

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON JUDICIARY
HEARING ON FEBRUARY 5, 2020 AT 2:05PM IN CR 325

HB 2017 RELATING TO THE HAWAIIAN HOMES COMMISSION

February 4, 2020

Aloha Chair Lee, Vice Chair San Buenaventura, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill allowing the Hawaiian Homes Commission (HHC) or DHHL to retain independent legal counsel as needed and authorizing the HHC and DHHL to use the services of the Attorney General as needed and when the interests of the State, HHC, and DHHL are aligned. The HHC approved a similar measure, but it was not included in the Administration's legislative package.

The HHC and DHHL have a trust duty to its beneficiaries and in the fulfillment of this trust obligation, the HHC and DHHL may at times be at odds with the interests of the State. It is at these times that the HHC and DHHL must be assured that its counsel provides legal counsel strictly in the interest of its client. Independent counsel that is hired and retained by the HHC or DHHL eliminates any cloud of uncertainty that there is a conflict of interest as a result of representation by the Attorney General's office that also represents the State of Hawaii.

Thank you for your consideration of our testimony.



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

ON THE FOLLOWING MEASURE:

H.B. NO. 2017, RELATING TO THE HAWAIIAN HOMES COMMISSION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Wednesday, February 5, 2020 **TIME:** 2:05 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Clare E. Connors, Attorney General, or
Craig Y. Iha, Deputy Attorney General

Chair Lee and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill allows the Hawaiian Homes Commission (HHC) and the Department of Hawaiian Home Lands (DHHL) to hire their own attorneys without the approval or participation of the Attorney General or the Governor. This bill provides the HHC and DHHL the discretion to use the services of the Attorney General if the interests of the State, the HHC, and DHHL are “aligned.” This bill also requires the State pay the legal fees owed to the attorneys hired by the HHC and DHHL.

As a general matter, state agencies should be advised by deputy attorneys general. By locating the attorneys for state agencies within a single department, we are able to provide a wide range of experience and expertise to those agencies. Private attorneys retained by the HHC and DHHL could not acquire the necessary breadth of knowledge and experience that the Department of the Attorney General already has. Additionally, because state agencies are regulated by a variety of laws, such as the Procurement Code, the Sunshine Law, and the Uniform Information Practices Act, not applicable to private practice, the Department of the Attorney General has a depth of expertise in representing state agencies that would be difficult to duplicate by private attorneys, and certainly not without additional expense. Finally, deputy attorneys general, being separate and apart from the state agencies they represent, are insulated

from political issues that may arise within a state agency. This insulation permits the Department of the Attorney General to provide objective and high-quality legal counsel.

The Department of the Attorney General is also unique in its ability under the law to undertake concurrent representation of multiple state agencies that may have conflicting interests, something that private attorneys are not able to do under the Hawaii Rules of Professional Conduct, which are the rules governing lawyers. In State v. Klattenhoff (1990), the Hawaii Supreme Court ruled that the Department of the Attorney General may assign deputies to represent agencies that have competing interests as long as it erects appropriate firewalls between those attorneys and takes steps to ensure that no prejudice is suffered by the clients. The Department of the Attorney General has done this in past cases to ensure that all client agencies are vigorously, and separately, represented. We have provided, and will continue to provide, vigorous and objective legal representation to the HHC and DHHL.

Notwithstanding the prohibition against employing or retaining an attorney, agencies may submit a request to the Attorney General requesting that section 28-8.3, Hawaii Revised Statutes (HRS), be waived. Under certain circumstances deemed by the Attorney General to be good and sufficient, an agency may retain or employ its own attorney, provided that the Governor also waives section 28-8, HRS. This avenue has been exercised by the HHC and DHHL in the past.

For the foregoing reasons, we respectfully request that this bill be held in committee.

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)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON JUDICIARY
ON
HOUSE BILL NO. 2017

February 5, 2020
2:05 p.m.
Room 325

RELATING TO THE HAWAIIAN HOMES COMMISSION

The Department of Budget and Finance (B&F) offers comments on House Bill (H.B.) No. 2017.

H.B. No. 2017 amends Section 28-8.3, HRS, to exclude the Hawaiian Homes Commission or the Department of Hawaiian Home Lands from the provision that states that no department of the State other than the Attorney General may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department. The bill also proposes that legal fees owed to independent counsel shall be paid by the State.

B&F strongly believes that legal fees for independent counsel should be budgeted and appropriated by the Legislature to ensure efficient and effective use of limited State tax revenues based on the State's current priorities and financial situation.

Thank you for your consideration of our comments.

HB-2017

Submitted on: 2/5/2020 9:18:19 AM

Testimony for JUD on 2/5/2020 2:05:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Lana Ululani Robbins	Individual	Oppose	No

Comments:

Mahalo for the oportunity to testify.

HB 2017 wants to amend the HRS so HHC/DHHL can be the sole State of Hawai'i agency under HRS to be able to use the Attorney General as their counsel. This hurts Hawaiians.

Please vote NO. Thank you.