



LATE

**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:

S.B. NO. 1072, MAKING AN EMERGENCY APPROPRIATION FOR THE
DEPARTMENT OF THE ATTORNEY GENERAL.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Thursday, March 19, 2015 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 329
Douglas S. Chin, Attorney General, or
Harvey E. Henderson, Jr., Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General supports this measure and requests its passage for the following reasons.

The purpose of this bill is to secure additional funds for the Department of the Attorney General (Department) to deal with extraordinary litigation expenses that have been incurred and that we anticipate incurring before the end of the current fiscal year and to fund ongoing litigation expenses in more routine cases. The extraordinary expenses include (1) continuing to defend the State against claims for money damages in several large, one-time only class action lawsuits, and (2) investigating and preparing a suit to recover money for damage in and around Honolulu Harbor resulting from the devastating effects of the September 2013 molasses spill. These cases are significantly larger than normal and concern matters that may have far reaching consequences or involve large sums of money. Thus, additional litigation expenses are warranted to properly represent and protect the interests of the State of Hawaii. The funds being requested would supplement the normal annual litigation budget which has been depleted because of expenses already incurred in these extraordinary cases. It is the intent of the Department to only draw such funds down to the extent that actual litigation expenses exceed the normal litigation budget.

The following cases may involve extraordinary litigation expenses:

(1) Class Action Lawsuits:

(a) Substitute and part-time teachers' back pay cases: Garner, et al., v. State of Hawaii, et al., Civ. No. 03-1-0305, and Klitternick, et al., v. Matayoshi, et al., Civ. No. 05-1-0031 (First Circuit Court, State of Hawaii); and Kawashima, et al., v. State of Hawaii, et al., Civ. No. 06-1-0244-02 (First Circuit Court, State of Hawaii). These cases involve the alleged underpayment of the wages of substitute and part-time teachers. The cases are substantially completed in circuit court and will be appealed. At the trial court level, substantial expert witness fees have been incurred and need to be paid.

(b) Hawaiian Home Lands individual claims: Kalima, et al v. State of Hawaii, Civil No. 99-4771-12 (First Circuit Court, State of Hawaii). This case deals with claims filed by 2,721 individuals against the State of Hawaii and the Department of Hawaiian Home Lands (DHHL) in connection with the management of the resources and breaches of trust of the DHHL trust under chapter 674, Hawaii Revised Statutes. To date only liability issues for the class members' waiting list claim has been tried. After a six-week trial in August and September of 2009, the State was found liable for three breaches of trust and, since then, proceedings to determine whether and how much class members may recover as their out-of-pocket loss have been ongoing. The Department anticipates that substantial amounts will be needed for discovery, experts, the court-appointed master and further organization of DHHL records to defend against the class members' damages claims.

(2) Molasses Spill. On September 9, 2013, a pipeline owned by Matson Navigation Company (Matson) ruptured and caused a spill into Honolulu Harbor of hundreds of thousands of gallons of molasses. The molasses spread throughout portions of Honolulu Harbor, Keehi Lagoon, and near the Reef Runway. The molasses had the effect of killing the coral reefs, fish, other marine life, and plants that were in the area. Because of the extensive damage to the coral reefs and ecosystem, the Department retained counsel from the San Francisco law firm of Bingham McCutchen, now a part of Morgan Lewis & Bockius ("Morgan Lewis"), which specializes in bringing and defending claims for catastrophic losses to natural resources. Morgan Lewis will assist in the investigation and pursuit of damages against Matson. Substantial amounts have already been spent and the case is almost ready for filing. It is understood,

nonetheless, that further substantial amounts are needed for attorneys and experts to finish preparing the case for filing and for presentation.

The above noted expenses are necessary to ensure that litigation involving the State is properly handled and that the State is properly defended and represented.