
A BILL FOR AN ACT

RELATING TO LEGAL COUNSEL.

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

1 SECTION 1. As legal matters in education increase in
2 frequency, complexity, and volume, a growing number of public
3 school systems throughout America have retained in-house legal
4 counsel to address, monitor, and manage the vast amounts of
5 legal work generated by the operation of public schools in their
6 respective districts. In fact, of the ten largest school
7 districts in the United States, most have a law department or an
8 office of general counsel that handles the legal affairs of
9 their school district. The Hawaii department of education,
10 which is among the ten largest school districts in the United
11 States, does not have a separate legal department or in-house
12 legal counsel. Furthermore, section 28-8.3, Hawaii Revised
13 Statutes, provides that no state department other than the
14 department of the attorney general may employ or retain
15 attorneys for the purpose of representing the State or any of
16 its departments in their legal affairs.

17 Act 51, Session Laws of Hawaii 2004, initiated the process
18 of repositioning the State's educational system to meet the



1 challenges of the twenty-first century and placed additional
2 responsibilities on the department of education. The
3 department's expanded responsibilities require the legislature
4 to consider whether the establishment of an office of general
5 counsel is in the best interests of the State's educational
6 system.

7 The purpose of this Act is to provide the department of
8 education with the authority and funding to appoint and retain
9 attorneys separate from the department of the attorney general
10 for the purpose of monitoring, managing, and addressing the
11 legal affairs of the department of education.

12 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
13 amended by adding a new section to be appropriately designated
14 and to read as follows:

15 "§302A- Legal counsel. (a) The department, through
16 the superintendent, may appoint or retain one or more attorneys
17 who are independent of the department of the attorney general,
18 to provide legal services to the board and the department. The
19 superintendent may fix the compensation of the attorneys
20 appointed pursuant to this section. Attorneys appointed or
21 retained under this section shall be exempt from chapters 76 and
22 89.



1 (b) This section shall not preclude the board or the
2 department from requesting and securing legal services from the
3 attorney general or the department of the attorney general, for
4 the board or its members, or the department, its officers or
5 employees."

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

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

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

16 (1) By the public utilities commission, the labor and
17 industrial relations appeals board, and the Hawaii
18 labor relations board;

19 (2) By any court or judicial or legislative office of the
20 State;

21 (3) By the legislative reference bureau;



- 1 (4) By any compilation commission that may be constituted
- 2 from time to time;
- 3 (5) By the real estate commission for any action involving
- 4 the real estate recovery fund;
- 5 (6) By the contractors license board for any action
- 6 involving the contractors recovery fund;
- 7 (7) By the trustees for any action involving the travel
- 8 agency recovery fund;
- 9 (8) By the office of Hawaiian affairs;
- 10 (9) By the department of commerce and consumer affairs for
- 11 the enforcement of violations of chapters 480 and 485;
- 12 (10) By the department of education;
- 13 ~~[(10)]~~ (11) As grand jury counsel;
- 14 ~~[(11)]~~ (12) By the Hawaiian home lands trust individual
- 15 claims review panel;
- 16 ~~[(12)]~~ (13) By the Hawaii health systems corporation, or its
- 17 regional system boards, or any of their facilities;
- 18 ~~[(13)]~~ (14) By the auditor;
- 19 ~~[(14)]~~ (15) By the office of ombudsman;
- 20 ~~[(15)]~~ (16) By the insurance division;
- 21 ~~[(16)]~~ (17) By the University of Hawaii;
- 22 ~~[(17)]~~ (18) By the Kahoolawe island reserve commission;



1 ~~(18)~~ (19) By the division of consumer advocacy;
2 ~~(19)~~ (20) By the office of elections;
3 ~~(20)~~ (21) By the campaign spending commission;
4 ~~(21)~~ (22) By the Hawaii tourism authority, as provided in
5 section 201B-2.5; or
6 ~~(22)~~ (23) By a department, in the event the attorney
7 general, for reasons deemed by the attorney general
8 good and sufficient, declines, to employ or retain an
9 attorney for a department; provided that the governor
10 thereupon waives the provision of this section."

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

12 "(c) Every attorney employed by any department on a full-
13 time basis, except an attorney employed by the public utilities
14 commission, the labor and industrial relations appeals board,
15 the Hawaii labor relations board, the office of Hawaiian
16 affairs, the Hawaii health systems corporation or its regional
17 system boards, the department of commerce and consumer affairs
18 in prosecution of consumer complaints, insurance division, the
19 division of consumer advocacy, the department of education, the
20 University of Hawaii, the Hawaii tourism authority as provided
21 in section 201B-2.5, the Hawaiian home lands trust individual



1 claims review panel, or as grand jury counsel, shall be a deputy
2 attorney general."

3 SECTION 4. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2008-2009 for the
6 purposes of this Act, which includes the hiring of six full-time
7 attorneys who shall be exempt from chapter 76 and 89, Hawaii
8 Revised Statutes.

9 The sum appropriated shall be expended by the department of
10 education for the purposes of this Act.

11 SECTION 5. Statutory material to be repealed is bracketed
12 and stricken. New statutory material is underscored.

13 SECTION 6. This Act shall take effect upon approval;
14 provided that:

- 15 (1) Section 4 shall take effect on July 1, 2008; and
- 16 (2) The amendment made to section 28-8.3(c), Hawaii
17 Revised Statutes, by section 3 of this Act shall not
18 be repealed when that section is reenacted by section
19 1 of Act 306, Session Laws of Hawaii 2006.

20

INTRODUCED BY:



JAN 22 2008



Report Title:

Legal Counsel; Legal Representation; Department of Education

Description:

Authorizes the department of education to appoint and retain attorneys separate from the department of the attorney general for the purpose of monitoring, managing, and addressing the department's legal affairs. Appropriates funds.

