

SB144



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

S.B. No. 144, RELATING TO LEGAL SERVICES.

BEFORE THE:

SENATE COMMITTEE ON EDUCATION AND HOUSING

DATE: Monday, February 2, 2009 **TIME:** 1:15 PM

LOCATION: State Capitol, Room 225

TESTIFIER(S): Mark J. Bennett, Attorney General
or Charleen M. Aina, Holly T. Shikada, or Gary K. H. Kam,
Deputy Attorneys General

Chair Sakamoto and Members of the Committee:

The Attorney General does not oppose the Board of Education being able to hire its own attorneys, but does not support this bill in its present form.

This measure would authorize the Board of Education ("Board") to hire its own attorneys, who would be independent of the Department of the Attorney General. These attorneys would be appointed or retained by the Board.

However, this measure would also require the Department of the Attorney General to continue to provide legal services to the Board upon mutual agreement.

It is the position of the Attorney General that if the Board is given the autonomy to hire or retain its own in-house attorneys, then generally all legal matters of the Board and the Department of Education ("Department") should be handled by the attorneys hired by the Board. Also, money settlements or judgments arising out of actions brought against the Board or Department, or their members or employees, should be the responsibility of the Board and Department if they are to have legal representation autonomous from the Attorney General. We have attached a revised measure for the Committee's consideration.

Essentially, the revised measure would require that all claims arising solely out of the acts or omissions of the Board or the Department, or their members or employees, may be asserted only by a suit brought against the Board or the Department, or their members or employees. Any monetary settlement or judgment from such a suit shall be solely the liability of the Board and the Department and not the State, unless the Legislature appropriates money to pay the liability. All non-monetary terms of any settlement of such a suit require the prior approval of the Attorney General.

The revised measure also provides for service of process upon the Board's general counsel. The revised measure establishes a general counsel position who is appointed by the Board. The general counsel shall provide legal representation to the Board and the Department in all matters. The attorneys employed by the general counsel shall not be deputy attorneys general. The revised measure allows, but does not require, the Attorney General to provide legal services to the Board or Department at the Attorney General's discretion. The Attorney General also retains the authority to determine if Board members or Department employees, who are sued in their individual capacities, will receive legal representation under section 662-16, Hawaii Revised Statutes. However, once the Attorney General decides that the member or employee is entitled to legal representation, the Attorney General may delegate the responsibility for providing the legal representation of the member or employee to the general counsel.

If this measure is passed, we respectfully request that it be passed in the form of the revised measure attached to this testimony.

Date of Hearing: Monday, February 2, 2009

Committee: Senate Committee on Education and Housing

Board: Education

Person Testifying: Garrett Toguchi, Chairperson, Board of Education

Title of Bill: S.B. No. 144, Relating to Legal Services

Purpose of Bill: Authorizes the Board of Education (Board) to appoint or retain attorneys who are independent of the Attorney General (AG), to provide legal services for the Board. Specifies that nothing precludes the Board from requesting and securing legal services from the Attorney General and the Department of the Attorney General for the Board, its members, or employees.

Board's Position: Chairperson Sakamoto, Vice Chairperson Kidani, and members of the Senate Committee on Education and Housing, thank you for this opportunity to submit testimony in **strong support** of S.B. No. 144.

With the enormity and complexity of issues affecting public education, the Board must often consult with legal counsel to address and make policy decisions in areas of legal significance and consequence. This includes areas related to the employment of personnel, privacy rights of students, labor negotiations, student discipline, civil rights, and board powers and immunities, to name a few.

The Board finds that the current arrangement of relying on the legal services of deputy attorneys general to provide legal services and representation for all Board legal matters does not allow the Board to handle issues in the most efficient and timeliest manner. There have also been occasions where the Board has disagreed with the advice provided by the Department of the Attorney General, but were unable to pursue other alternatives.

With the multitude of legal services that deputy attorneys general must provide to other agencies and the complexity of legal issues they must handle, attending to Board requests often takes more time than is reasonable or desired, and causes delays in attending to time-driven deadlines.

This bill proposes to allow the Board to retain or hire attorneys who are independent of the AG, thereby allowing the Board to attend to and address educational matters and issues in a more sound, timely, and effective manner. S.B. No. 144 would enable the Board to pursue independent legal advice and independent legal scrutiny aside from the services provided by the AG.

Allowing the Board to hire attorneys without the AG's approval will improve the response time and provide necessary support to pursue legal action when the Board's interests diverge from the rest of the Executive Branch.

The Board requests the latitude to hire independent legal counsel to address problems and issues affecting our public schools and public libraries in a more expedient and effective manner.

Thank you for the opportunity to testify in **strong support** of S.B. No. 144.