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

February 25, 2025  
12:00 p.m.  
State Capitol, Room 308 VC

**H.B. 990 H.D. 1**  
**RELATING TO MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE,**  
**ITS OFFICERS, OR ITS EMPLOYEES**

House Committee on Finance

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The Hawaii Department of Transportation (HDOT) supports H.B. 990 H.D. 1 that authorizes judgements and settlements for claims against the State.

We want to thank the State Attorney General office for all their support and hard work on completing these cases for the HDOT.

Thank you for the opportunity to provide testimony.

JOSH GREEN, M.D.  
GOVERNOR



KEITH T. HAYASHI  
SUPERINTENDENT

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

**Date:** 02/25/2025

**Time:** 12:00 PM

**Location:** 308 VIA VIDEOCONFERENCE

**Committee:** House Finance

**Department:** Education

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

**Bill Title:** HB 0990, HD1 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. Effective 7/1/3000. (HD1)

**Department's Position:**

The Hawaii State Department of Education (Department) supports HB990, HD1, which appropriates funds to satisfy claims against the State. This measure enables timely resolution of legal obligations, preventing unnecessary litigation and financial burdens.

By settling claims efficiently, this bill allows the Department to focus on its core mission of educating Hawaii's students. Appropriating these funds ensures fiscal responsibility and protects essential educational resources.

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



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2025**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 990, H.D. 1, MAKING APPROPRIATIONS FOR CLAIMS AGAINST THE STATE, ITS OFFICERS, OR ITS EMPLOYEES.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Tuesday, February 25, 2025 **TIME:** 12:00 p.m.

**LOCATION:** State Capitol, Room 308

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Skyler G. Cruz, Deputy Attorney General

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Chair Yamashita and Members of the Committee:

The Department of the Attorney General (Department) supports this bill.

The purpose of this bill is to seek appropriations to satisfy claims against the State, its officers, or its employees, including claims for legislative relief, judgments against the State, settlements, and miscellaneous claims.

The bill contains seventeen claims that total \$5,911,234.22. To satisfy this total amount, the following appropriations are needed:

- An appropriation in the amount of \$4,571,234.22, allocated among fourteen claims to be paid from the general fund; and
- An appropriation in the amount of \$1,340,000.00, allocated among three claims to be paid from departmental funds.

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

Since the bill was last amended, four new claims were resolved that total \$587,632.85. To satisfy these additional claims, the Department requests that the bill be amended to increase the requested appropriation by the amount of \$587,632.85, allocated among nine claims to be paid from the general fund.

Attachment "B" provides a brief description of the new claims.

**Including the new claims**, the appropriation request totals \$6,498,867.07 allocated among twenty-one claims, with the updated appropriation request as follows:

- An appropriation in the amount of \$5,158,867.07, allocated among eighteen claims to be paid from the general fund; and
- An appropriation in the amount of \$1,340,000.00, allocated among three claims to be paid from departmental funds.

The Department has a longstanding policy of advising agencies as to how to avoid claims such as those in this bill. The Department has complied with section 37-77.5, Hawaii Revised Statutes (HRS), which requires the Attorney General to develop and implement a procedure for advising our client agencies on how to avoid future claims.

We respectfully request passage of this bill with amendments to add the new claims.

## **ATTACHMENT "A"**

### **DEPARTMENT OF THE ATTORNEY GENERAL:**

**Billy Peter v. Anne E. Lopez**  
**Civil No. 24-cv-00508 MWJS-RT, USDC**

**\$ 28,500.00** *(General Fund)*  
**Settlement**

Plaintiff Billy Peter (Peter) is a citizen of the Federated States of Micronesia (FSM). He resides in the United States pursuant to the Compact of Free Association (COFA) between the United States and FSM. Peter sought a permit to acquire a firearm, but was informed by the Honolulu Police Department that he could not be issued a firearm permit because of his immigration status as a COFA migrant. Peter then filed a lawsuit asserting that section 134-2(d)(1), HRS, violates the Second Amendment and the Equal Protection Clause of the Fourteenth Amendment to the extent that it prohibits COFA migrants from acquiring or possessing firearms on the basis of their COFA status. The parties agreed to a stipulated judgment.

### **DEPARTMENT OF DEFENSE:**

**James Sean Shields v. State of Hawaii**  
**Civil No. 18-1-1897-11 VLC, First Circuit**

**\$ 275,000.00** *(General Fund)*  
**Settlement**

During a drill on January 13, 2018, an employee of the Hawaii Emergency Management Agency (HI-EMA), a division of the State's Department of Defense, mistakenly sent a text message alert to cellular phones across the State warning of an incoming ballistic missile threat. Shortly after receiving this alert, Plaintiff James Sean Shields (Shields) had a cardiac episode, which required surgery and hospitalization. Shields' girlfriend, Plaintiff Brenda Reichel, was with Shields at the time he received the text message alert and experienced the cardiac episode. Plaintiffs alleged gross negligence against the State and certain HI-EMA employees.

### **DEPARTMENT OF EDUCATION:**

**B.R., M.A., and F.R. v. State of Hawaii**  
**Civil No. 1CCV-20-0000549, First Circuit**

**\$ 330,000.00** *(General Fund)*  
**Settlement**

Plaintiffs B.R., M.A., and F.R. sued the Department of Education (DOE) seeking damages for gross negligence pursuant to section 657-1.8, HRS, alleging that the DOE failed to protect them from sexual abuse perpetrated by a school security guard while they were students at the Highlands Intermediate School in the mid-1970s. The security guard led and supervised two school programs, an "Indian Dance Program" and a "Campus Police Officer Program." Both programs included activities conducted at the Highlands Intermediate School premises as well as activities conducted off-campus with the permission of DOE. The Plaintiffs alleged that the school security guard sexually assaulted them and other students on and off-campus during their

participation in these programs. Plaintiffs B.R. and M.A. settled their claims in this lawsuit. Plaintiff F.R. voluntarily dismissed his claims before the case settled.

**Child Evangelism Fellowship of Hawaii, Inc. v.  
Hawaii State Department of Education  
Civil No. 24-cv-00034 MWJS-WRP, USDC**

**\$ 100,000.00 (General Fund)  
Settlement**

This lawsuit was filed by Child Evangelism Fellowship of Hawaii, Inc. (CEF) against the Department of Education (DOE) alleging violations of the Free Exercise clause in the First Amendment and the Equal Protection clause in the Fourteenth Amendment to the United States Constitution. CEF is a Christian, nonprofit organization that uses DOE facilities pursuant to chapter 8-39, Hawaii Administrative Rules, to host its after-school Good News Clubs. Unlike other similarly situated organizations, the DOE required CEF to pay rental fees to use DOE facilities. As a result of this lawsuit, the DOE has agreed to stop charging CEF rental fees.

**Brenda Persinger, Individually and as a  
Personal Representative of the Estate of  
Michael Ambrose, Deceased v. State of Hawaii,  
Department of Education  
Civil No. 3CCV-22-0000337, First Circuit**

**\$ 1,750,000.00 (General Fund)  
Settlement**

On June 13, 2022, a Department of Education (DOE) special education teacher was asked by her supervisor to bring supplies from a DOE office to a park to help set up a DOE-run summer camp for special needs students. The teacher was driving to the park along Highway 19 on Hawaii Island when she realized that she had missed her turn. The teacher then made a turn on the highway crossing over the double yellow line to head back in the other direction. Although the teacher had intended to make a U-turn, the highway was too narrow. Unable to complete the U-turn, the teacher then had to make a three-point turn, which caused her vehicle to partially block both lanes of the highway. At this time, a motorcyclist who was traveling on the highway struck the teacher's vehicle and died as a result of the accident. Police found the teacher at fault. The motorcyclist's widow filed a wrongful death lawsuit against the teacher and the DOE alleging that the teacher negligently caused the accident while in the course and scope of her employment for the DOE and that the DOE was vicariously liable for the teacher's negligence.

**Jake Ferreira v. State of Hawaii,  
Department of Education  
Civil No. 1CCV-23-0000874, First Circuit**

**\$ 75,000.00 (General Fund)  
Settlement**

On October 22, 2021, Plaintiff Jake Ferreira (Ferreira) was a student at Castle High School. That day, Ferreira and another student were asked by a DOE teacher to assist with setting up a mechanical log splitter during an agriculture class. The log splitter was going to be used to split wood for the school's annual Thanksgiving imu fundraiser.

While Ferreira and the other student were attempting to set-up the log splitter, Ferreira's left pinky finger got caught in a pinch point on the machine causing his finger to be severed. Ferreira filed a lawsuit against the DOE and the teacher alleging that their negligent actions and/or omissions caused Ferreira's injury.

**DEPARTMENT OF LAND AND NATURAL RESOURCES:**

**Jennifer Reber v. State of Hawaii**  
**Civil No. 5CCV-23-000053, Fifth Circuit**

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

On May 20, 2021, Plaintiff Jennifer Reber (Reber) slipped and fell onto a piece of rebar protruding from the ground while hiking on a trail leading to Waipoo Falls, which is located at Kokee and Waimea Canyon State Park on Kauai, Hawaii. The rebar spike impaled Reber's lower right thigh. First responders transported Reber to the nearest hospital where she was treated and released. After returning to her home in Utah, Reber underwent reconstructive surgery and physical therapy.

**Brenda Osmer**  
**Tort Claim**

**\$ 100,000.00 (General Fund)**  
**Settlement**

Brenda Osmer (Osmer) was visiting Waimea Canyon State Park on June 15, 2023. She was with her husband when they headed down the walkway from the Waimea Canyon lookout. Around the middle of the walkway, Osmer slipped on a steel diamond plate that was covering a small drainage ditch. Osmer fell and fractured her femur in the mid-thigh area of her right leg. According to Osmer, her husband, and two witnesses, there was a light sprinkling of rain prior to the incident. The two witnesses provided a statement that another person had fallen in the same area right before this incident. Osmer was taken by ambulance to the Wilcox Medical Center. Surgery was done the following day where a metal plate and screws were used to repair the fracture. The Department of Land and Natural Resources had no notice of anyone falling on the steel plate prior to June 15, 2023. After this incident, the steel plate was coated with a paint and sand mixture to make it less slippery and anti-slip tape was applied to the top of the steel plate to make it safer.

**DEPARTMENT OF LAW ENFORCEMENT:**

**Cresencia Espejo v. State of Hawaii**  
**Civil No. 1CCV-21-0000192, First Circuit**

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

On February 18, 2019, Defendant Deputy Sheriff Gregory Bergman (Deputy Bergman) was patrolling the Hawaii State Capitol grounds when he encountered Delmar Espejo (Espejo) drinking vodka in public in violation of state law. Espejo refused to comply with Bergman's requests to pour out the vodka. A physical altercation ensued, which led to Deputy Bergman fatally shooting Espejo. Espejo's estate, mother, brothers, and sister brought this lawsuit against Deputy Bergman and the State asserting state law claims

and civil rights claims pursuant to 42 U.S.C. § 1983. Plaintiffs alleged that Deputy Bergman's use of force against Espejo was excessive force and the State did not properly train or supervise Deputy Bergman.

**DEPARTMENT OF TRANSPORTATION:**

**Juan Jimmie Aldeguer v. State of Hawaii**  
**Civil No. 1CCV-21-0000052, First Circuit**

**\$ 1,075,000.00** (*Dept. Appropriation*)  
**Settlement**

This case arises out of a pedestrian and motor vehicle accident that occurred on January 18, 2019, at approximately 6:36 p.m. at the Farrington Highway and Linakola Street intersection crosswalk in Maili along the west coast of Oahu. Juan Jimmie Lee Wills-Aldeguer, Jr., and his female companion entered the crosswalk from the parking lot of the Maili-Pink Market located on mauka side of the highway and were walking toward the Maili Beach Park when they were struck by a northbound-Waianae-bound vehicle. Mr. Wills-Aldeguer landed over the center line where he was then struck by a southbound-Honolulu-bound vehicle. Mr. Wills-Aldeguer died as the result of the injuries he sustained in the accident. The driver of the northbound vehicle settled with Plaintiff, the decedent's father. The driver of the southbound vehicle is a Japanese national against whom Plaintiff obtained default. The complaint alleged, among other things, that the crosswalk presented a hazard to pedestrians, and that the Department of Transportation (DOT) was negligent in the design and maintenance of the crosswalk. Prior to the subject accident, DOT had its private engineering consultant study pedestrian safety along the Farrington Highway corridor from the Kahe Power Plant to the end of Makaha. In April 2017, DOT's consultant determined that there were thirteen marked but unsignalized crosswalks in the corridor, including the subject crosswalk. Many of these crosswalks had between one to three prior crossing accidents and had very low pedestrian usage. The consultant recommended that the crosswalks be removed as part of a comprehensive redesign and resurfacing the corridor that would also include the consolidation and relocations of some bus stops and bus stop facilities. Because of the comprehensive scope of the project and the traffic control-contra-flow necessary during construction, the project was divided into Phases 1 and 2. Phase 1 included the Nakakuli area. Phase 2 included the Maili, Waianae, and Makaha areas, including the Farrington Highway and Linakola Street intersection site of the accident. Phase 1 began in 2018. Phase 2 began after the completion of Phase 1. The subject accident occurred while work on Phase 1 was being completed and before work on Phase 2 had begun.

**Estate of Bruce Perdue v. State of Hawaii**  
**Civil No. 5CC131000351, Fifth Circuit**

**\$ 175,000.00** (*Dept. Appropriation*)  
**Settlement**

This case arises out of a single motor vehicle accident that occurred in the early morning hours on May 21, 2012, in Kapaa, Lihue, Kauai. Bruce Perdue was driving north on the Kuhio Highway toward Kapaa town when he was involved in an accident. The post-accident police investigation indicated that, as he approached Mile Post 7, Mr.



Perdue was driving in excess of the posted speed when he drove off the travel portion of the highway, off the paved shoulder, and struck a utility pole. He died as the result of the injuries he sustained in the accident. At the time of his death, he was employed with the National Guard. Plaintiffs include Mr. Perdue's parents and two siblings, in addition to the estate. The State of Hawaii (State) owns Kuhio Highway. Kaua'i Island Utility Cooperative and Hawaiian Telcom owned the utility pole. Plaintiffs sued the State for negligent design and operation of the highway and for maintenance of hazardous conditions on the highway including the utility pole. Plaintiffs dismissed their claims against the utility companies. The subject utility pole was within the State's highway right-of-way/paved shoulder. Plaintiffs' experts opined that the shoulder should have been free of hazardous conditions such as the utility pole, that the State should have moved the subject pole after two prior utility pole accidents, had a guardrail installed along the highway to prevent vehicles from striking the pole, and/or used other traffic control devices such as plastic delineators to highlight the presence of the pole. The State's experts opined that the highway was designed in conformance with applicable engineering guidelines, that guardrail installation might increase the occurrence of different types of accidents at the site, and that the entire utility line and a number of poles along the line would need to be re-designed and relocated by the utility companies in order to relocate the subject pole.

#### **STATE OF HAWAII JUDICIARY:**

**Leanne Rosa v. Randall G.B. Valenciano**  
**Civil No. 23-CV-00315-JAO-WRP, USDC**

**\$ 90,000.00** (*Dept. Appropriation*)  
**Settlement**

Plaintiff Leanne Rosa (Rosa) was at all relevant times a judicial assistant at the Fifth Circuit Court, State of Hawaii. Rosa brought a lawsuit against Chief Judge Randal G.B. Valenciano (Judge Valenciano) alleging that he subjected her to unwanted "hugs" in 2015 and during 2018 through 2023. Rosa asserted a claim under Title VII and/or 42 U.S.C. § 2000e and state law claims of Intentional Infliction of Emotional Distress and Negligence.

#### **MISCELLANEOUS CLAIMS:**

**Mark Lloyd**

**\$ 111,733.08** (*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.

**Maui Kuponu Builders, LLC**  
**(Check No. S0057589)**

**\$ 442,504.75** *(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.

**Maui Kuponu Builders, LLC**  
**(Check No. S0001176)**

**\$ 152,665.39** *(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.

**Sarah Ann D. Pacheco**  
**f/k/a Sarah Ann D. Taylor**

**\$ 460.00** *(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.

**Kiyoji Tanimura**

**\$ 5,371.00** *(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.

**ATTACHMENT “B”**

**DEPARTMENT OF DEFENSE:**

**Paul Aker v. Hawaii Emergency  
Management Agency  
Civil No. 2CCV-23-0000378, Second Circuit**

**\$ 5,000.00 (General Fund)  
Settlement**

Plaintiff Paul Aker (Aker), who does business in the State as Aker Media and Maui Alert, claimed that on August 25, 2023, he submitted four requests to the Hawaii Emergency Management Agency (HIEMA) pursuant to the State’s Uniform Information Practices Act (UIPA) seeking records concerning the Maui wildfires. HIEMA has no record of receiving any of Aker’s requests. It was not until Aker filed this lawsuit, which was served on HIEMA on December 20, 2023, that HIEMA learned of Aker’s UIPA requests. However, because of the numerous records requests that HIEMA received concerning the Maui wildfires, HIEMA was not able to finish searching for and providing copies of the records to Aker until August 21, 2024, which was past the deadlines under the UIPA. The settlement amount is for Aker’s attorneys’ fees as provided under UIPA section 92F-15, HRS.

**DEPARTMENT OF EDUCATION:**

**Katherine Balatico v. State of Hawaii  
Civil No. 22-cv-0415-LEK-KJM, USDC**

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

Plaintiff Katherine Balatico (Balatico), who is a former Principal of Stevenson Middle School, received four communications of a sexual and violent nature from an unknown person over the span of eight months from May 2020 through January 2021. The Department of Education (DOE), the Honolulu Police Department (HPD) and the Federal Bureau of Investigations, in consultation with the Hawaii Fusion Center, investigated these threats to no avail. During the investigation of these communications, DOE provided Plaintiff with supportive measures, including the development and implementation of a safety plan for Balatico, private security at her home and at school, installation of additional security cameras on campus and a card scanner to lock access to the administration building, upgrades to the school’s telephone system, and hiring additional campus security personnel. DOE later terminated the safety plan and posted a vacancy announcement for Balatico’s position while Balatico was on Worker’s Compensation leave, which Balatico construed as termination of her employment. Plaintiff filed this lawsuit claiming that these and other actions or inactions were retaliatory in violation of Title IX of the Education Amendments of 1974, 20 U.S.C. § 1681 and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.* Balatico also asserted various state law tort claims, including negligence, gross negligence, and negligent and intentional infliction of emotional distress, which were dismissed without prejudice. Balatico sought economic, non-economic and punitive damages, as well as attorneys’ fees and costs.

**DEPARTMENT OF HAWAIIAN HOME LANDS:**

**Royal Contracting Company, Ltd. v.  
Department of Hawaiian Home Lands  
Civil No. 1CCV-16-1760-09, First Circuit**

**\$ 400,000.00** *(General Fund)*  
**Settlement**

This case involved a highly technical dispute regarding the quantity of non-expansive coral fill required for grading a Department of Hawaiian Home Lands (DHHL) subdivision in Kapolei. Royal Contracting Company, Ltd. (Royal) alleged that DHHL's bid documents did not clearly state the amount of fill required, which allegedly caused Royal to import additional fill at its expense. The parties settled this case after multiple rounds of mediation over the course of several years.

**DEPARTMENT OF TAXATION:**

**Deborah Kwan v. State of Hawaii  
Civil No. 1CCV-21-0000424, First Circuit**

**\$ 32,632.85** *(General Fund)*  
**Settlement**

Plaintiff Deborah Kwan (Kwan) is a former Public Information Officer (PIO) for the Department of Taxation (DoTax). Kwan held a limited term appointment as an exempt employee, and her appointment had been renewed annually upon its expiration. Kwan was also enlisted in the Air National Guard. On December 31, 2019, Kwan requested military leave from DoTax so that she could fulfill duties for the Air National Guard. The leave request was not approved and eventually her contract for the PIO position within DoTax was not renewed. Kwan filed this lawsuit against DoTax alleging violations of the State's employment practices laws, section 378-2(a)(4), HRS, and the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301. She claimed that she was terminated because of her membership in the National Guard, she was retaliated against because of her membership in the military and/or her making a complaint, and she should have been returned to her position within DoTax upon the completion of her military training.