



**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:**

S.B. NO. 796, RELATING TO CLAIMS AGAINST THE STATE.

**BEFORE THE:**

SENATE COMMITTEE ON JUDICIARY

**DATE:** Wednesday, February 5, 2025      **TIME:** 9:15 a.m.

**LOCATION:** State Capitol, Room 016

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

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Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) provides the following comments with recommendations.

The purposes of this bill are to: prohibit claims for refunds, reimbursements, or other payments, for which authorization is sought from the Legislature, that exceed the time limitations in section 40-68, Hawaii Revised Statutes (HRS); require the Attorney General to include in the Attorney General's annual report of claims recommended for approval as required under section 37-77, HRS, a list of possible claims against the State that have not yet settled; require additional information in the Attorney General's report to the Legislature required under section 37-77.5, HRS; and amend section 37-77.5 to require the Attorney General to submit a report every five years to the Legislature containing further incidents that occurred in an agency that led to a similar claim and state why recommended actions were inadequate to prevent the incident.

The Department has a concern with respect to the proposed wording in section 1 on page 2, lines 10-11, of the bill. The proposed wording would require the Attorney General to include "a list of possible claims against the State that have not yet settled" in addition to the claims recommended for approval by the Legislature. While we appreciate that the Legislature may find it useful to have notice of potential future settlements, we believe the proposed wording would not achieve the desired result. The Department cannot predict with any level of confidence or accuracy which, if

any, pending lawsuits and claims may settle or be reduced to a judgment, when they may settle or be reduced to a judgment, or what the amount of the settlement or judgment may be. Thus, in the Department's view, the only way to comply with this wording would be to provide a list of all lawsuits and claims currently pending at the Department. This would likely be of no value to the Legislature. An additional concern is that even if it were possible for the Department to determine which cases and claims it believes are likely to settle or be reduced to a judgment, such a list should not be made publicly available. A list of this nature, which would be made publicly available as part of the bill, could be interpreted or viewed as a list of cases that the Attorney General believes are likely to have unfavorable outcomes. This would significantly compromise the Department's ability to obtain favorable settlements and defend its clients in those cases.

The Department recommends that the proposed wording on page 2, lines 10-11, of the bill be omitted.

The Department also has a concern with respect to the proposed wording in section 2 on page 3, lines 11-20, of the bill. Section 37-77.5, HRS, currently requires the Attorney General to submit a report to certain members of the Legislature that describes the claims and attendant circumstances therein and the advice for corrective action rendered to the agency twenty days before the convening of the legislative session. The proposed wording would require the Attorney General to set timelines for departments to implement the Attorney General's recommended actions and determine whether each department's implementation of the recommended actions was timely. The Attorney General is generally not authorized to establish timelines for other departments to implement and/or complete actions or even require another department to take any particular action. Even if the Attorney General did have that authority, there are concerns that timelines established by the Attorney General may be incompatible with, delayed by, or impracticable due to requirements or constraints in applicable procurement laws, collective bargaining agreements, departmental budgets, and staffing limitations, among other things.

The Department recommends that the proposed wording on page 3, lines 11-20, be revised to omit the requirements relating to the establishment of timelines and the evaluation of timeliness by the Attorney General.

The Department has an additional concern with respect to the proposed wording in section 2 on page 4, lines 5-13, of the bill. The proposed wording would require the Attorney General to submit a new report to certain members of the Legislature twenty days before the convening of the legislative session in 2026 and prior to each regular session every five years thereafter stating "whether there were any further incidents that occurred in an agency that led to a claim after the actions were implemented and why recommended actions were inadequate to prevent the incident." This requirement is inconsistent with the purpose of this statute because claims of this nature are not claims for legislative relief. Under the proposed wording, many of the claims that would have to be identified in this report may never be submitted to the Legislature for an appropriation because, for example, the claims could be dismissed or settled for an amount that does not require legislative approval.

The Department recommends that the proposed wording on page 4, lines 5-13, be omitted.

We thank the Committee for this opportunity to submit our comments and proposed revisions.