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STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
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April 1, 2021
9:30 a.m.
State Capitol, Teleconference

H.B. 357, H.D. 1, S.D. 1
RELATING TO STATUTE OF LIMITATIONS

Senate Committee on Ways and Means

The Department of Transportation (DOT) **strongly supports** H.B. 357, H.D. 1, S.D. 1, which clarifies that the statute of limitations for an inverse-condemnation claim brought against the State founded upon article I, section 20, of the Hawaii State Constitution is two years, pursuant to section 661-5, Hawaii Revised Statutes, by amending the jurisdiction of the state circuit and district courts under section 661-1, Hawaii Revised Statutes, to expressly include claims against the State founded upon article I, section 20, of the Hawaii State Constitution.

This bill would provide a proper incentive for people to provide timely notice to government agencies, such as DOT, if they believe that the State is acting in some way that is adversely impacting their rights. When a regulatory-taking claim is asserted, the DOT can initiate timely action to mitigate damages and prevent further undue interference with private property rights. Without a two-year limit on those claims, the State's potential damages increase substantially.

Thank you for the opportunity to provide testimony.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 357, H.D. 1, S.D. 1, RELATING TO STATUTE OF LIMITATIONS.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, April 1, 2021 **TIME:** 9:30 a.m.

LOCATION: State Capitol, Room 211, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact David D. Day,
Deputy Attorney General, at 586-1346)

Chair Dela Cruz and Members of the Committee:

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

The purpose of this bill is to expressly establish that claims brought against the State for inverse condemnation based on section 20 of article I of the Constitution of the State of Hawaii must be brought within two years of accrual pursuant to section 661-5, Hawaii Revised Statutes (HRS), by amending section 661-1, HRS, to expressly include claims against the State founded upon section 20 of article I of the State Constitution.

Section 20 of article I of the Constitution of the State of Hawaii provides: "Private property shall not be taken or damaged for public use without just compensation." Although traditionally associated with eminent domain, where the government literally takes ownership of property, courts have expanded the claim by recognizing the doctrine of "inverse condemnation," which allows suits for compensation alleging that a government action has taken private property by virtue of physical occupation of the property (a physical taking) or by a regulation that severely diminishes the value of the property (a regulatory taking).

Monetary claims against the State—whether based upon contract, statute, rule, a tort theory, or breach of fiduciary duty—are subject to a two-year statute of limitations. See, e.g., sections 661-5, 662-4, and 673-10, HRS. However, the Hawaii Supreme Court ruled in DW Aina Le'a Development, LLC v. State of Hawai'i Land Use Comm'n,

148 Hawai'i 396, 477 P.3d 836 (2020), that the statute of limitations for a regulatory-taking claim is six years pursuant to the "catch all" statute of limitations of section 657-1(4), HRS, but left open the question of the applicable statute of limitations for a physical-taking claim. This bill would establish that all inverse-condemnation claims—whether based upon a physical- or regulatory-taking theory—are subject to the same two-year statute of limitations, and are otherwise procedurally treated the same, as other monetary claims against the State.

It is not always immediately obvious to the government that a regulation may have serious adverse effects upon private property owners. Hawaii has unique legal structures for land-use and permitting, including conservation-district permitting, coastal-zone management, shoreline setbacks, historic-preservation laws, the Water Code, and a robust trust doctrine, all of which are intended to protect the 'aina and its resources and natural beauty. Because regulations within these legal structures could potentially limit the development of property, the State could be subject to a variety of regulatory-taking claims. Likewise, whether a physical invasion of private property occurs may not be immediately obvious to the State.

This bill also might be helpful to the State with respect to the COVID-19 pandemic. Laws and regulations imposed for the benefit of public health conceivably could result in lawsuits. Because Hawaii case law on regulatory-taking claims is very limited, the likelihood of the State being found liable for a regulatory-taking claim is difficult to predict, given the myriad of different factual situations. This in turn makes the State's potential financial exposure very high.

When an inverse-condemnation claim is asserted, the State and its agencies can take timely action to mitigate damages and prevent further undue interference with private-property rights. Without a two-year limit on those claims, the State's potential damages increase substantially. A two-year statute of limitations allows the State to timely consider a claim and determine the best course of action to take without allowing potential damages to continue and increase. And, because inverse-condemnation claims usually allege substantial interference with real property and development rights,

and routinely seek many millions of dollars, the statute of limitations should be limited to two years to prevent the State from unnecessarily accruing increased financial liability.

The Department respectfully requests that the Committee pass this bill.

HB-357-SD-1

Submitted on: 3/29/2021 11:03:03 AM

Testimony for WAM on 4/1/2021 9:30:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. SMITH	Individual	Support	No

Comments:

† support