

JAN 17 2020

A BILL FOR AN ACT

RELATING TO CLAIMS AGAINST THE STATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 41D, Hawaii Revised Statutes, is
2 amended by adding a new section to be appropriately designated
3 and to read as follows:

4 "§41D- Department or agency responsible for payment of
5 claim. (a) Any claim that is compromised or settled under
6 section 41D-3, 41D-8, or 662-11 shall be paid by the department
7 or agency that is found liable for the claim. For the purpose
8 of this section, the attorney general shall determine the
9 department or agency that is liable for a claim.

10 (b) If the department or agency is financially incapable
11 of meeting its obligation to pay a claim under this section, the
12 department or agency may request that the governor authorize the
13 transfer of sufficient sums to meet the obligation from whatever
14 savings as may be available from other current appropriations
15 for any other state program.

16 (c) Moneys transferred to a department or agency pursuant
17 to subsection (b) shall be repaid by that department or agency



1 in annual installments without interest; provided that the
2 director of finance shall establish the number and amount of
3 installments as may be reasonably calculated to liquidate the
4 indebtedness of the department or agency in not more than ten
5 years."

6 SECTION 2. Section 41D-3, Hawaii Revised Statutes, is
7 amended by amending subsection (f) to read as follows:

8 "(f) Claims compromised or settled under this section
9 shall be paid [~~from the state risk management revolving fund.~~]
10 as provided in section 41D- ."

11 SECTION 3. Section 41D-8, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "[+]§41D-8[+] **Insurance on public vehicles.** Vehicles
14 owned by the State or in the custody and use of any department
15 may be self-insured or insured by purchased insurance against
16 public liability in compliance with article 10C of chapter 431.
17 Determinations of whether to insure or self-insure shall be made
18 by the comptroller in conjunction with the state agency having
19 custody or control of the vehicle, or the vehicle may be insured
20 on a complete or excess coverage basis under a comprehensive
21 automobile liability insurance policy entered into by the



1 comptroller. If the vehicles are self-insured, claims for which
 2 the State is liable under article 10C of chapter 431 may be
 3 settled and paid [~~by the comptroller from the state risk~~
 4 ~~management revolving fund,~~] as provided in section 41D- ,
 5 notwithstanding the provisions of chapter 662. Any purchased
 6 state comprehensive automobile liability insurance policy shall
 7 be administered by and be subject to the control of the
 8 comptroller."

9 SECTION 4. Section 662-11, Hawaii Revised Statutes, is
 10 amended by amending subsection (b) to read as follows:

11 "(b) Claims arbitrated, compromised, or settled by the
 12 attorney general for an amount not exceeding \$25,000, shall be
 13 paid [~~from the state risk management revolving fund. Claims~~
 14 ~~arbitrated, compromised, or settled by the attorney general for~~
 15 ~~more than \$25,000 shall be paid only after funds are~~
 16 ~~appropriated by the legislature for the payment of those~~
 17 ~~claims.] as provided in section 41D- ."~~

18 SECTION 5. Section 41D-4, Hawaii Revised Statutes, is
 19 repealed.



1 ~~["§41D-4 State risk management revolving fund. (a) The~~
2 ~~state risk management revolving fund is created and shall be~~
3 ~~funded in amounts reasonably necessary to:~~

4 ~~(1) Carry out the responsibilities of the comptroller~~
5 ~~established in section 41D-2;~~

6 ~~(2) Pay claims to state agencies for losses to property of~~
7 ~~the State caused by fire or other casualty, including~~
8 ~~the cost to repair or replace buildings and other~~
9 ~~structures, replace damaged contents, and to provide~~
10 ~~alternate structures while damaged structures are~~
11 ~~being repaired or replaced;~~

12 ~~(3) Pay claims against the State under sections 662-11,~~
13 ~~41D-3, and 41D-8; and~~

14 ~~(4) Pay for losses to the State incurred by the~~
15 ~~dishonesty, nonfeasance, or misfeasance of any officer~~
16 ~~or employee of the State or for any losses to the~~
17 ~~State through larceny, theft, embezzlement, forgery,~~
18 ~~misappropriation, wrongful abstraction, wilful~~
19 ~~misapplication, or any other fraudulent or dishonest~~
20 ~~act committed by one or more of the employees of the~~
21 ~~State acting directly or in collusion with others.~~



1 ~~(b) In addition to any appropriation the legislature shall~~
2 ~~make to the state risk management revolving fund, the~~
3 ~~comptroller may apportion to, and collect from, state agencies~~
4 ~~those amounts of money that, in the discretion of the~~
5 ~~comptroller, reflect benefits received by the agencies under~~
6 ~~this chapter. The comptroller may consider the relevant risk~~
7 ~~and loss experience of the agencies in making apportionments and~~
8 ~~assessments. Funds so collected shall be deposited into the~~
9 ~~state risk management revolving fund.~~

10 ~~(c) The comptroller may establish deductibles for the~~
11 ~~state agencies for certain perils or classes of property losses~~
12 ~~and may:~~

- 13 ~~(1) Assess the agencies for losses incurred in the amount~~
14 ~~of the deductible; or~~
- 15 ~~(2) Reduce the payment from the state risk management~~
16 ~~revolving fund to cover the casualty loss by the~~
17 ~~amount of the deductible.~~

18 ~~(d) The comptroller may establish a formula for refunds to~~
19 ~~the state agencies based upon the agencies' risk and loss~~
20 ~~experience.~~



1 ~~(e) Money in the state risk management revolving fund~~
2 ~~shall be expended only for the purposes delineated in subsection~~
3 ~~(a) and only upon the authority of the comptroller, who is given~~
4 ~~discretion when to permit expenditures from the fund. Money in~~
5 ~~the state risk management revolving fund shall not be garnished,~~
6 ~~attached, or otherwise subjected to legal compulsion to pay~~
7 ~~actual or alleged obligations of the State, any state agency, or~~
8 ~~any state employee.~~

9 ~~(f) The comptroller shall prepare, for each fiscal year, a~~
10 ~~report of all claims arbitrated, compromised, or settled and~~
11 ~~paid from the state risk management revolving fund as provided~~
12 ~~in section 41D-3. The report shall be submitted to the~~
13 ~~legislature twenty days prior to the commencement of the regular~~
14 ~~session next succeeding the year for which the report is made.~~

15 ~~(g) Money received from the settlement of claims or losses~~
16 ~~of the State as delineated in subsection (a) shall be deemed to~~
17 ~~be trust moneys and may be deposited into the state risk~~
18 ~~management revolving fund or into a trust account with and under~~
19 ~~the control of the affected agency at the discretion of the~~
20 ~~comptroller. These moneys and any interest earned thereon shall~~
21 ~~be used for the purpose identified in any such settlement."]~~



1 SECTION 6. Section 41D-5, Hawaii Revised Statutes, is
2 repealed.

3 ~~["§41D-5] Investment of fund. The director of finance~~
4 ~~shall invest all moneys appropriated or assessed to the state~~
5 ~~risk management revolving fund. Interest upon the investments~~
6 ~~shall be credited to the state risk management revolving fund."]~~

7 SECTION 7. Section 41D-6, Hawaii Revised Statutes, is
8 repealed.

9 ~~["§41D-6] Fund advancement; dissolution. If the state~~
10 ~~risk management revolving fund should become financially~~
11 ~~incapable of meeting its obligations under this chapter, the~~
12 ~~comptroller, in the comptroller's discretion, may:~~

13 ~~(1) Request that the governor authorize the transfer of~~
14 ~~sufficient sums to meet the fund's obligations from~~
15 ~~whatever such savings as may be available from other~~
16 ~~current appropriation for any other state program.~~
17 ~~Money so advanced shall be repaid from the state risk~~
18 ~~management revolving fund in annual installments,~~
19 ~~without interest. The amount of installments shall be~~
20 ~~fixed by the director of finance at whatever amount as~~



1 ~~can reasonably be expected to liquidate indebtedness~~
 2 ~~of the fund in not more than ten years; or~~
 3 ~~(2) Dissolve the fund, prorating remaining assets of the~~
 4 ~~fund among the claimants, giving priority to those~~
 5 ~~claims as, in the comptroller's discretion, is~~
 6 ~~appropriate."]~~

7 SECTION 8. On July 1, 2020, all unencumbered balances
 8 remaining in the state risk management revolving fund repealed
 9 by this Act shall lapse to the credit of the general fund.

10 SECTION 9. Statutory material to be repealed is bracketed
 11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect on July 1, 2020.

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INTRODUCED BY: Clarence K. Jettihana

Ronald J. Bork

Transmitted
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S.B. NO. 2522

Report Title:

Claims Against the State; AG; Payments; Departments;
Departmental Budget; State Risk Management Revolving Fund;
Repeal

Description:

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.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

