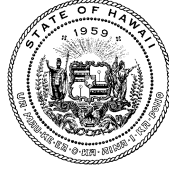


DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON GOVERNMENT OPERATIONS

JANUARY 28, 2020, 2:45 P.M.
CONFERENCE ROOM 225, STATE CAPITOL

S.B.2522

RELATING TO CLAIMS AGAINST THE STATE

Chair Thielen, Vice Chair Inouye and members of the Committee, thank you for the opportunity to testify on S.B. 2522. The Department of Accounting and General Services (“Department”) is opposing S.B. 2522 (the measure) and offers the following comments.

The measure seeks to amend Chapter 41D, Hawaii Revised Statutes, by providing that claims against the State shall be paid by the department or agency that is found liable for the claim, as determined solely by the Attorney General (“AG”); authorizes a department or agency that is financially incapable of meeting its obligation under a claim against the State to request that the Governor transfer available moneys to meet that obligation, provided that any money transferred is repaid by that department or agency in annual installments; and repeals the state risk management revolving fund (“SRMRF”), with the balance to revert to the general fund.

The Department opposes this measure as it seeks to repeal the SRMRF. In addition to the payment of tort and automobile claims under sections 41D-3, 41-D-8, and 662-11, the SRMRF

also funds the Risk Management Office (“RMO”) operating costs and statewide insurance policies premiums, property, crime and cyber losses, and payment of other insurance related expenses. By repealing the SRMRF and lapsing the fund balance to the general fund, the Comptroller’s responsibilities established in section 41D-2 would be unfunded. This would leave the Department without the ability to purchase general liability, property, crime and cyber insurance which protects the State from serious and catastrophic losses, pay claims, and funds operating costs of the RMO. In addition to handling claims, the RMO staff provide the critical technical risk management expertise and primary insurance-related support to state agencies in their normal daily operations.

In summary, the Department opposes this measure as written and recommends not repealing the SRMRF by deleting sections 5, 6, 7 and 8 of the measure. The Department is willing to work with the Legislature and Attorney General’s office to clarify the true intent and objective of this proposed bill.

Thank you for the opportunity to testify on this matter.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2522, RELATING TO CLAIMS AGAINST THE STATE.

BEFORE THE:

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

DATE: Tuesday, January 28, 2020 **TIME:** 2:45 p.m.

LOCATION: State Capitol, Room 225

TESTIFIER(S): Clare E. Connors, Attorney General, or
Caron Inagaki, Deputy Attorney General

Chair Thielen and Members of the Committee:

The Department of the Attorney General opposes this bill.

The purpose of this bill is to require that claims against the State be paid by the department or agency that is found liable for the claim as determined solely by the Department of the Attorney General. The bill also authorizes a department or agency that is financially incapable of paying such claims to request that the Governor transfer available moneys to meet that obligation. The department or agency would be required to repay that amount in annual installments. In addition, the bill repeals the state Risk Management Revolving Fund.

The current system within the Risk Management Office (RMO) of the Department of Accounting and General Services has functioned efficiently for many years. Thus, it is unclear what problem this bill is intended to address and the Department of the Attorney General has concerns that this bill will have unintended consequences. Eliminating the Risk Management Revolving Fund would have a cascading effect on virtually every department. The RMO investigates and resolves approximately 1,000 claims a year and the fund pays out an average of nearly \$700,000 annually for tort and automobile claims. By eliminating the state Risk Management Revolving Fund, each department's claims that would have been paid by the fund would now have to be paid out of the department's own budget from funds that have been earmarked for other programs and services. This would also eliminate insurance policies that would have

been purchased by RMO. The result will be that all claims that would have been paid through applicable insurance policies purchased and managed by RMO would now fall to the departments to pay, increasing state expenditures of already scarce resources.

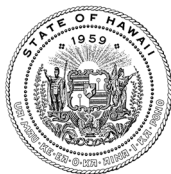
In addition, by placing the responsibility for determining which department or agency would be “liable” for the claim upon the Department of the Attorney General (AG), all investigations currently being handled by the RMO, would now fall to the AG. The AG does not have the staff and resources necessary to take on investigations for approximately a thousand more claims a year. It would require new positions to be created within the department to handle these additional duties.

Furthermore, the wording on page 1, lines 5 – 9, is imprecise. When claims are settled, there is no admission of liability. Thus, no one is ever “found” liable. Moreover, claims are settled for various reasons based on multiple considerations. There will be claims that should be settled even where there is no one to actually blame. For example, even if there is no fault on any state employee or entity, if a nominal settlement can be reached, it would make sense to settle the case to avoid spending several thousands of dollars at a trial.

Finally, in the circumstances contemplated by subsections (b) and (c) on page 1, lines 10-17, and page 2, line 1, it is unclear what funds the governor can transfer and from what funds the department or agency will repay the money transferred.

We respectfully request that this bill be held.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

ROBERT YU
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS
ON
SENATE BILL NO. 2522**

**January 28, 2020
2:45 p.m.
Room 225**

RELATING TO CLAIMS AGAINST THE STATE

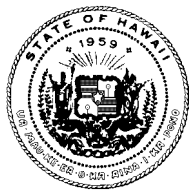
The Department of Budget and Finance (B&F) opposes Senate Bill (S.B.) No. 2522.

S.B. No. 2522 amends Chapter 41D, HRS, to repeal the State Risk Management Revolving Fund and to add a new section to make a department or agency responsible for payment of a claim as determined by the Attorney General. The department or agency may request that the Governor authorize the transfer of sufficient sums from savings available from appropriations from any other State program to meet the obligation and shall be allowed to repay this transfer in annual installments with zero interest as established by the Director of Finance at a term no longer than ten years.

B&F opposes the proposed requirement that any claim shall be paid by the department or agency that is found liable for the claim. There is merit to having departments bear some liability for claims; however, having departments bear full liability without consideration for the amount of the claim and available departmental budgets is not practicable. Departments may not have the ability to pay the claim or

an annual installment and carry out its mission and major functions. Further, any additional claims in the future would severely compound this problem.

Thank you for your consideration of our comments.



STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

January 27, 2020

TO: The Honorable Senator Laura H. Thielen, Chair
Senate Committee on Government Operations

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2522 – RELATING TO CLAIMS AGAINST THE STATE**

Hearing: January 28, 2020, 2:45 p.m.
Conference Room 225, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) defers to the Attorney General's testimony and provides comments.

PURPOSE: The purpose of this measure is to require that claims against the State shall be paid by the department or agency that is found liable for the claim, as determined solely by the Attorney General. Authorizes a department or agency that is financially incapable of meeting its obligation under a claim against the State to request that the Governor transfer available moneys to meet that obligation; provided that any money transferred is repaid by that department or agency in annual installments. Repeals the state risk management revolving fund. Makes conforming amendments.

DHS receives the bulk of its funds from the federal government. Federal funds may not be used to pay for claims against the department. General funds are used to gain matched federal funds; DHS is concerned that general funds diverted to pay claims against the department will reduce the department's ability to match available federal funds.

In the recent past, as required by the Legislature, the department paid certain claims with existing general funds comprised of program savings or vacancy savings. DHS will not be able to pay claims from existing general funds unless programs experience savings. DHS is

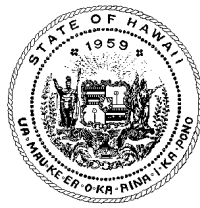
concerned that in any given year, pending claims against the department may further reduce funding available for necessary benefits and services or planned improvements not funded by the federal government.

From practical experience, paying these claims from existing funds are difficult transactions to complete given the time frame, as the process to transact the payment can only happen after the bill approving the claim is enacted into law and must be completed prior to the end of the fiscal year to avoid a lapse in funds. The inability to timely pay the approved claim would potentially increase the amount owed if the judgment were able to accrue post judgment interest due to a delay in payment.

If savings are not available, DHS will still be required to seek appropriation for claims against it. As to the practice of borrowing funds from other available existing funds upon the promise to pay back, it should only be used sparingly in response to a significant emergency or other unpredictable event that happens or when the Legislature is not in session and decisions need to be made to address the immediate funding shortfall or emergency need.

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

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Shari L. Kimoto
Deputy Director
Corrections

Renee R. Sonobe Hong
Deputy Director
Law Enforcement

No. _____

**TESTIMONY ON SENATE BILL 2522
RELATING TO CLAIMS AGAINST THE STATE.**

by
Nolan P. Espinda, Director
Department of Public Safety

Senate Committee on Government Operations
Senator Laura H. Thielen, Chair
Senator Lorraine R. Inouye, Vice Chair

Tuesday, January 28, 2020; 2:45 p.m.
State Capitol, Conference Room 225

Chair Thielen, Vice Chair Inouye, and Members of the Committee:

The Department of Public Safety (PSD) offers the following comments in opposition to Senate Bill (SB) 2522.

The purpose of this bill is to (1) require that claims against the State be paid by the department or agency that is found liable for the claim as determined solely by the Department of the Attorney General; (2) authorize the department or agency that is incapable of paying such claims to request that the Governor transfer available moneys to meet that obligation and the department or agency would be required to repay that amount in annual installments; and (3) repeal the state Risk Management Revolving Fund.

PSD does not believe it is good policy to require the departments to bear the entire cost of legal claims arising from settlements and claims ordinarily paid out of the Risk Management Revolving Fund, without providing additional funding. The Department is concerned that this bill will further reduce funding earmarked for our various programs and services. PSD is mandated to provide safety and security to the

citizens of our State, and we believe we will be unable to meaningfully fulfill our mission with reduced funding.

While we understand the appeal of requiring a department to bear the full responsibility for claims against it, we agree with the testimony of the Department of the Attorney General that claims are settled for various reasons and not necessarily because the department is at fault.

Thank you for your consideration of our comments.

COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

Phone/E-Mail: (808) 927-1214 / kat.caphi@gmail.com



COMMITTEE ON GOVERNMENT OPERATIONS

Senator Laura Thielen, Chair

Senator Lorraine Inouye, Vice Chair

Tuesday, January 28, 2019

2:45 PM – Room 225

STRONG SUPPORT FOR SB 2522 – CLAIMS AGAINST THE STATE

Aloha Chair Thielen, Vice Chair Inouye and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai'i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O'MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** including the ten people who have died in the last 5 months, as well as the approximately 5,200 Hawai'i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,200 of Hawai'i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

SB 2522 provides that claims against the State shall be paid by the department or agency that is found liable for the claim, as determined solely by the Attorney General. Authorizes a department or agency that is financially incapable of meeting its obligation under a claim against the State to request that the Governor transfer available moneys to meet that obligation; provided that any money transferred is repaid by that department or agency in annual installments. Repeals the state risk management revolving fund. Makes conforming amendments.

Community Alliance on Prisons is in strong support of this measure.

The next page shows that from 2008-2018, taxpayers have been over-burdened with more than \$10 million in claims arising from problems at the department of public safety.

Following that is 10 years of data from the Ombudsman's Annual Reports highlighting that this department's percentage of claims eclipses all other departments combined.

THIS IS A CLARION CALL FOR CHANGE.

Community Alliance on Prisons respectfully urges the committee to pass SB 2522 onto the JDC/WAM committees after you take a look at the data provided. We should all be outraged.

Here is data from the last 10 years of Claims Against the State bills where taxpayers were burdened by claims against the department of public safety:

TAXPAYER-FUNDED CLAIMS AGAINST THE DEPARTMENT OF PUBLIC SAFETY - 2008-2018

Judgements & Settlements by Incarcerated Persons & Department Employees

2018	\$ 704,465.45
2017	643,000.00
2016	4,680,000.00
2015	1,231,089.05
2014	140,000.00
2013	524,451.20
2012	558,025.00
2011	149,500.00
2010	110,454.33
2009	425,159.00
2008	<u>547,906.68</u>

TOTAL **\$10,220,864.72**

Here is data from the last 10 years culled from the Annual Report from the Office of the Ombudsman on the disproportionate percentage of complaints against the Department of Public Safety compared to all the other executive agencies combined:

OMBUDSMAN COMPLAINTS – 2008-2018

	Total Jurisdictional	Prison Complaints	General Complaints	% of Prison Complaints
2017-2018	2,388	1,295	1,093	54%
2016-2017	2,357	1,295	1,062	55%
2015-2016	2,706	1,606	1,100	59%
2014-2015	3,106	1,848	1,258	60%
2013-2014	3,071	1,676	1,395	55%
2012-2013	3,128	1,692	1,436	54%
2011-2012	3,159	1,540	1,619	49%
2010-2011	3,399	1,744	1,655	51%
2009-2010	3,509	1,869	1,640	53%
2008-2009	3,268	1,746	1,522	53%