



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2107, RELATING TO SPECIAL COUNSEL.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY

DATE: Thursday, January 25, 2024 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 016 and Videoconference

TESTIFIER(S): Anne E. Lopez, Attorney General, or
Robyn Chun, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

The purpose of this bill is to add a new section to chapter 28, Hawaii Revised Statutes, that authorizes the Attorney General to appoint a special counsel when: (i) an investigation of a person or matter is warranted; (ii) the investigation or prosecution of a person or matter may present a conflict of interest for the Department; and (iii) it is deemed to be in the public's interest to have an outside counsel assume responsibility for the matter.

The Attorney General already has the ability to appoint special deputy attorneys general and may specify the duties and powers of such deputies. See section 28-8, Hawaii Revised Statutes. When conflicts of interests arise that implicate the Attorney General personally, or the Department of the Attorney General as a whole, the Department has a range of options to resolve them. For example, the Attorney General may request any of the four county prosecuting attorneys to investigate and prosecute criminal acts when she or the Department has an unresolvable conflict of interest. The county prosecuting attorney may then exercise his or her prosecutorial discretion without involvement or interference by the Attorney General. The creation of the Department of Law Enforcement provides another avenue for criminal investigation that does not require the involvement of the Attorney General.

Moreover, as the only cabinet-level official that cannot be removed by the Governor, the Attorney General is uniquely insulated from political pressure and influence. See article V, section 6 of the Hawaii Constitution. This allows the Attorney General to perform her duties, including administrative, civil, and criminal investigations, in an unbiased and apolitical manner. This bill, while well-intended, is ultimately unnecessary.

The Department asks this Committee to defer this bill.

SB-2107

Submitted on: 1/23/2024 8:20:55 AM

Testimony for JDC on 1/25/2024 10:00:00 AM

Submitted By	Organization	Testifier Position	Testify
Michael EKM Olderr	Individual	Comments	Written Testimony Only

Comments:

I support the intent of this measure though I am concerned about why this wasn't already a law. I also want to express my concern about the attorney general themselves appointing a special counsel in matters of a conflict of interest because that itself I fear would lead to another conflict of interest of them choosing someone they know who would be lenient. Perhaps it would be better if there would be a way for a third party to choose who would be the special counsel I would be more supportive of this bill.