

ACT 58

H.B. NO. 2608

A Bill for an Act Relating to the Hawaii Tourism Authority.

Be It Enacted by the Legislature of the State of Hawaii:

PART I

SECTION 1. Chapter 201B, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§201B- Authority, private attorneys. (a) The board may appoint or retain by contract one or more attorneys who are independent of the attorney general to provide legal services for the board solely in cases of contract negotiations in which the attorney general lacks sufficient expertise; provided that the independent attorney shall consult and work in conjunction with the designated deputy attorney general assigned to the Hawaii tourism authority.

(b) The board may fix the compensation of the attorneys appointed or retained pursuant to this section. Attorneys appointed or retained by contract shall be exempt from chapters 76, 78, and 88.”

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

1. By amending subsection (a) to read:

“(a) 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; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

- (1) By the public utilities commission, the labor and industrial relations appeals board, and the Hawaii labor relations board;
- (2) By any court or judicial or legislative office of the State;
- (3) By the legislative reference bureau;
- (4) By any compilation commission that may be constituted from time to time;

- (5) By the real estate commission for any action involving the real estate recovery fund;
- (6) By the contractors license board for any action involving the contractors recovery fund;
- (7) By the trustees for any action involving the travel agency recovery fund;
- (8) By the office of Hawaiian affairs;
- (9) By the department of commerce and consumer affairs for the enforcement of violations of chapters 480 and 485;
- (10) As grand jury counsel;
- (11) By the Hawaiian home lands trust individual claims review panel;
- (12) By the Hawaii health systems corporation or any of its facilities;
- (13) By the auditor;
- (14) By the office of ombudsman;
- (15) By the insurance division;
- (16) By the University of Hawaii;
- (17) By the Kahoolawe island reserve commission;
- (18) By the division of consumer advocacy; [ø]
- (19) By a department, in the event the attorney general, for reasons deemed by the attorney general good and sufficient, declines, to employ or retain an attorney for a department; provided that the governor thereupon waives the provision of this section[-]; or
- (20) By the Hawaii tourism authority, as provided in section 201B-__.”

2. By amending subsection (c) to read:

“(c) Every attorney employed by any department on a full-time basis, except an attorney employed by the public utilities commission, the labor and industrial relations appeals board, the Hawaii labor relations board, the office of Hawaiian affairs, the Hawaii health systems corporation, the department of commerce and consumer affairs in prosecution of consumer complaints, insurance division, the division of consumer advocacy, the University of Hawaii, the Hawaii tourism authority as provided in section 201B-__, the Hawaiian home lands trust individual claims review panel, or as grand jury counsel, shall be a deputy attorney general.”

SECTION 3. Section 40-1, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) With respect to the executive branch, except the University of Hawaii, the Hawaii tourism authority, and the department of education, the comptroller shall have complete supervision of all accounts. The comptroller shall preaudit all proposed payments of \$10,000 or more to determine the propriety of expenditures and compliance with executive orders and rules that may be in effect. When necessary, the comptroller shall withhold approval of any payment. Whenever approval is withheld, the department or agency concerned shall be promptly notified. With respect to the University of Hawaii, the Hawaii tourism authority, and the department of education, the comptroller shall issue warrants for the release of funds for the operating costs of the university, the Hawaii tourism authority, or the department of education, as applicable, in amounts and at times mutually agreed upon by the governor or director of finance and the university, the Hawaii tourism authority, or department of education, as applicable; provided:

- (1) The amounts released shall not exceed the allotment ceilings for the respective funding sources of the university’s or the department of education’s appropriations established by the governor for an allotment period pursuant to section 37-34[; and], or in the case of the Hawaii tourism authority, revenues received by the convention center enter-

prise special fund and the tourism special fund pursuant to section 237D-6.5; and

- (2) The comptroller may issue warrants as an advance from the state treasury to the University of Hawaii, the Hawaii tourism authority, and the department of education to establish a checking account and provide working capital in amounts and at times mutually agreed upon by the governor or director of finance and the University of Hawaii, the Hawaii tourism authority, and the department of education.

The University of Hawaii, the Hawaii tourism authority, and the department of education shall preaudit all proposed payments to determine the propriety of expenditures and compliance with applicable laws, executive orders, and rules as may be in effect. The University of Hawaii, the Hawaii tourism authority, and the department of education shall make disbursements for operating expenses from the amounts released by the comptroller and maintain records and documents necessary to support those disbursements at times mutually agreed upon by the university president, the executive director of the Hawaii tourism authority, or the superintendent of education, as applicable, and the comptroller; provided that when requested by the university, the Hawaii tourism authority, or department of education, the comptroller shall make all disbursements for the university, the Hawaii tourism authority, or department of education, as applicable, subject to available allotment. Funds released pursuant to this section shall be deposited by the university, the Hawaii tourism authority, or department of education, as applicable, in accordance with the provisions applicable to the director of finance by chapter 38. [Any] Except for moneys deposited by the Hawaii tourism authority in the convention center enterprise special fund pursuant to section 201B-8, and in the tourism special fund pursuant to section 201B-11, any interest earned on the deposit of funds released pursuant to this section shall be deposited in the state treasury at the end of each fiscal year."

SECTION 4. Section 40-4, Hawaii Revised Statutes, is amended to read as follows:

"§40-4 Publication of statements. The comptroller shall prepare and submit to the governor, immediately following the close of each fiscal year, a statement of income and expenditure by funds, showing the principal sources of revenue, the function or purpose for which expenditures were made, together with a consolidated statement showing similar information for all funds; also a statement showing the balance in each fund at the beginning of the fiscal year, plus the receipts; minus the disbursements, and the balance on hand at the close of the fiscal year after deducting outstanding warrants and vouchers. The comptroller may request all agencies, the judiciary, the University of Hawaii, the Hawaii tourism authority, the department of education, and the legislature to provide such information as may be required for the preparation of statements."

SECTION 5. Section 40-6, Hawaii Revised Statutes, is amended to read as follows:

"§40-6 Approval of business and accounting forms. The comptroller shall determine the forms required to adequately supply accounting and statistical data for the state government. The comptroller shall require heads of departments and establishments of the state government to submit proposed new forms or proposed changes in current business and accounting forms for review and approval before ordering the same printed; except that the University of Hawaii, the Hawaii tourism authority, and the department of education shall be subject to this requirement only

with respect to uniform business and accounting forms of statewide use in the State's accounting system. All standard state forms shall be classified, numbered, and standardized in design, dimensions, color, and grade of paper and recorded in a catalogue of accounting and statistical forms by the comptroller."

SECTION 6. Section 201B-2, Hawaii Revised Statutes, is amended by amending subsection (f) to read as follows:

"(f) The board shall appoint an executive director, exempt from chapters 76, [and] 78, and 88 who shall oversee the authority staff; provided that the compensation package, including salary, shall not exceed [fifteen] nine per cent of the [3.5] five per cent authorized for administrative expenses under section 201B-11(c); and provided further that the compensation package shall not include private sector moneys or other contributions. The board shall set the executive director's duties, responsibilities, holidays, vacations, leaves, hours of work, and working conditions. It may grant such other benefits as it deems necessary.

The board may appoint a sports coordinator, exempt from chapters 76, 78, and 88, who shall provide management services for all sporting events supported through the authority."

SECTION 7. Section 201B-11, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) There is established in the state treasury the tourism special fund, into which shall be deposited:

- (1) A portion of the revenues from any transient accommodations tax, as provided by section 237D-6.5; [and]
- (2) Appropriations by the legislature to the tourism special fund; [and]
- (3) Gifts, grants, and other funds accepted by the authority[-]; and
- (4) All interest and revenues or receipts derived by the authority from any project or project agreements."

2. By amending subsection (c) to read:

"(c) Moneys in the tourism special fund shall be used by the authority for the purposes of this chapter[-]; provided that:

- (1) Not more than [3.5] five per cent of this amount shall be used for administrative expenses, including \$15,000 for a protocol fund to be expended at the discretion of the executive director; and
- (2) At least \$1,000,000 shall be made available to support efforts to manage, improve, and protect Hawaii's natural environment and areas frequented by visitors."

PART II

SECTION 8. The Hawaii tourism authority was established in 1998 to implement the recommendations of the economic revitalization task force relating to tourism and economic development to coordinate the development, marketing, and research of the tourism industry in a manner consistent with the needs of the State.

The Hawaii tourism authority's initial budget was required to fund eighteen months of the Hawaii visitors and convention bureau's marketing contract (July 1, 1998, to December 31, 1998, and January 1, 1999, to December 31, 1999) with funding for twelve months. This situation caused the authority to use future budgets to make up for the appropriation shortfall, which in the authority's initial budget year amounted to \$27,000,000. This condition continues today, where the fiscal year budgets of the Hawaii tourism authority are inadequate to cover the calendar year contracts for marketing the State of Hawaii.

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The purpose of this part is to appropriate funds from the tourism special fund to allow the Hawaii tourism authority to begin correcting this fiscal anomaly.

SECTION 9. There is appropriated out of the tourism special fund the sum of \$8,000,000 or so much thereof as may be necessary for fiscal year 2004-2005 to improve the operational and financial efficiency of the Hawaii tourism authority; provided that the sum appropriated shall be in addition to the sums appropriated out of the tourism special fund in the supplemental appropriations Act or any other Act.

The sum appropriated shall be expended by the Hawaii tourism authority for the purposes of this part.

SECTION 10. The Hawaii tourism authority may amend existing contracts to conform to the purposes of this part.

SECTION 11. The Hawaii tourism authority shall report to the legislature no later than January 15, 2005, on the details of expenditures of moneys appropriated under this part.

SECTION 12. This part shall not be construed to impair any contract existing as of the effective date of this Act.

PART III

SECTION 13. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 14. This Act shall take effect on upon its approval; provided that:

- (1) The amendments made to sections 40-1, 40-4, and 40-6, Hawaii Revised Statutes, by part I of this Act shall not be repealed when those sections are reenacted on June 30, 2005, by section 24 of Act 115, Session Laws of Hawaii 1998;
- (2) Part I shall be repealed on June 30, 2007, and sections 28-8.3, 40-1, 40-4, and 40-6, 201B-2, and 201B-11, Hawaii Revised Statutes, shall be reenacted in the form in which they read on June 29, 2005; and
- (3) Section 9 shall take effect July 1, 2004.

(Vetoed by Governor and veto overridden by Legislature on May 6, 2004.)