

JAN 23 2009

A BILL FOR AN ACT

RELATING TO LEGAL SERVICES.

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

1 SECTION 1. The legislature finds that the board of
2 education is faced with increasingly complex legal issues and
3 matters that require expedited attention and legal response.
4 Having the flexibility to hire independent legal counsel will
5 expedite the disposition of legal issues and cases related to
6 the board's purview of the public schools and public libraries.

7 The purpose of this Act is to authorize the board of
8 education to employ or retain its own independent legal counsel.

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

12 "§302A- Board attorneys. (a) The board may appoint or
13 retain by contract one or more attorneys who are independent of
14 the attorney general, to provide legal services for the board,
15 including:



- 1 (1) Representation for the board in civil actions to which
- 2 the board is a party, either directly or through the
- 3 acts or omissions of its members or employees;
- 4 (2) Advice and assistance to ensure the lawful and
- 5 efficient administration and operation of the board;
- 6 and
- 7 (3) Other legal services specified by the board.

8 The board may establish the compensation of the attorneys
9 appointed pursuant to this section. Attorneys appointed or
10 retained by contract shall be exempt from chapters 76 and 89.

11 (b) Nothing in this section precludes the board from
12 requesting and securing legal services from the attorney general
13 and the department of the attorney general for the board, its
14 members, or employees."

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

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

18 "(a) No department of the State other than the attorney
19 general may employ or retain any attorney, by contract or
20 otherwise, for the purpose of representing the State or the
21 department in any litigation, rendering legal counsel to the
22 department, or drafting legal documents for the department;



1 provided that the foregoing provision shall not apply to the
2 employment or retention of attorneys:

3 (1) By the public utilities commission, the labor and
4 industrial relations appeals board, and the Hawaii
5 labor relations board;

6 (2) By any court or judicial or legislative office of the
7 State; provided that if the attorney general is
8 requested to provide representation to a court or
9 judicial office by the chief justice or the chief
10 justice's designee, or to a legislative office by the
11 speaker of the house of representatives and the
12 president of the senate jointly, and the attorney
13 general declines to provide such representation on the
14 grounds of conflict of interest, the attorney general
15 shall retain an attorney for the court, judicial, or
16 legislative office, subject to approval by the court,
17 judicial, or legislative office;

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
- 8 485A;
- 9 (10) As grand jury counsel;
- 10 (11) By the Hawaiian home lands trust individual claims
- 11 review panel;
- 12 (12) By the Hawaii health systems corporation, or its
- 13 regional system boards, or any of their facilities;
- 14 (13) By the auditor;
- 15 (14) By the office of ombudsman;
- 16 (15) By the insurance division;
- 17 (16) By the University of Hawaii;
- 18 (17) By the Kahoolawe island reserve commission;
- 19 (18) By the division of consumer advocacy;
- 20 (19) By the office of elections;
- 21 (20) By the campaign spending commission;



1 (21) By the Hawaii tourism authority, as provided in
2 section 201B-2.5; [~~or~~]
3 (22) By the board of education; or
4 [~~(22)~~] (23) By a department, in the event the attorney
5 general, for reasons deemed by the attorney general
6 good and sufficient, declines to employ or retain an
7 attorney for a department; provided that the governor
8 thereupon waives the provision of this section."

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

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



1 SECTION 4. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

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

4

INTRODUCED BY: Norman Saker
Shanne Chun Allard
Nichelle N. Kikai
Clarence A. Kishikawa

Report Title:

Education; Board of Education; Attorneys

Description:

Authorizes the board of education to employ or retain its own independent legal counsel.

