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# A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1           SECTION 1. The legislature finds that a growing number of  
2 public school systems nationwide have hired in-house legal  
3 counsel to address, monitor, and manage the vast amounts of  
4 legal work generated by the operation of public schools in their  
5 respective school districts. Most of the ten largest school  
6 districts in the United States have a legal department or office  
7 of general counsel to handle the legal affairs of schools.

8           Act 51, Session Laws of Hawaii 2004 (Act 51), known as the  
9 "Reinventing Education Act of 2004," implemented a comprehensive  
10 education reform of Hawaii's public schools upon a legislative  
11 finding in section 1 of the Act that stated in part:

12           The legislature finds that significant changes need to  
13 be made to enhance Hawaii's public education system to  
14 ensure the success of that journey. Although the State's  
15 students, parents, teachers, school administrators,  
16 departmental staff, and other educational stakeholders  
17 strive to achieve excellence, their efforts will never be



1 completely successful until various aspects of the system  
2 around them are improved.

3 The legislature has supported and will continue to  
4 support efforts by the department of education to improve  
5 Hawaii's schools as a means of enhancing the academic  
6 achievement, safety and well being, and civic commitment of  
7 students, to meet the evolving needs of today's  
8 communities.

9 The legislature further finds that the department of the  
10 attorney general currently is responsible for responding to  
11 requests for legal opinions from the department of education.  
12 However, the deputy attorneys general are not available on a  
13 full-time, day-to-day basis to advise the department of  
14 education as legal matters arise in the course of conducting the  
15 multiplicity and complexity of educational reform operations  
16 required by Act 51. Prudence would dictate that full-time legal  
17 representation should be available on a continuing daily basis  
18 in order to identify and resolve legal issues before litigation  
19 arises. Act 51 is landmark and complex legislation that  
20 requires such full-time legal representation for the department  
21 of education.



1           The purpose of this Act is to allow the department of  
2 education to hire in-house attorneys independent of the  
3 department of the attorney general.

4           SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is  
5 amended by amending subsection (a) to read as follows:

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;

18           (3) By the legislative reference bureau;

19           (4) By any compilation commission that may be constituted  
20 from time to time;

21           (5) By the real estate commission for any action involving  
22 the real estate recovery fund;



- 1 (6) By the contractors license board for any action
- 2 involving the contractors recovery fund;
- 3 (7) By the trustees for any action involving the travel
- 4 agency recovery fund;
- 5 (8) By the office of Hawaiian affairs;
- 6 (9) By the department of commerce and consumer affairs for
- 7 the enforcement of violations of chapters 480 and 485;
- 8 (10) As grand jury counsel;
- 9 (11) By the Hawaiian home lands trust individual claims
- 10 review panel;
- 11 (12) By the Hawaii health systems corporation, or its
- 12 regional system boards, or any of their facilities;
- 13 (13) By the auditor;
- 14 (14) By the office of ombudsman;
- 15 (15) By the insurance division;
- 16 (16) By the University of Hawaii;
- 17 (17) By the Kahoolawe island reserve commission;
- 18 (18) By the division of consumer advocacy;
- 19 (19) By the office of elections;
- 20 (20) By the campaign spending commission;
- 21 (21) By the Hawaii tourism authority, as provided in
- 22 section 201B-2.5; [e]



1        (22) By the department of education to the extent provided  
2                    in section 302A-1114; or

3        [~~22~~] (23) By a department, in the event the attorney  
4                    general, for reasons deemed by the attorney general  
5                    good and sufficient, declines, to employ or retain an  
6                    attorney for a department; provided that the governor  
7                    thereupon waives the provision of this section."

8                SECTION 3. Section 302A-1114, Hawaii Revised Statutes, is  
9        amended to read as follows:

10                "**§302A-1114 Power of appointment, removal[-]; hiring of**  
11 **attorneys.** (a) The department, from time to time, may appoint  
12 and remove such teachers, educational officers, and other  
13 personnel as may be necessary for carrying out the purposes of  
14 sections 302A-201, 302A-301, 302A-401 to 302A-410, 302A-601,  
15 302A-1001 to 302A-1004, 302A-1101 to 302A-1122, 302A-1301 to  
16 302A-1305, 302A-1401 to 302A-1403, and 302A-1501 to 302A-1506,  
17 and regulate their duties, powers, and responsibilities, when  
18 not otherwise provided by law.

19                (b) The department may hire as necessary, without regard  
20 to chapters 76 and 89, and may remove without cause, one or more  
21 full-time attorneys licensed in Hawaii, to provide legal advice  
22 and draft documents for the department or the board independent



1 of the department of the attorney general; provided that the  
 2 attorney general shall represent the department in litigation,  
 3 and provide legal advice and draft documents upon request of the  
 4 department; and provided further that the department shall fix  
 5 an appropriate and reasonable compensation for the attorney  
 6 hired that reflects the experience of the attorney."

7 SECTION 4. Statutory material to be repealed is bracketed  
 8 and stricken. New statutory material is underscored.

9 SECTION 5. This Act shall take effect upon its approval.

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INTRODUCED BY:

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**Report Title:**

Department of Education; Hiring of Attorneys

**Description:**

Allows the department of education to hire its own attorneys independent of the attorney general.

