
A BILL FOR AN ACT

RELATING TO THE UNIVERSITY OF HAWAII.

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

1 SECTION 1. On August 29, 2012, pursuant to senate rule 20,
2 the senate president appointed a senate special committee on
3 accountability to conduct informational briefings to review the
4 oversight, accountability, and transparency of the operational
5 and financial management of the University of Hawaii system,
6 including but not limited to the University of Hawaii's athletic
7 department.

8 The committee held informational briefings on September 24,
9 2012, and October 2, 2012.

10 During the informational briefings, the committee found,
11 among other things, that the board of regents and the University
12 of Hawaii system have spent large amounts of money to contract
13 with independent attorneys rather than use the university
14 general counsel or attorney general.

15 The purpose of this Act is to:

16 (1) Charge the board of regents with direct oversight of
17 the university general counsel;



1 (2) Limit the exemption from the prohibition against state
2 departments contracting with attorneys that is
3 currently provided to the University of Hawaii so that
4 it applies only to the board of regents of the
5 University of Hawaii; and

6 (3) Require the auditor to review the contracts for legal
7 services entered into by the University of Hawaii to
8 examine their provisions, scope, justification, and
9 underlying policies, and report to the legislature
10 regarding the auditor's findings.

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

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

20 (1) By the public utilities commission, the labor and
21 industrial relations appeals board, and the Hawaii
22 labor relations board;



- 1 (2) By any court or judicial or legislative office of the
2 State; provided that if the attorney general is
3 requested to provide representation to a court or
4 judicial office by the chief justice or the chief
5 justice's designee, or to a legislative office by the
6 speaker of the house of representatives and the
7 president of the senate jointly, and the attorney
8 general declines to provide such representation on the
9 grounds of conflict of interest, the attorney general
10 shall retain an attorney for the court, judicial, or
11 legislative office, subject to approval by the court,
12 judicial, or legislative office;
- 13 (3) By the legislative reference bureau;
- 14 (4) By any compilation commission that may be constituted
15 from time to time;
- 16 (5) By the real estate commission for any action involving
17 the real estate recovery fund;
- 18 (6) By the contractors license board for any action
19 involving the contractors recovery fund;
- 20 (7) By the office of Hawaiian affairs;



- 1 (8) By the department of commerce and consumer affairs for
- 2 the enforcement of violations of chapters 480 and
- 3 485A;
- 4 (9) As grand jury counsel;
- 5 (10) By the Hawaiian home lands trust individual claims
- 6 review panel;
- 7 (11) By the Hawaii health systems corporation, or its
- 8 regional system boards, or any of their facilities;
- 9 (12) By the auditor;
- 10 (13) By the office of ombudsman;
- 11 (14) By the insurance division;
- 12 (15) By the board of regents of the University of Hawaii;
- 13 (16) By the Kahoolawe island reserve commission;
- 14 (17) By the division of consumer advocacy;
- 15 (18) By the office of elections;
- 16 (19) By the campaign spending commission;
- 17 (20) By the Hawaii tourism authority, as provided in
- 18 section 201B-2.5;
- 19 (21) By the division of financial institutions for any
- 20 action involving the mortgage loan recovery fund; or
- 21 (22) By a department, in the event the attorney general,
- 22 for reasons deemed by the attorney general to be good



1 and sufficient, declines to employ or retain an
2 attorney for a department; provided that the governor
3 waives the provision of this section."

4 SECTION 3. Section 304A-1005, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) The board of regents may appoint or retain by
7 contract one or more attorneys who are independent of the
8 attorney general, to provide legal services for the university,
9 including:

10 (1) Representation of the university in civil actions to
11 which the university is a party, either directly or
12 through the acts or omissions of its officers or
13 employees;

14 (2) Advice and assistance to ensure the lawful and
15 efficient administration and operation of the
16 university;

17 (3) Review and approval of documents relating to the
18 acquisition of land or interest in land by the
19 university; and

20 (4) Any other legal service specified by the board of
21 regents.



1 The board of regents shall have direct oversight of the
 2 university general counsel and shall not delegate this authority
 3 to the university president. The university general counsel
 4 shall report directly to the board of regents. The board of
 5 regents may fix the compensation of the attorneys appointed
 6 pursuant to this section. Attorneys appointed or retained by
 7 contract shall be exempt from chapters 76 and 89."

8 SECTION 4. The auditor shall review all contracts with
 9 attorneys to provide legal services entered into by the
 10 University of Hawaii within the past five years from the
 11 effective date of this Act to examine their justification,
 12 scope, provisions, and underlying policies.

13 The auditor shall submit a report of the examination
 14 performed to the legislature no later than twenty days prior to
 15 the convening of the regular session of 2015.

16 SECTION 5. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY:

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 JAN 17 2014



H.B. NO. 1833

Report Title:

University of Hawaii; Board of Regents; General Counsel; Audit

Description:

Charges the Board of Regents with oversight of the University General Counsel. Exempts the Board of Regents, and repeals UH's exemption, from the prohibition to contract with attorneys. Requires the Auditor to review legal contracts entered into by UH.

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





UNIVERSITY OF HAWAII

BOARD OF REGENTS

Testimony presented before the
House Committee on Higher Education
January 30, 2014 at 2:15 p.m.

by
John Holzman
Chair, Board of Regents

HB1833 – RELATING TO THE UNIVERSITY OF HAWAII

Chair Choy, Vice Chair Ichiyama, and members of the House Committee on Higher Education:

The Board of Regents comments that while we recognize and support the intent of this bill to address the concerns about unnecessary expenditures for outside counsel, we believe that the best approach to achieve prudent spending is through careful management of the Office of General Counsel by the President, the Vice President for Legal Affairs and General Counsel, and the Board of Regents.

The bill's stated purpose is to:

- (1) Charge the board of regents with direct oversight of the university general counsel;
- (2) Limit the exemption from the prohibition against state departments contracting with attorneys that is currently provided to the University of Hawaii so that it applies only to the board of regents of the University of Hawaii; and
- (3) Require the auditor to review the contracts for legal services entered into by the University of Hawaii to examine their provisions, scope, justification, and underlying policies, and report to the legislature regarding the auditor's findings.

The Office of General Counsel serves 10 campuses, with over 60,000 students, over 2,000 faculty, and more than 9,000 employees. It is the primary duty of the University President to carry out the operations of the University. To do so, the University President must be able to access and utilize General Counsel in the daily conduct of business. General Counsel needs to be available to the President to draft and review legal documents and provide legal input and advice on operational matters on a daily basis. The President also must have the ability to supplant legal services with outside counsel in matters of specialized legal expertise. Many of these issues do not even rise to the level of a policy-making board. Thus, it is impractical to require this volunteer board to directly manage the UH System's legal services, and have sole authority to hire outside counsel.

The Board has made prudent spending a priority and took action at its October Board meeting to return the day to day oversight of the OGC to the President, who is to ensure that the OGC adequately represents the University under the direction of the BOR.

The Board further acted in recognition that understandably there may be occasions when it becomes necessary to avoid a conflict, perception of conflict, or to obtain specialized legal expertise. At such times, the Board may exercise its discretion in securing the services of independent legal counsel. Accordingly, at its November board meeting, the Board amended its policy to clarify that in such event the selection of counsel will be conducted through the Office of the Board of Regents.

Finally, the University currently undergoes periodic audits both internally and externally by the Legislative Auditor and other accrediting bodies. Thus, the necessity of review of contracts for legal services is already adequately addressed.

We note that in late Spring 2013, the reporting lines for the OGC was reviewed by University of Hawai'i Advisory Task Group on Operational and Financial Controls Improvement ("ATG") in connection with its charge from the BOR to conduct an independent review of University operating policies and practices. The ATG issued its Report on Board of Regents Policies and Practices on System Level Administration Operating Policies and Practices on July 15, 2013, and August 14, 2013, respectively. In both reports, the ATG recommended that OGC should report to the President instead of the BOR while still being available to provide advice and support to the BOR as needed.

The ATG explained that "The statutes ...place all operational responsibility with the BOR and the BOR then delegates authority to the President to carry out the operations of the University." The ATG further supported its recommendation by citing the State Senate Special Committee Report No. 2, dated November 19, 2012, in which the Senate Report explained that

"[w]hile the BOR needs access to the General Counsel, it does not need to have General Counsel reporting directly to it. The University's General Counsel should be available to the BOR to provide advice on legal matters. However the University President needs to be able to access and utilize General Counsel in the daily conduct of business. General Counsel needs to be available to draft and review legal documents and provide legal input and advice on operational matters on a daily basis."

Thank you for the opportunity to testify on this measure.