

S.B. NO. 2705

JAN 25 2012

A BILL FOR AN ACT

RELATING TO ATTORNEY'S FEES.

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

1 SECTION 1. The legislature finds that section 28-6, Hawaii
2 Revised Statutes, has been improperly interpreted by some courts
3 as a prohibition on an award of attorney's fees and litigation
4 costs to the department of the attorney general. The department
5 of the attorney general should not be prohibited from being
6 awarded attorney's fees and litigation costs when it prevails in
7 a court action. The purpose of this Act is to clarify that the
8 law allows a court to award the department of the attorney
9 general attorney's fees and litigation costs when it prevails in
10 a court action.

11 SECTION 2. Section 28-6, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§28-6 No fee; not to act as attorney.** The attorney
14 general shall not personally receive any fee or reward from or
15 in behalf of any person or prosecutor, for services rendered in
16 any prosecution or business to which it shall be the attorney
17 general's official duty to attend; nor be concerned as counsel

S.B. NO. 2705

1 or attorney for either party in any civil action depending upon
2 the same state of facts.

3 This section shall not be interpreted as a prohibition on
4 an award of attorney's fees and litigation costs to the
5 department of the attorney general when the state is the
6 prevailing party in a court action, as authorized by statute,
7 rule of court, agreement, stipulation, or precedent."

8 SECTION 3. New statutory material is underscored.

9 SECTION 4. This Act shall take effect upon its approval.

10

11

INTRODUCED BY: 

12

BY REQUEST

13

S.B. NO. 2705

Report Title:

Attorney's Fees

Description:

Clarify that section 28-6, Hawaii Revised Statutes, allows a court to award the Department of the Attorney General attorney's fees and litigation costs when it prevails in a lawsuit.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: A BILL FOR AN ACT RELATING TO ATTORNEY'S FEES.

PURPOSE: To amend section 28-6, Hawaii Revised Statutes, to clarify that a court may award the Department of the Attorney General attorney's fees and litigation costs when it prevails in a lawsuit.

MEANS: Amend section 28-6, Hawaii Revised Statutes.

JUSTIFICATION: The purpose of section 28-6, Hawaii Revised Statutes, is to prohibit the Attorney General and his deputies from being compensated for performing a task that is part of their official duties and for which they receive a salary. Section 28-6 has been misinterpreted by some courts as prohibiting a court from awarding the Department of the Attorney General attorney's fees and litigation costs when it prevails in a lawsuit. However, the Supreme Court has recognized that a court may order a losing party to pay the attorney's fees and litigation costs of a prevailing party when authorized by statute, rule of court, agreement, stipulation, or precedent. Taomae v. Lingle, 110 Haw. 327, 331, 132 P.2d 1238, 1242 (2006). This amendment clarifies that a court may award the Department of the Attorney general attorney's fees and litigation costs when it prevails in a lawsuit.

Impact on the public: This bill will be beneficial to the public interest because it would allow the Department of the Attorney General to recover its attorney's fees and litigation costs and use those funds for continued service to the public.

SB. NO. 2705

Impact on the department and other agencies:
This bill will help the department recover litigation costs when its deputies prevail in court actions, thereby helping the budget and Litigation Deposits Trust Fund under section 28-16, Hawaii Revised Statutes.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: ATG 100.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.