
A BILL FOR AN ACT

RELATING TO INDEPENDENT LEGAL COUNSEL.

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

1 SECTION 1. The legislature finds that Congress through the
2 Hawaiian Homes Commission Act, 1920, as amended, set aside lands
3 to be used for the benefit of native Hawaiians. As required by
4 the Admission Act and as a compact with the United States, the
5 State of Hawaii and the people of Hawaii adopted the Hawaiian
6 Homes Commission Act as a provision of the Hawaii State
7 Constitution and agreed to faithfully carry out the spirit of
8 the Hawaiian Homes Commission Act for the rehabilitation of the
9 Hawaiian race. These trust responsibilities remain to this day.

10 The legislature further finds that given this unique and
11 significant history, the department of Hawaiian home lands and
12 other state agencies will, at times, have different strategic
13 objectives and policies on issues that are culturally sensitive
14 to the Native Hawaiian people. Accordingly, the purpose of this
15 Act is to allow the department of Hawaiian home lands to retain
16 independent legal counsel where the opposing party to the



1 reasonably anticipated litigation is the State or another state
2 agency.

3 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By amending subsection (a) to read:

6 "(a) No department of the State other than the attorney
7 general may employ or retain any attorney, by contract or
8 otherwise, for the purpose of representing the State or the
9 department in any litigation, rendering legal counsel to the
10 department, or drafting legal documents for the department;
11 provided that the foregoing provision shall not apply to the
12 employment or retention of attorneys:

13 (1) By the public utilities commission, the labor and
14 industrial relations appeals board, and the Hawaii
15 labor relations board;

16 (2) By any court or judicial or legislative office of the
17 State; provided that if the attorney general is
18 requested to provide representation to a court or
19 judicial office by the chief justice or the chief
20 justice's designee, or to a legislative office by the
21 speaker of the house of representatives and the



1 president of the senate jointly, and the attorney
2 general declines to provide such representation on the
3 grounds of conflict of interest, the attorney general
4 shall retain an attorney for the court, judicial, or
5 legislative office, subject to approval by the court,
6 judicial, or legislative office;

7 (3) By the legislative reference bureau;

8 (4) By any compilation commission that may be constituted
9 from time to time;

10 (5) By the real estate commission for any action involving
11 the real estate recovery fund;

12 (6) By the contractors license board for any action
13 involving the contractors recovery fund;

14 (7) By the office of Hawaiian affairs;

15 (8) By the department of commerce and consumer affairs for
16 the enforcement of violations of chapters 480 and
17 485A;

18 (9) As grand jury counsel;

19 (10) By the Hawaii health systems corporation, or its
20 regional system boards, or any of their facilities;

21 (11) By the auditor;



- 1 (12) By the office of ombudsman;
- 2 (13) By the insurance division;
- 3 (14) By the University of Hawaii;
- 4 (15) By the Kahoolawe island reserve commission;
- 5 (16) By the division of consumer advocacy;
- 6 (17) By the office of elections;
- 7 (18) By the campaign spending commission;
- 8 (19) By the Hawaii tourism authority, as provided in
- 9 section 201B-2.5;
- 10 (20) By the division of financial institutions;
- 11 (21) By the office of information practices;
- 12 (22) By the school facilities authority;
- 13 (23) By the Mauna Kea stewardship and oversight authority;
- 14 [~~or~~]
- 15 (24) By the department of Hawaiian home lands; provided
- 16 that:
- 17 (A) The opposing party to the reasonably anticipated
- 18 litigation is the State or another state agency;
- 19 and
- 20 (B) Legal fees owed to independent counsel shall be
- 21 paid by the attorney general; or



1 [~~(24)~~] (25) By a department, if the attorney general, for
2 reasons deemed by the attorney general to be good and
3 sufficient, declines to employ or retain an attorney
4 for a department; provided that the governor waives
5 the provision of this section."

6 2. By amending subsection (c) to read:

7 "(c) Every attorney employed by any department on a full-
8 time basis, except an attorney employed by the public utilities
9 commission, the labor and industrial relations appeals board,
10 the Hawaii labor relations board, the office of Hawaiian
11 affairs, the Hawaii health systems corporation or its regional
12 system boards, the department of commerce and consumer affairs
13 in prosecution of consumer complaints, insurance division, the
14 division of consumer advocacy, the University of Hawaii, the
15 Hawaii tourism authority as provided in section 201B-2.5, the
16 Mauna Kea stewardship and oversight authority, the office of
17 information practices, the department of Hawaiian home lands as
18 provided in subsection (a), or as grand jury counsel, shall be a
19 deputy attorney general."

20 SECTION 3. Statutory material to be repealed is bracketed
21 and stricken. New statutory material is underscored.



1 SECTION 4. This Act shall take effect on March 22, 2075.



Report Title:

Department of Hawaiian Home Lands; Legal Counsel

Description:

Allows the Department of Hawaiian Home Lands to retain independent legal counsel where the opposing party to the reasonably anticipated litigation is the State or another state agency. Provides that fees owed to independent legal counsel shall be paid by the State. Effective 3/22/2075. (SD2)

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