there was a dispute between GBI and the DOT as to whether GBI failed to comply with contract procedures to submit a recommendation to eliminate left turns at the intersection prior to the subject accident. Although the driver was primarily at fault, and although the elimination of left turns at the intersection during construction was not mandated by standards or guidelines, under section 663-10.9, HRS, there was a risk that the State and GBI would be found jointly and severally liable for the driver's share of fault.

Charles David Yandell v. State of Hawaii,
Department of Transportation
Civil No. 5CCV-21-0000100, Fifth Circuit

\$ 100,000.00 (Dept. Appropriation)
Settlement

Before sunrise on October 25, 2019, Cindy Yandell and her sister-in-law, Kristi Molz, were struck by a vehicle while walking in an unsignalized crosswalk at the junction of Kuhio Highway and Ala Road in Kapaa, Kauai. There is a streetlight above the crosswalk. Kuhio Highway has a northbound lane, a southbound lane, and a two-way left turn lane for either direction of travel that separates the two through lanes. The pedestrians were struck by a car driven by a tourist who was heading south on the highway. The driver said that he did not see the pedestrians in time to avoid hitting them. The accident was captured on surveillance video from a nearby shop. Ms. Yandell died of her injuries. Ms. Molz sustained multiple fractures and remained in the hospital for approximately two weeks before returning home to the mainland. The plaintiffs reached a confidential settlement with the driver before the lawsuit was filed. The plaintiffs then filed a lawsuit against the DOT for negligent design and operation of the highway and against Kaua'i Island Utility Cooperative (KIUC) for inadequate street

lighting. When the video revealed that the lights were on and operating properly, the plaintiffs dismissed their claims against KIUC and proceeded against the DOT only.

MISCELLANEOUS CLAIMS:

Employers Insurance Company of Wausau **\$ 147,657.77** *(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, or claimant has shown good cause for any delay.

Merrill Lynch Pierce Fenner & Smith **\$ 13,824.40** *(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 or claimant has shown good cause for any delay.

Amy Chang **\$ 27.00** *(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, or claimant has shown good cause for any delay.

County of Hawaii, Hawaii Fire Department **\$ 360,000.00** *(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, or claimant has shown good cause for any delay.

James X He and Yue-Chuen C. Lin **\$ 559.00** *(General Fund)*

Claimants request 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, or claimants have shown good cause for any delay.

The Estate of Morris A. Inasaki **\$ 550.00** *(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, or claimant has shown good cause for any delay.

Laura Ishii **\$ 120.00** *(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, or claimant has shown good cause for any delay.

Lien T. Nguyen **\$ 110.00** *(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, or claimant has shown good cause for any delay.

Matthew W. Payne **\$ 445.00** *(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, or claimant has shown good cause for any delay.

Chaniel Ramo **\$ 167.00** *(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, or claimant has shown good cause for any delay.

Sedring Bulda & Katherine Bulda **\$ 1,236.00** *(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, or claimant has shown good cause for any delay.

Shirokiya Cosmetics Inc. **\$ 7,259.00** *(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, or claimant has shown good cause for any delay.

Two Spirits, Inc.

\$ 358,413.97 *(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, or claimant has shown good cause for any delay.

Wallace K. Yashima

\$ 3,916.04 *(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, or claimant has shown good cause for any delay.

**Wallace Yashima and
Hyang-Suk Yashima**

\$ 746.00 *(General Fund)*

Claimants request 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, or claimants have shown good cause for any delay.

ATTACHMENT “B”

DEPARTMENT OF THE ATTORNEY GENERAL:

Schweitzer v. State of Hawaii
Civil No. 3CSP-23-000003, Third Circuit

\$ 800,000.00 *(General Fund)*
Settlement

Albert Ian Schweitzer (Schweitzer) was tried and convicted for the murder, kidnapping, and sexual assault of Dana Ireland that occurred on Hawaii Island in December 1991. On May 23, 2019, the Hawaii Innocence Project entered into a Conviction Integrity Agreement with the Office of the Prosecuting Attorney for the County of Hawaii to re-investigate the case, which led to the discovery of new evidence (i.e., DNA, bitemark, and tire tread evidence) and the recantation of witness testimony. On January 23, 2023, Schweitzer filed a petition against the State of Hawaii to vacate his convictions and sentence and for his immediate release from custody based on the newly discovered evidence, which had not been presented to the jury in his criminal trial. Schweitzer’s petition came on for a hearing on January 24, 2023. The Court found that based on the new evidence, a jury in a new trial would likely reach a verdict of acquittal and, therefore, the Court vacated Schweitzer’s conviction and indictment without prejudice. On March 7, 2024, Schweitzer filed a Motion for Finding of Actual Innocence pursuant to section 661B-3, Hawaii Revised Statutes, which provides that a petitioner who has proven a claim for wrongful conviction and imprisonment shall be awarded \$50,000 for each year of actual confinement, including time spent awaiting trial, served by the petitioner for the crime or crimes for which the petitioner was actually innocent. Schweitzer, who served 23 years in prison, would be entitled to approximately \$1,150,000.00 in compensation if the Court granted his petition and entered a finding of actual innocence.

DEPARTMENT OF EDUCATION:

A.B. v. Department of Education
Civil No. 18-00477 LEK-RT, USDC

\$1,000,000.00 *(General Fund)*
Settlement

This was a Title IX gender equity class action lawsuit involving athletics at James Campbell High School (JCHS) in Ewa Beach. The Plaintiffs, a class of female student athletes, claimed that their athletic programs were inferior to the boys’ programs. The parties reached a settlement of Plaintiffs’ claims, which includes a plan to bring JCHS into compliance with Title IX over a period of years. No monetary damages were paid to the Plaintiffs. The parties subsequently settled Plaintiffs’ claim for attorneys’ fees and costs with the State paying \$1,000,000.00.

DEPARTMENT OF HUMAN SERVICES:

**C.K., J.M., and T.M. v. Department of
Human Services
Civil No. 1ccv-20-0000641, First Circuit**

\$1,800,000.00 *(General Fund)*
Settlement

The Plaintiffs, who were minors at all relevant times, brought this lawsuit against the Department of Human Services (DHS) alleging that while they were in a DHS foster care home they were sexually abused by a teenager living in the foster care home. DHS was aware that the teenager had previously sexually abused his biological sister. DHS officially placed him with the foster care home in 1998 when he was 13-years-old and allowed the foster caregivers to adopt him later that same year. The teenager continued to live in the foster care home until 2004. DHS warned the foster caregivers to protect other children from the teenager and required the teenager to attend psychological treatment while in foster care. The Plaintiffs alleged, however, that DHS should not have allowed his placement and subsequent adoption into a home with other children. This lawsuit was brought under section 657-1.8(b), Hawaii Revised Statutes, which allowed a waiver of the statute of limitations for adult survivors of childhood sexual abuse.

DEPARTMENT OF TRANSPORTATION:

**Allstate Insurance Company v.
State of Hawaii Department of Transportation
Civil No. 1CCV-23-0000397, First Circuit**

\$ 35,961.64 *(Dept. Appropriation)*
Settlement

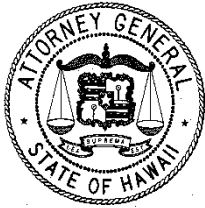
On March 25, 2021, a State of Hawaii Department of Transportation (DOT) employee drove over a bump in the road and lost control of his DOT truck causing him to collide into a van owned by Kevin Shimizu (Shimizu). The DOT employee was in the course and scope of his employment at the time of the accident. The van was deemed a total loss and Shimizu's insurer, Allstate Insurance Company, filed a subrogation lawsuit to recoup the expenses it paid as a result of accident and the deductible on behalf of Shimizu. The case settled for the full value of the property damage claim with each party agreeing to pay its own attorneys' fees and costs.

MISCELLANEOUS CLAIMS:

Jessie J. McMorrow and Kevin B. McMorrow

\$ 265.00 *(General Fund)*

Claimants request 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, or claimant has shown good cause for any delay.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

H.B. NO. 2340, H.D. 2, 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, April 3, 2024 **TIME:** 10:30 a.m.

LOCATION: State Capitol, Room 211 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Skyler G. Cruz, Deputy Attorney General, at 808-586-1494)

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.

The bill, in its current draft, contains 36 claims that total \$13,867,302.37. Of this total, \$6,517,302.37 are general funds appropriation requests allocated among thirty claims, and \$7,350,000.00 are appropriation requests from a departmental fund, allocated among six claims. The amount of the appropriations in the bill differs from the total claims that have been made against the State, which as of the date of the last committee hearing on this bill, totaled \$15,167,302.37. The discrepancy was caused when the last committee amended two of the claims to be paid out of existing departmental funds. Attachment A provides a brief description of each claim that has been made against the State and should be included in this bill.

Since the bill was last amended, five new claims were resolved for an additional \$3,636,226.64. Appropriations totaling \$3,600,265.00 are needed from the general fund and an appropriation of \$35,961.64 is needed from a departmental fund to satisfy these claims. Attachment B provides a brief description of these additional claims.

Including the new claims, the appropriation request totals \$18,803,529.01 allocated among 41 claims. Of this total, \$11,417,567.37 is a general fund appropriation request and \$7,385,961.64 is an appropriation request from a departmental fund.

As introduced, this bill requested that the appropriations in part II be made as a general fund expenditure. However, as mentioned above, part II of this bill has been amended to require the Department of Human Resources Development to expend the sum of \$250,000.00 from its departmental funds for fiscal year 2023-2024 and the Department of Land and Natural Resources to expend the sum of \$250,000.000 from its departmental funds for fiscal year 2023-2024 to satisfy a portion of the settlement in *Courtney Ledford v. Ethan Ferguson, et al.*, Civil No. 17-1-0416, Third Circuit, and to require the Department of Corrections and Rehabilitation to expend the sum of \$800,000.000 from its departmental funds for fiscal year 2023-2024 to satisfy a portion of the settlement in *Leinette Reyes, et al. v. Eric Tanaka*, Civil No. 17-cv-00143 JAO-KJM, USDC. It is the Department's strong position that all amounts appropriated to satisfy the claims in part II of this bill be made as a general fund expenditure. We request that the amounts that were subtracted from the general fund requests for the *Ledford* and *Reyes* cases be restored to this bill as general fund appropriations. With these amounts restored to this bill, the appropriation request totals \$18,803,529.01 allocated among 41 claims. Of this total, \$11,417,567.37 is a general fund appropriation request and \$7,385,961.64 is an appropriation request from a departmental fund.

The Department has 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 request a correction to the name of the Department listed at p 4, line 32. Instead of the Department of Public Safety, it should be the Department of Corrections and Rehabilitation.

We respectfully request passage of this bill with amendments to add the new claims and to make the appropriation as a general fund expenditure for all claims in part II.

ATTACHMENT “A”

AGRIBUSINESS DEVELOPMENT CORP:

Ohana Best LLC v. State of Hawaii
Civil No. 1CC-19-1001640, First Circuit

\$1,250,000.00 *(General Fund)*
Settlement

The Agribusiness Development Corporation (ADC) acquired the former Galbraith Estates (Estates) in December 2012. ADC advertised for farmers to license the Estates in February 2013, despite knowing that there was insufficient water available for all the properties. Ohana Best LLC submitted a farming application to ADC requesting a large parcel of land. In January 2014, ADC granted Ohana Best a license to farm 160 acres of the Estates. The Executive Director of ADC, James Nakatani (Nakatani), assured Ohana Best that water for farming would shortly be available. Based on these assurances, Ohana Best prepared the land, purchased irrigation infrastructure, installed farm buildings, and incurred other expenses while waiting for water delivery. Each time Ohana Best asked ADC when water would be delivered, Nakatani told them “soon.” By August 2016, Ohana Best abandoned the farm when it became apparent that water would not be provided as promised.

DEPARTMENT OF THE ATTORNEY GENERAL:

Rodney Pagba v. Anne E. Lopez
Civil No. 22-cv-00521 JMS-KJM USDC

\$ 5,707.00 *(General Fund)*
Settlement

Plaintiff was convicted of third-degree assault, a misdemeanor under Hawaii law, in 1988. In 2022, he applied for a permit to acquire a firearm under section 134-2, Hawaii Revised Statutes (HRS), and was denied. Section 134-7, HRS, imposes an indefinite prohibition on persons convicted of crimes of violence from owning or possessing firearms. Plaintiff sued the City and County of Honolulu and the Attorney General, arguing that the denial of his application violated the Second Amendment to the United States Constitution. The parties agreed to stay this case pending the Legislature’s consideration of Act 52 of 2023 (S.B. No. 1230) which, among other things, adopted a twenty-year disqualification from firearms possession, rather than an indefinite disqualification, for persons convicted of misdemeanor crimes of violence. The parties agreed to a nominal settlement in order to provide for an orderly resolution of this case and to avoid further litigation.

Michael Santucci v. City & County of Honolulu
Civil No. 22-cv-00142 DKW-KJM, USDC

\$ 28,000.00 *(General Fund)*
Judgment

This lawsuit sought declaratory relief and an injunction against enforcement of section 134-7(c), HRS, which prohibits the possession of firearms by a person who “[i]s or has been diagnosed as having a significant behavioral, emotional, or mental disorders (sic)

as defined by the most current diagnostic manual of the American Psychiatric Association or for treatment for organic brain syndromes[.]” The complaint raised a Second Amendment claim in addition to other legal challenges, including equal protection, vagueness, and due process. Plaintiff, a naval officer, moved to Hawaii in 2021. According to the Complaint, Plaintiff saw a medical provider because he was feeling depressed and homesick. When Plaintiff sought to register his firearms, he indicated on the relevant form that he had “been diagnosed as having a behavioral, emotional, or mental disorder(s)” and indicated that his diagnosis was “not serious.” The City and County of Honolulu denied Plaintiff’s application to register his firearms. The district court determined that the City and County of Honolulu had wrongly denied Plaintiff’s application, and all parties subsequently entered into a stipulated injunction. Judgment was entered against the City and County of Honolulu for \$102,500.00 and the State for \$28,000.00 for attorneys’ fees. Subsequently the form was amended and the relevant provision of the statute was revised via Act 52, Session Laws of Hawaii 2023.

**Smith and Wesson v. Hawaii State Department
of the Attorney General** **\$ 70,468.07 (General Fund)**
Civil No. 1CCV-22-000353, First Circuit **Judgment**

Plaintiff filed suit alleging a violation of chapter 92F, HRS, the Uniform Information Practices Act (UIPA). Before the lawsuit was filed, Plaintiff submitted nine requests to the Department of the Attorney General (Department) for records regarding “firearms litigation, firearms marketing practices, firearm safety, firearm violence, firearm violence prevention, gun law reform, or gun control.” The Department reviewed the requests and provided Plaintiff with an estimate of the amount of time it would need to review, redact, and segregate the relevant documents and an estimate of the total fees and costs for review and segregation of the relevant documents. The Department then notified Plaintiff of the estimated fees and costs and requested a fifty percent down payment before the Department started the process. Plaintiff brought this suit against the Department claiming that it violated the UIPA, on the basis that the estimate was designed to prohibit Plaintiff access to the records it sought. The Court entered summary judgment in favor of Plaintiff and awarded Plaintiff its attorneys’ fees and costs.

Todd Yukutake v. Anne E. Lopez **\$ 50,000.00 (General Fund)**
Civil No. 22-cv-00323 JAO-WRP, USDC **Judgment**

Plaintiffs Todd Yukutake and Justin Solomon asserted that Hawaii’s ban on carrying billy clubs in section 134-51(a), HRS, violated the Second Amendment. Plaintiffs sued the Attorney General in her official capacity. The Attorney General moved to dismiss Plaintiffs’ claims, but the motion was denied. Subsequently, to avoid the need for, and risks associated with, further litigation, the parties entered into a stipulated judgment which included \$50,000.00 in attorneys’ fees.

DEPARTMENT OF EDUCATION:

Ralphielyn L.M. Gaston-Lovell v. State of Hawaii, **\$ 550,000.00 (General Fund)**
Department of Education **Settlement**
Civil No. 3CCV-22-0000163, Third Circuit

Plaintiff Ralphielyn L.M. Gaston-Lovell brought this lawsuit on behalf of herself and her son, "B.G.L.", a minor. B.G.L. was born with a health condition – congenital hydrocephalus – which severely limits his speech and mobility and has him mostly confined to a wheelchair or a non-motorized standup wheelchair. On November 5, 2021, B.G.L.'s Educational Assistant took B.G.L. to the school parking lot for his morning exercise routine in which the Educational Assistant would push B.G.L. in his standup wheelchair and have B.G.L. steer himself at certain points. On the day of the incident, the Educational Assistant gave B.G.L. a push and the wheelchair fell over causing B.G.L. to hit his head on the ground. B.G.L. was unable to brace himself for the impact because of the nature of the wheelchair. B.G.L. suffered a subdural hematoma as a result of the accident, which required him to be flown from Hawaii Island to Oahu for treatment and surgery. B.G.L. was released from the hospital on November 11, 2021. B.G.L. was 11 years old when the accident occurred.

John Roe No. 122 v. State of Hawaii **\$ 450,000.00 (General Fund)**
Civil No. 1CCV-19-0002046, First Circuit **Settlement**

Plaintiff alleged that in 1976-1977 when he was a minor student at Highlands Intermediate School, he was repeatedly sexually abused by a school security officer, Joseph Moisa. Plaintiff alleged that the abuse occurred on school grounds, at a camping trip allegedly arranged by Moisa for participants in the Campus Police Officer (CPO) program, and in a hotel room. 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. The State was able to find 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 during the relevant period of time. Due to the enactment of section 657-1.8, HRS, in 2018, 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 (DOE) was unable to offer evidence to contradict Plaintiff's claims and decided to settle the case to avoid the risk of an adverse judgment.

Amanda Kelly v. Debra Farmer **\$ 50,000.00 (General Fund)**
Civil No. 1CCV-20-0000825, First Circuit **Settlement**

Plaintiff provided private services as a Board Certified Behavior Analyst to DOE students while employed as a private contractor. Plaintiff commonly participated in

special education Individualized Education Plan (IEP) meetings with her clients. Defendants are current or former DOE employees. Plaintiff asserted defamation claims against the Defendants, in their individual capacities, for allegedly disseminating written and oral statements to Plaintiff's employer and supervisors complaining of Plaintiff's "aggressive" or "negative" conduct, some of which included the threat of withholding future DOE contracts unless Plaintiff was transferred or removed from all DOE-related work. Plaintiff claimed that the Defendants' statements caused her to suffer significant damage to her reputation for which she sought damages.

DEPARTMENT OF HUMAN SERVICES:

**Sherri-Ann Garrett v. State of Hawaii,
Department of Human Services
Civil No. 19-1-008K, Third Circuit**

**\$ 750,000.00 (General Fund)
Settlement**

Plaintiffs Sheri-Ann Garrett and Juben Garcia, biological parents of the deceased child, F.G., brought this lawsuit against the Department of Human Services, State of Hawaii (State), alleging damages stemming from the death of F.G. on July 25, 2017, while F.G. was in foster custody. Plaintiffs alleged that the State was negligent in its supervision and monitoring of the foster home while F.G., along with his two siblings, A.G. and P.G., were placed in the home. On July 25, 2017, F.G. was found unresponsive in his crib in the foster home and was declared dead at the hospital later that day. The foster parents claimed that F.G.'s death was the result of an accident where F.G. lost his balance and fell from a 3-foot-high bench onto his face while wearing virtual reality goggles. The County Coroner determined the cause of death to be "blunt force trauma to the head." Plaintiffs asserted that the State fell below a reasonable standard of care in that its negligent supervision of F.G. and his siblings led to F.G.'s death at the foster home. Plaintiffs requested special damages for funeral/burial expenses, past and future medical expenses, conscious pain and suffering, severe emotional distress and mental anguish, loss of future enjoyment of life, consortium, filial care, and other general damages. F.G. was 3 years old at the time of his death.

DEPARTMENT OF LAND AND NATURAL RESOURCES:

**Courtney Ledford v. Ethan Ferguson
Civil No. 17-1-0416, Third Circuit**

**\$1,250,000.00 (General Fund)
Settlement**

Plaintiff brought this lawsuit against the State of Hawaii and Ethan Ferguson, a former Department of Land and Natural Resources Conservation and Resources Enforcement Officer, alleging that she had been sexually assaulted by Ferguson at the Lalakea Beach Park on Hawaii island. Ferguson was prosecuted and convicted on five counts of sexual assault. In a Second Amended Complaint, Plaintiff claimed that the State should not have hired Ferguson based upon information disclosed in his employment application relating to his termination from the Honolulu Police Department. Plaintiff

asserted claims against the State for negligent hiring, retention, and supervision, and negligent infliction of emotional distress.

Pamela Ann Flanagin (Personal Representative) v. State of Hawaii, **\$ 300,000.00** *(General Fund)*
Civil No. 1CCV191000173, First Circuit **Settlement**

Plaintiff Paul T. Beyer (Beyer) alleged that on July 2, 2017, he contracted a flesh-eating bacterium after he was forced to walk through standing water at the Ke‘ehi Boat Harbor (Ke‘ehi Harbor) to reach a boat docked at a slip that he rented at the Ke‘ehi Harbor. Beyer sued the State of Hawaii (State) alleging that the State knew, or should have known, that the water in and/or around Ke‘ehi Harbor contained dangerous levels of harmful bacteria, should have warned citizens about the dangerous levels of harmful bacteria in the water, and failed to post visible and/or effective warnings in the part of Ke‘ehi Harbor where it knew, or reasonably should have known, that Beyer would be walking. After the lawsuit was filed, Beyer passed away from unrelated causes and Plaintiff Pamela Ann Flanagin was substituted in as Personal Representative of the Estate of Paul T. Beyer. A Court Annexed Arbitration Program (CAAP) hearing was held on June 15, 2021. The CAAP Arbitrator found the State to be 100 percent liable and awarded Beyer \$469,126.50 in damages. The State appealed the award and thereafter settled this matter for \$300,000.00.

DEPARTMENT OF CORRECTIONS AND REHABILITATION (fka DEPARTMENT OF PUBLIC SAFETY):

Civil Beat Law Center for the Public Interest v. Department of Public Safety **\$ 401.00** *(General Fund)*
Civil No. 1CCV-23-0000943, First Circuit **Settlement**

In April 2023, Civil Beat Center for the Public Interest (Civil Beat) requested records from the Department of Public Safety (PSD), referred to in the request as “data dictionaries,” that are maintained by PSD’s Intake Service Center (ISC) in the Offendertrak program PSD uses to keep track of its inmates. PSD denied the records request because the Offendertrak’s “data dictionaries” are part of a commercial proprietary computer program purchased by PSD in 1993 from a company that was later taken over by Motorola and a program that ISC developed in-house. PSD also denied the records request pursuant to section 92F-13(3), HRS, on the basis that the disclosure of the ISC and Offendertrak “data dictionaries” would jeopardize the security of the programs and increase the risk of a computer hack. Civil Beat filed this suit alleging that PSD improperly denied its records request.

**Kevin A. Lifoifoi v. State of Hawaii, Department
of Public Safety
Civil No. 2CCV-21-0000067(2), Second Circuit**

**\$ 60,000.00 (General Fund)
Settlement**

Plaintiff alleged that he suffered a broken jaw due to an assault by another inmate during a riot that occurred on March 11, 2019, at the Maui Community Correctional Center. Plaintiff alleged that four or five Adult Correction Officers were about fifty to sixty feet away at the time of the incident, but did nothing to control the situation. Due to multiple fractures being discovered in Plaintiff's jaw, Plaintiff was required to undergo a surgical stabilization procedure and his jaw was wired shut to minimize nerve injury.

**Leinette Reyes, et al. v. Eric Tanaka
Civil No. 17-cv-00143 JAO-KJM, USDC**

**\$2,000,000.00 (General Fund)
Settlement**

Plaintiffs are current and former female inmates at the Women's Community Correctional Center (WCCC) who asserted civil rights claims under 42 U.S.C. § 1983 and state law claims alleging that they were sexually assaulted by four Adult Corrections Officers (ACOs). The State prosecuted the ACOs on sexual assault charges, and two of the ACOs pleaded guilty or no contest to the charges. Plaintiffs alleged that Eric Tanaka, who was the warden at WCCC during the relevant time period, failed to supervise the ACOs and condoned a culture, pattern, and policy of sexual abuse.

HAWAII PUBLIC HOUSING AUTHORITY:

**Edwin Kalamau, Sr. v. State of Hawaii
Civil No. 1CCV-22-0000701, First Circuit**

**\$ 107,695.12 (General Fund)
Judgment**

Plaintiff slipped and fell in a puddle of water in the underground parking garage of the Pumehana Federal Housing Project, where he was a resident. The property is managed by the Hawaii Public Housing Authority. Plaintiff suffered injuries to his cervical spine. The arbitrator found that Plaintiff sustained damages in the amount of \$205,405.23 but reduced the amount by fifty percent for Plaintiff's contributory negligence. With costs, Plaintiff was awarded a total of \$103,313.50. Neither party appealed and judgment was entered. With interest, the total appropriation amount is \$107,695.12.

DEPARTMENT OF TRANSPORTATION:

**Michelle Banks v. State of Hawaii
Civil No. 1CCV-22-0000089, First Circuit**

**\$ 3,900,000.00 (Dept. Appropriation)
Settlement**

This case arose out of a single motor vehicle accident fatality that occurred on the H-3 freeway beyond Exit 11 in Kaneohe. Joshua Banks was heading northeast toward Marine Corps Base Hawaii and drove off the freeway and into the guardrail.

Approximately 18 months prior to Mr. Banks' accident, there had been another accident where a driver drove off the freeway and into the guardrail. At that time, there was an ET-Plus terminal system on the guardrail. ET-Plus complies with Federal Highway Administration crash test criteria and the driver survived. A DOT crew cut away the damaged guardrail and terminal and put a temporary end on the guardrail that is referred to as a "boxing glove," which is a curved or rounded guardrail end. The "glove" is not an approved crashworthy guardrail end treatment for the speed of the site. The DOT Oahu District had a contract with GP Roadway Solutions for guardrail repairs and replacements, but the district did not make a request to GP Roadway Solutions to repair the subject guardrail or replace the ET-Plus terminal. The DOT's temporary repair and "glove" remained on the subject guardrail when Mr. Banks' accident occurred. His vehicle was speared by the "glove" and the guardrail. The ET-Plus terminal and other approved crashworthy guardrail terminals prevent the type of "spearing" accidents that "glove" end treatments are unlikely to prevent. Mr. Banks died of his injuries at the scene. He was 21 years old.

**Bianca Chavez v. Department of
Transportation
Civil No. 1CC191001542, First Circuit**

**\$ 125,000.00 (Dept. Appropriation)
Settlement**

The DOT owns and operates Kamehameha Highway. On one side of the highway is a City and County of Honolulu driveway that leads to the Pali Golf Course (PGC) and on the other side is a private driveway that leads to the Hawai'i Pacific University Hawaii Loa (HPU) windward campus parking lot. There is a crosswalk between the PGC side of the highway and the HPU side of the highway. A bus stop is located on the PGC side of the highway. The speed limit is 35 mph in that location. There is a history of student-pedestrian versus motor vehicle accidents in the crosswalk. In addition, prior to this accident, the area neighborhood board notified the DOT of their concerns that the crosswalk was "dangerous." The DOT was proactive in its response and installed a Rectangular Rapid Flashing Beacon (RRFB) system at the crosswalk in August 2011. After testing, the system went into operation in October 2011.

Approximately one month after the installation of the RRFB in 2011, an HPU student walking across the highway in the crosswalk was struck and killed by a hit-and-run driver. There was no evidence that she had activated the RRFB before she began to cross the highway. There were no other reported pedestrian versus motor vehicle incidents at the subject crosswalk until the evening of October 8, 2017, when the plaintiff, Bianca Chavez, an HPU student, was walking in the crosswalk with a friend to her dormitory. Unlike the prior accident, the plaintiff had activated the RRFB before crossing the highway. A driver of a van hit both pedestrians and the plaintiff was severely injured. The driver claimed that he did not see the pedestrians until "a second" before he hit them, and he also claimed that the "flashing yellow lights" from the RRFB "confused" him. Although the driver was primarily liable to the plaintiff, and the RRFB system is known to be effective in getting driver compliance to stop or yield to pedestrians, the adequacy of the lighting in the vicinity of the subject site became an

issue when the plaintiff's lighting expert opined that the street lighting was inadequate and did not meet the current engineering standards. Virginia Tech Transportation Institute (VTTI) was hired to study the highway street lighting by collecting illumination data and performing analyses that included a comparison of the illumination prior to and after the replacement of High Pressure Sodium light fixtures with Light Emitting Diodes (LED) fixtures in 2013. The VTTI report showed that the illumination had decreased rather than increased in some areas along the highway after the LED fixtures were installed.

**Violet Fontes-Ringor v. State of Hawaii,
Department of Transportation
Civil No. 1CCV-23-0000768, First Circuit**

\$ 150,000.00 (Dept. Appropriation)
Settlement

On July 23, 2021, Plaintiff Violet Fontes-Ringor was operating her Sport Utility Vehicle (SUV) on South Kamehameha Highway in Wahiawa town. Plaintiff alleges that she was at a complete stop in traffic. State of Hawaii (State) Department of Transportation (HDOT) employee Darnell Lane was on duty and operating an HDOT owned Ford pickup truck heading back to a highways division field office. The HDOT truck rear-ended Plaintiff's SUV which was then pushed into the rear of a rented vehicle that had also been at a complete stop in traffic. Plaintiff sued both the State and employee Mr. Lane. She claimed that the State is liable under the doctrine of respondeat superior as the employer of Mr. Lane and for negligent supervision and training. She also claimed that Mr. Lane was negligent in his operation of the HDOT truck. Plaintiff claimed that she sustained multiple injuries as the result of the accident and considerable damage to her SUV, as well as incurred considerable medical expenses for treatment of her injuries and her lost earnings.

**David Lawrence v. State of Hawaii
Civil No. 2CCV-22-0000273, Second Circuit**

\$ 2,950,000.00 (Dept. Appropriation)
Settlement

Plaintiff David Lawrence was injured when he encountered a "bump and crack" in the pavement surface created by tree roots while he was bicycling southbound on Kekaulike Avenue in Kula, Maui. Mr. Lawrence sustained a traumatic brain injury as well as fractures and loss of earnings and will incur future medical care expenses. Plaintiffs, Mr. Lawrence and his wife, Sandra Lawrence, brought this lawsuit against the State claiming, among other things, that the State had notice of the condition described, that the condition was hazardous, that the State had negligently breached its duty to inspect, repair, or maintain the highway in a reasonably safe condition or warn of defects in the road. Mrs. Lawrence made claims for loss of consortium and emotional distress.

Patrick Mitchell v. State of Hawaii
Civil No. 3CCV-20-000024, Third Circuit

\$ 125,000.00 (Dept. Appropriation)
Settlement

Defendants Goodfellow Bros., Inc. (GBI) and DOT had a design-build contract for the "Queen Kaahumanu Highway Widening Phase 2" (Contract). Under the Contract, GBI contracted with and hired its own design engineer and all subcontractors through the completion of the project. GBI was to manage traffic control during construction in compliance with standards and guidelines as well as other federal and state guidelines, including those pertaining to safety. On May 20, 2018, Patrick Mitchell was riding his bicycle northbound on Queen Kaahumanu Highway approaching Honokōhau Street. A pick-up truck driver was making a left turn from Honokōhau Street onto the highway southbound. As Mr. Mitchell approached the intersection, the truck driver accelerated from the stop line into Mr. Mitchell's path. Mr. Mitchell and his bicycle impacted the left driver side rear door of the truck. There was no liability insurance covering the truck. Mr. Mitchell sustained severe and permanent injuries that resulted in permanent disability and extensive health care costs. The plaintiffs, Mr. Mitchell and his wife, filed a lawsuit against GBI, the pick-up truck driver, and the owner of the pick-up truck. One of the claims was that the left turns should have been eliminated early in the project, and then the subject accident would not have occurred. The plaintiffs also claimed that there was a dispute between GBI and the DOT as to whether GBI failed to comply with contract procedures to submit a recommendation to eliminate left turns at the intersection prior to the subject accident. Although the driver was primarily at fault, and although the elimination of left turns at the intersection during construction was not mandated by standards or guidelines, under section 663-10.9, HRS, there was a risk that the State and GBI would be found jointly and severally liable for the driver's share of fault.

Charles David Yandell v. State of Hawaii,
Department of Transportation
Civil No. 5CCV-21-0000100, Fifth Circuit

\$ 100,000.00 (Dept. Appropriation)
Settlement

Before sunrise on October 25, 2019, Cindy Yandell and her sister-in-law, Kristi Molz, were struck by a vehicle while walking in an unsignalized crosswalk at the junction of Kuhio Highway and Ala Road in Kapaa, Kauai. There is a streetlight above the crosswalk. Kuhio Highway has a northbound lane, a southbound lane, and a two-way left turn lane for either direction of travel that separates the two through lanes. The pedestrians were struck by a car driven by a tourist who was heading south on the highway. The driver said that he did not see the pedestrians in time to avoid hitting them. The accident was captured on surveillance video from a nearby shop. Ms. Yandell died of her injuries. Ms. Molz sustained multiple fractures and remained in the hospital for approximately two weeks before returning home to the mainland. The plaintiffs reached a confidential settlement with the driver before the lawsuit was filed. The plaintiffs then filed a lawsuit against the DOT for negligent design and operation of the highway and against Kaua'i Island Utility Cooperative (KIUC) for inadequate street

lighting. When the video revealed that the lights were on and operating properly, the plaintiffs dismissed their claims against KIUC and proceeded against the DOT only.

MISCELLANEOUS CLAIMS:

Employers Insurance Company of Wausau **\$ 147,657.77** *(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, or claimant has shown good cause for any delay.

Merrill Lynch Pierce Fenner & Smith **\$ 13,824.40** *(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 or claimant has shown good cause for any delay.

Amy Chang **\$ 27.00** *(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, or claimant has shown good cause for any delay.

County of Hawaii, Hawaii Fire Department **\$ 360,000.00** *(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, or claimant has shown good cause for any delay.

James X He and Yue-Chuen C. Lin **\$ 559.00** *(General Fund)*

Claimants request 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, or claimants have shown good cause for any delay.

The Estate of Morris A. Inasaki **\$ 550.00** *(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, or claimant has shown good cause for any delay.

Laura Ishii \$ **120.00** *(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, or claimant has shown good cause for any delay.

Lien T. Nguyen \$ **110.00** *(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, or claimant has shown good cause for any delay.

Matthew W. Payne \$ **445.00** *(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, or claimant has shown good cause for any delay.

Chaniel Ramo \$ **167.00** *(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, or claimant has shown good cause for any delay.

Sedring Bulda & Katherine Bulda \$ **1,236.00** *(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, or claimant has shown good cause for any delay.

Shirokiya Cosmetics Inc. \$ **7,259.00** *(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, or claimant has shown good cause for any delay.

Two Spirits, Inc.

\$ 358,413.97 *(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, or claimant has shown good cause for any delay.

Wallace K. Yashima

\$ 3,916.04 *(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, or claimant has shown good cause for any delay.

**Wallace Yashima and
Hyang-Suk Yashima**

\$ 746.00 *(General Fund)*

Claimants request 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, or claimants have shown good cause for any delay.

ATTACHMENT “B”

DEPARTMENT OF THE ATTORNEY GENERAL:

Schweitzer v. State of Hawaii
Civil No. 3CSP-23-000003, Third Circuit

\$ 800,000.00 *(General Fund)*
Settlement

Albert Ian Schweitzer (Schweitzer) was tried and convicted for the murder, kidnapping, and sexual assault of Dana Ireland that occurred on Hawaii Island in December 1991. On May 23, 2019, the Hawaii Innocence Project entered into a Conviction Integrity Agreement with the Office of the Prosecuting Attorney for the County of Hawaii to re-investigate the case, which led to the discovery of new evidence (i.e., DNA, bitemark, and tire tread evidence) and the recantation of witness testimony. On January 23, 2023, Schweitzer filed a petition against the State of Hawaii to vacate his convictions and sentence and for his immediate release from custody based on the newly discovered evidence, which had not been presented to the jury in his criminal trial. Schweitzer’s petition came on for a hearing on January 24, 2023. The Court found that based on the new evidence, a jury in a new trial would likely reach a verdict of acquittal and, therefore, the Court vacated Schweitzer’s conviction and indictment without prejudice. On March 7, 2024, Schweitzer filed a Motion for Finding of Actual Innocence pursuant to section 661B-3, Hawaii Revised Statutes, which provides that a petitioner who has proven a claim for wrongful conviction and imprisonment shall be awarded \$50,000 for each year of actual confinement, including time spent awaiting trial, served by the petitioner for the crime or crimes for which the petitioner was actually innocent. Schweitzer, who served 23 years in prison, would be entitled to approximately \$1,150,000.00 in compensation if the Court granted his petition and entered a finding of actual innocence.

DEPARTMENT OF EDUCATION:

A.B. v. Department of Education
Civil No. 18-00477 LEK-RT, USDC

\$1,000,000.00 *(General Fund)*
Settlement

This was a Title IX gender equity class action lawsuit involving athletics at James Campbell High School (JCHS) in Ewa Beach. The Plaintiffs, a class of female student athletes, claimed that their athletic programs were inferior to the boys’ programs. The parties reached a settlement of Plaintiffs’ claims, which includes a plan to bring JCHS into compliance with Title IX over a period of years. No monetary damages were paid to the Plaintiffs. The parties subsequently settled Plaintiffs’ claim for attorneys’ fees and costs with the State paying \$1,000,000.00.

DEPARTMENT OF HUMAN SERVICES:

**C.K., J.M., and T.M. v. Department of
Human Services
Civil No. 1ccv-20-0000641, First Circuit**

\$1,800,000.00 *(General Fund)*
Settlement

The Plaintiffs, who were minors at all relevant times, brought this lawsuit against the Department of Human Services (DHS) alleging that while they were in a DHS foster care home they were sexually abused by a teenager living in the foster care home. DHS was aware that the teenager had previously sexually abused his biological sister. DHS officially placed him with the foster care home in 1998 when he was 13-years-old and allowed the foster caregivers to adopt him later that same year. The teenager continued to live in the foster care home until 2004. DHS warned the foster caregivers to protect other children from the teenager and required the teenager to attend psychological treatment while in foster care. The Plaintiffs alleged, however, that DHS should not have allowed his placement and subsequent adoption into a home with other children. This lawsuit was brought under section 657-1.8(b), Hawaii Revised Statutes, which allowed a waiver of the statute of limitations for adult survivors of childhood sexual abuse.

DEPARTMENT OF TRANSPORTATION:

**Allstate Insurance Company v.
State of Hawaii Department of Transportation
Civil No. 1CCV-23-0000397, First Circuit**

\$ 35,961.64 *(Dept. Appropriation)*
Settlement

On March 25, 2021, a State of Hawaii Department of Transportation (DOT) employee drove over a bump in the road and lost control of his DOT truck causing him to collide into a van owned by Kevin Shimizu (Shimizu). The DOT employee was in the course and scope of his employment at the time of the accident. The van was deemed a total loss and Shimizu's insurer, Allstate Insurance Company, filed a subrogation lawsuit to recoup the expenses it paid as a result of accident and the deductible on behalf of Shimizu. The case settled for the full value of the property damage claim with each party agreeing to pay its own attorneys' fees and costs.

MISCELLANEOUS CLAIMS:

Jessie J. McMorrow and Kevin B. McMorrow

\$ 265.00 *(General Fund)*

Claimants request 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, or claimant has shown good cause for any delay.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



TESTIMONY BY:
EDWIN H. SNIFFEN
DIRECTOR
KA LUNA HO'OKELE

Deputy Directors
Nā Hope Luna Ho'okele
DREANALEE K. KALILI
TAMMY L. LEE
ROBIN K. SHISHIDO

STATE OF HAWAI'I | KA MOKU'ĀINA 'O HAWAI'I
DEPARTMENT OF TRANSPORTATION | KA 'OIHANA ALAKAU
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

April 3, 2024
10:30 a.m.
State Capitol, RM 211 VC

HB2340, H.D. 2, S.D. 1
RELATING TO RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST
THE STATE, ITS OFFICERS, OR ITS EMPLOYEES

House Committee on Ways and Means

The Department of Transportation supports HB2340, H.D. 2, S.D. 1, that authorizes judgements and settlements for claims against the State.

Thank you for the opportunity to provide testimony.