

---

# A BILL FOR AN ACT

---

RELATING TO GOVERNMENT OPERATION AND POLICY.

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

1       SECTION 1.   Section 26-35.5, Hawaii Revised Statutes, is  
2   amended to read as follows:

3       "**§26-35.5   Members of boards and commissions; immunity from**  
4   **or indemnification for civil liability; defense of members[-];**  
5   **training.**   (a)   For purposes of this section, "member" means any  
6   person who is appointed, in accordance with the law, to serve on  
7   a temporary or permanent state board, including members of the  
8   board of education, the governing board of any charter school  
9   established under chapter 302D, council, authority, committee,  
10   or commission, established by law or elected to the board of  
11   trustees of the employees' retirement system under section 88-  
12   24, or the corporation board of the Hawaii health systems  
13   corporation under section 323F-3 and its regional system boards  
14   under section 323F-3.5; provided that "member" shall not include  
15   any person elected to serve on a board or commission in  
16   accordance with chapter 11.



1           (b) Notwithstanding any law to the contrary, no member  
2 shall be liable in any civil action founded upon a statute or  
3 the case law of this State, for damage, injury, or loss caused  
4 by or resulting from the member's performing or failing to  
5 perform any duty which is required or authorized to be performed  
6 by a person holding the position to which the member was  
7 appointed, unless the member acted with a malicious or improper  
8 purpose, except when the plaintiff in a civil action is the  
9 State.

10           (c) Except as provided in subsections (d) and (f), the  
11 State shall indemnify a member from liability by paying any  
12 judgment in, or settlement or compromise of, any civil action  
13 arising under federal law, the law of another state, or the law  
14 of a foreign jurisdiction, including fees and costs incurred,  
15 unless the loss, injury, or damage for which the judgment or  
16 settlement amount is required to be paid:

17           (1) Is fully covered by a policy of insurance for civil  
18 liability purchased by the State;

19           (2) Is caused by or is the result of the member's  
20 performing an act authorized or required to be  
21 performed by a person holding the position to which



1 the member was appointed so as to effect a malicious  
2 or improper purpose; or

3 (3) Is caused by or is the result of the member's failure  
4 to perform an act required or authorized to be  
5 performed by a person holding the position to which  
6 the member was appointed so as to effect a malicious  
7 or improper purpose.

8 (d) The State shall not indemnify a member who would  
9 otherwise be entitled to indemnification under subsection (c),  
10 if the member fails to cooperate fully in the defense of the  
11 civil action which is made available to the member under  
12 subsection (e). The State shall not indemnify a member for any  
13 portion of a judgment that represents punitive or exemplary  
14 damages. The State shall not indemnify a member for any portion  
15 of a settlement which is deemed unreasonable by the legislature.

16 (e) The attorney general, or in the case of the board of  
17 regents of the University of Hawaii, its university general  
18 counsel, or in the case of the board of directors of the Hawaii  
19 health systems corporation under section 323F-3 or its regional  
20 system boards under [†]section[†] 323F-3.5, the attorneys  
21 retained by the board of directors of the Hawaii health systems



1 corporation or its regional system boards under section 323F-9,  
2 shall represent and defend a member in any civil action for  
3 which immunity is conferred under subsection (b), or when the  
4 attorney general, or, if the action involves a member of the  
5 board of regents, the university general counsel, or, if the  
6 action involves a member of the board of directors of the Hawaii  
7 health systems corporation or its regional system boards, the  
8 attorneys retained by the board of directors of the Hawaii  
9 health systems corporation or its regional system boards,  
10 determines that indemnification is available to the member under  
11 subsection (c), and the member against whom the action is  
12 brought has submitted a written request for representation and  
13 has provided the attorney general, the university general  
14 counsel in the case of an action involving a member of the board  
15 of regents, or the attorneys retained by the board of directors  
16 of the Hawaii health systems corporation or its regional system  
17 boards in the case of an action involving a member of the board  
18 of directors of the Hawaii health systems corporation or its  
19 regional system boards with all process or complaint served upon  
20 the member within a reasonable period of time, but not more than  
21 five days after being served with the process or complaint. The



1 attorney general, the university general counsel, or an attorney  
2 retained by the board of directors of the Hawaii health systems  
3 corporation or its regional system boards may terminate the  
4 representation and defense of the member at any time if, after  
5 representation and defense is accepted, the attorney general,  
6 the university general counsel, or an attorney retained by the  
7 board of directors of the Hawaii health systems corporation or  
8 one of its regional system boards determines that  
9 indemnification would not be available to the member under  
10 subsection (c).

11 (f) A member may retain counsel of the member's own choice  
12 at the member's own expense. If the member chooses to retain  
13 counsel at the member's own expense, the State shall not  
14 indemnify the member even though the member would have been  
15 entitled to indemnification under subsection (c). The attorney  
16 general, or the university general counsel in the case of a  
17 member of the board of regents, may enter an appearance in any  
18 action in which the member is represented by counsel of the  
19 member's own choice, even though no request for the appearance  
20 has been made by the member.



1 (g) Nothing in this section precludes a member from  
2 compromising or settling any claim against the member at the  
3 member's own expense. If such a settlement or compromise is  
4 effected, however, the member shall be deemed to have waived any  
5 claims which the member might have made under this section  
6 unless the provisions of subsection (i) apply.

7 (h) If the attorney general, or the university general  
8 counsel in the case of a member of the board of regents, denies  
9 representation to the member under subsection (e) and the member  
10 proceeds to judgment in the action for which representation was  
11 denied, the member may commence an action against the State or  
12 the University of Hawaii in the case of a member of the board of  
13 regents, in the circuit court to recover reasonable costs and  
14 fees incurred by the member in defending against that action,  
15 including attorney's fees, court costs, investigative costs, and  
16 expert witness fees. The State or the University of Hawaii in  
17 the case of a member of the board of regents, shall pay the  
18 judgment or reimburse the member if the member has satisfied the  
19 judgment in an action for which representation was denied;  
20 provided the member was found not liable in that action or the  
21 member establishes by a preponderance of the evidence that the



1 member is entitled to indemnification under subsection (c). A  
2 finding of negligence against the member in the civil action for  
3 which representation was denied shall not be binding upon the  
4 circuit court in any action brought under this subsection. The  
5 member shall commence any action under this subsection no later  
6 than two years after entry of judgment in the action for which  
7 the member was denied representation if no appeal is filed, or  
8 two years after the conclusion of the final appeal from that  
9 judgment if an appeal is filed.

10 (i) If the attorney general, or the university general  
11 counsel in the case of a member of the board of regents, denies  
12 representation to the member under subsection (e) and the member  
13 negotiates a compromise or settlement without an entry of  
14 judgment in the action for which representation was denied, the  
15 member may seek to introduce a bill in the legislature to secure  
16 an appropriation to reimburse the member for the amount of the  
17 settlement or that portion which constitutes a reasonable  
18 settlement, and for reasonable costs and fees incurred by the  
19 member in defending against that action, including attorney's  
20 fees, court costs, investigative costs, and expert witness fees.



1           (j) Any moneys [~~which~~] that the State is required to pay  
2 to a member under this section shall be paid from an  
3 appropriation made by the legislature at the next session after  
4 the requirement to pay inures to the member. The appropriation  
5 shall be sufficient to include any postjudgment interest [~~which~~]  
6 that the member was required to pay if the member has personally  
7 satisfied the judgment, or at the rate specified in section  
8 478-3 for the period from the entry of judgment for which  
9 indemnification is available until the appropriation is enacted  
10 if the judgment was not satisfied. Any bill necessary to effect  
11 a payment required by subsections (h) and (i) shall be submitted  
12 by the member to a legislator; all other bills necessary to  
13 effect payments required by this section shall be initiated by  
14 the attorney general.

15           (k) This section shall not be construed as eliminating,  
16 waiving, reducing, or limiting any defense, immunity, or  
17 jurisdictional bar conferred upon or available to a member or  
18 the State by any other statute or by case law.

19           (l) Upon appointment, each new member shall participate in  
20 a formal educational and orientation session with the head of  
21 the department or agency that administratively controls or





1 supervises the member's board or commission; provided that no  
2 new member shall receive voting rights until the educational and  
3 orientation session is completed.

4 (m) At least once per calendar year, all departments and  
5 its agencies with boards and commissions subject to section  
6 84-17, shall train their members regarding their mission, roles,  
7 and responsibilities under federal, state, and local laws;  
8 programs; processes and procedures; and statutes relevant to the  
9 work of the board or commission on which their members sit."

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.



**Report Title:**

Departments; Boards; Commissions; Members

**Description:**

Requires each new member of a board or commission to participate in a formal educational and orientation session with the head of the department with jurisdiction of that member's board or commission in order to receive voting rights. Requires each department and agency to train their members at least once per calendar year. (Proposed SD1)

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

