



GOV. MSG. NO. 908

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 8, 2008

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB3386 HD1 SD2 CD1, without my approval, and with the statement of objections relating to the measure.

HB3386 HD1 SD2 CD1

A BILL FOR AN ACT RELATING TO ATTORNEYS.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

July 8, 2008

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 3386

Honorable Members
Twenty-Fourth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 3386, entitled "A Bill or an Act Relating to Attorneys."

The purpose of this bill is to expressly authorize administrative rules officers and specialists who are employed by the Department of Taxation and licensed to practice law to be designated "special tax counsel" to provide legal advice to the department concerning matters relating to title 14, "Taxation," of the Hawaii Revised Statutes.

I am returning this bill with objections because the amendments made to section 231-4.5, Hawaii Revised Statutes, to effectuate the bill's purposes, repeal the provisions creating the administrative rules officer and specialist positions, describing the qualifications and duties for the positions, and authorizing the Director of Taxation to appoint persons to fill the positions. I am particularly concerned because the amendments eliminate section 231-4.5's civil service exemptions for administrative rules officer and specialist positions. This could compromise the incumbents' current level of compensation and adversely affect the Department of Taxation's flexibility in recruiting and hiring attorneys.

I would have no objection to approving this bill if the section's current title was retained, the existing

STATEMENT OF OBJECTIONS
HOUSE BILL NO. 3386
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provisions of section 231-4.5 were retained and designated subsection (a), and the new provisions of the section were re-designated subsections (b), (c) and (d).

For the foregoing reasons, I am returning House Bill No. 3386 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO ATTORNEYS.

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

1 SECTION 1. Section 231-4.5, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "**§231-4.5 Administrative rules officer; specialists;**
4 ~~[appointment and duties]~~ special tax counsel designation. [The
5 ~~director of taxation may appoint an administrative rules~~
6 ~~officer, and administrative rules specialists as necessary to~~
7 ~~assist the administrative rules officer. The administrative~~
8 ~~rules officer shall direct the adoption of rules related to~~
9 ~~taxes administered by the department, assist with the issuance~~
10 ~~of tax memoranda and tax information releases, and perform other~~
11 ~~duties as directed by the director. The administrative rules~~
12 ~~officer and the administrative rules specialists shall be exempt~~
13 ~~from chapters 76 and may be legal or accounting professionals;~~
14 ~~provided that no individual appointed under this section shall~~
15 ~~render legal services reserved to the attorney general under~~
16 ~~chapter 28.]~~ (a) Notwithstanding any law to the contrary, any
17 licensed attorney employed by the department as administrative



1 rules officer or administrative rules specialist shall be
2 designated special tax counsel and shall be authorized to:

3 (1) Provide legal advice to the department relating to
4 title 14 subject to the attorney-client privilege;
5 (2) Represent the department before a board of review
6 under chapter 232 and provide legal services in such
7 representation subject to the attorney-client and
8 attorney-work product privileges; and

9 (3) Represent the department before the tax appeal court
10 under chapter 232 with the approval of the attorney
11 general and subject to attorney general supervision,
12 in the capacity of special deputy attorney general.

13 (b) Notwithstanding any law to the contrary, including
14 subsection (a), any and all legal advice or communications of
15 any form given by the licensed-attorney administrative rules
16 officer, administrative rules specialist, and special tax
17 counsel, shall be disclosed to the public in accordance with
18 standards provided by federal law and federal court
19 interpretation for public disclosure of Internal Revenue Service
20 Office of Chief Counsel advice and communications.

21 (c) The department shall keep daily records of time spent
22 by each licensed-attorney administrative rules officer,



1 administrative rules specialist, and special tax counsel, on
2 categories of work, including but not limited to representation
3 of the department before the board of review, representation
4 before the tax appeal court, legislation, rules, tax information
5 releases, notices, private rulings or letters, and advice to the
6 department by branch. The department shall report to the
7 legislature ten days prior to the convening of each regular
8 legislative session of the time so spent by each such person by
9 category of work for the preceding year."

10 SECTION 2. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 3. This Act shall take effect upon its approval.

