

SB 10

Measure Title: RELATING TO THE HAWAIIAN HOMES COMMISSION.

Report Title: Hawaiian Homes Commission; Legal Counsel

Description: Allows the Hawaiian homes commission, rather than the Hawaiian home lands trust individual claims review panel, counsel to retain separate legal counsel.

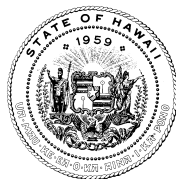
Companion:

Package: None

Current Referral: THA/JDL, WAM

Introducer(s): HEE

Sort by Date		Status Text
1/17/2013	S	Introduced.
1/17/2013	S	Passed First Reading.
1/17/2013	S	Referred to THA/JDL, WAM.
1/30/2013	S	The committee(s) on THA/JDL has scheduled a public hearing on 02-05-13 9:30AM in conference room 016.



STATE OF HAWAII

DEPARTMENT OF HAWAIIAN HOME LANDS

P. O. BOX 1879
HONOLULU, HAWAII 96805

COMMENTS OF **JOBIE M. K. MASAGATANI**, CHAIRMAN DESIGNATE
HAWAIIAN HOMES COMMISSION
TO THE SENATE COMMITTEES ON TOURISM AND HAWAIIAN AFFAIRS &
JUDICIARY AND LABOR

SB 10, RELATING TO THE HAWAIIAN HOMES COMMISSION

February 5, 2013

Chair Galuteria, Chair Hee, and Members of the Committees:

The Department of Hawaiian Home Lands (DHHL) **supports** the intent of this bill that would allow the Hawaiian Homes Commission to employ or retain an attorney separate from the attorney general to provide legal services to the commission.

In the past and currently, the Department of the Attorney General has permitted and permits the commission and our department to retain independent counsel in matters where there is a conflict between the interests of the state and the interests of the Hawaiian Homes Commission on behalf of our native Hawaiian beneficiaries. This measure would allow the commission greater discretion in retaining independent counsel. There are questions, however, that do require further clarification such as the liability of the commission, the obligation of the attorney general to represent the commission if a lawsuit is filed on a matter on which independent counsel provided legal services, the source of funds to pay for any court decisions

that go against the commission when it relied on the advice of independent counsel, etc.

Mahalo for the opportunity to provide these comments.

Leimana DaMate, Commissioner – West Hawaii

Hawaiian Homes Commission

Testimony IN SUPPORT

SB 10 – Relating to the Hawaiian Homes Commission

Senate Committee of Tourism & Hawaiian Affairs

February 5, 2013

Senate Committee on Judiciary and Labor

9:30 a.m., Room 016

Aloha Senator Galuteria and members of the Committee of Tourism & Hawaiian Affairs,

Aloha Senator Hee and members of the Committee on Judiciary and Labor;

Thank you for the opportunity to testify in support of S.B. 10, relating to the Hawaiian Homes Commission. I support this measure and thank the committees for understanding the oftentimes difficult situations in which the Commissioners of the Hawaiian Homes Commission sometimes find themselves when the only access to legal opinion is with the State Attorney General's Office.

The Hawaiian Homes Commission is responsible for and answers to the beneficiaries of the Hawaiian Homes Trust in matters that impact their welfare, sustainability, fiscal responsibility and self-determination. More often than not, issues come up where this responsibility conflicts with the State. In these cases, the primary responsibility of the Attorney General is to the State of Hawaii and not necessarily to the beneficiaries of the Hawaiian Homes Trust.

It is common knowledge that other state agencies are allowed to retain private counsel when needed, among them the Office of Hawaiian Affairs, the Real Estate Commission and the Legislative Reference Bureau to name a few. These are some of the exceptions listed under Section 28-8.3, Hawaii Revised Statutes. It is within the power of this legislature to amend these exceptions, and include the Hawaiian Homes Commission.

SB 10 ensures that the Hawaiian Homes Commission, whose mandate is to rehabilitate Native Hawaiians are able to receive opinions of the Hawaii State Attorney General's office but also private counsel charged with providing opinions that have the interests of beneficiaries under the fiduciary responsibility of a land trust.

As an Acting Hawaiian Homes Commissioner, I support this measure and urge the passage of S.B. 10. I speak for myself, and not for the entire Hawaiian Homes Commission. Mahalo.

Leimana DaMate

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COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

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Date: February 3, 2013

To: Senator Brickwood Galuteria, Chair, Committee on Tourism and Hawaiian Affairs
Senator Clayton Hee, Chair, Committee on Judiciary and Labor
Committee Members

From: Retired Judge William Fernandez, Chair, CNHA Policy Center
Robin Danner, CNHA President and CEO

Re: SB 10 Relating to the Hawaiian Homes Commission Act - Support

Aloha Honorable Chairs and Committee Members:

Thank you for reviewing the merits of Senate Bill 10. We **support** this measure and mahalo the committee for its work to identify a reasonable solution to the difficult conflicts that can occur when the Hawaiian Homes Commission, authorized by Congress and the Hawaii Constitution, only has access to the legal opinion of the State Attorney General's Office.

As you know, there are agencies of the State that are allowed to retain independent counsel when prudent, such as the Office of Hawaiian affairs, the Department of Commerce and Consumer Affairs, Legislative Reference Bureau, and others listed in Section 28-8.3, Hawaii Revised Statutes.

SB10 ensures that the governing authority of the Hawaiian Homes Commission has the ability to receive opinions by the State's Attorney General on behalf of State Government, but also private counsel charged with providing opinions that have the interests under the fiduciary responsibility of a land trust to its class of beneficiaries.

We believe that enabling the Hawaiian Homes Commission this type of autonomy to seek diverse legal opinions, will not only provide this governing body with the tools and information to fulfill their duties, but will also ensure that issues requiring arbitration by a court, are fully vetted, thereby creating opportunities to avoid unnecessary and expensive litigation.

SB10 is not only well within the legislature authority, it is not unusual at all.

Thank you.

SB10

Submitted on: 2/4/2013

Testimony for THA/JDL on Feb 5, 2013 09:30AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Lilia Kapuniai	Individual	Support	No

Comments: Aloha Chair Hee, Chair Galuteria, and Committee Members, Please accept my testimony in SUPPORT of SB10. The Hawaiian Homes Commissioners should have the authority to retain legal counsel separate from the State Attorney General, similar to the Office of Hawaiian Affairs, to protect themselves and the Trust, in cases where conflicts arise. Mahalo for the opportunity to present testimony. E malama pono, Lilia

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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COMMITTEE ON TOURISM AND HAWAIIAN AFFAIRS

Senator Brickwood Galuteria, Chair

Senator Gilbert S.C. Keith-Agaran, Vice Chair

COMMITTEE ON JUDICIARY AND LABOR

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

Kapua Kealiikoa-Kamai

TUESDAY FEBRUARY 5, 2013

DATE:

9:30 am

TIME:

PLACE Conference Room 016

:

SB 10 RELATING TO THE HAWAIIAN HOMES COMMISSION

Allows the Hawaiian homes commission, rather than the Hawaiian home lands trust individual claims review panel, counsel to retain separate legal counsel.

STRONG SUPPORT OF

SB 10 RELATING TO THE HAWAIIAN HOMES COMMISSION.

Aloha Chairs Galuteria and Hee, Vice Chairs Keith-Agaran and Shimabukuro and Committee Members,

This legislation is necessary because I believe that the HHC needs independent legal representation to completely fulfill their responsibilities to the beneficiaries of the Hawaiian Homes Commission Act.

Unlike other state departments, the HHC is obligated to serve the native Hawaiians, as stated in the HHCA. The HHC serves its beneficiaries, not the state nor its residents in entirety.

In my opinion, there have been instances where the interests of the state were not in full accord with the HHCA beneficiaries, and at times detrimental to native Hawaiians. By having their own separate counsel, the HHC will be able to fulfill their responsibilities to the native Hawaiians, the HHCA and, in turn the State of Hawaii.

Mahalo for this opportunity to share my mana‘o, please forward SB 10 RELATING TO THE HAWAIIAN HOMES COMMISSION for full consideration on the Senate Floor.

Me ka ha‘aha‘a,
«GreetingLine»



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SEVENTH LEGISLATURE, 2013**

ON THE FOLLOWING MEASURE:

S.B. NO. 10, RELATING TO HAWAIIAN HOMES COMMISSION.

OPPOSE

BEFORE THE:

Senate Committee on Tourism and Hawaiian Affairs

Senate Committee on Judiciary and Labor

DATE: Tuesday, February 5, 2013

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): David M. Louie, Attorney General, or
S. Kalani Bush, Deputy Attorney General

Chairs Galuteria and Hee and Members of the Committees:

The Department of the Attorney General opposes this bill.

The purpose of this bill is to allow the Hawaiian Homes Commission (Commission) to hire its own attorneys without the approval or participation of the Attorney General or the Governor.

The Department of Hawaiian Home Lands (department), which is headed by the Commission, is not included in this proposed amendment to Section 28-8.3, Hawaii Revised Statutes (HRS). Instead, this bill only seeks to allow the Commission to retain its own legal counsel. The remainder of the department would still be required to be represented by the Department of the Attorney General. Pursuant to Section 26-17, HRS, however, the Commission heads the department; the two are part of the same entity. Allowing for legal representation for different parts of the same entity unnecessarily risks legal advice lacking in consistency and comprehensiveness within the department.

In addition, as a general matter, state agencies should be advised by deputy attorneys general. By locating the attorneys for state agencies within a single department, we are able to provide a wide range of experience and expertise to agencies. Attorneys privately retained by the Commission could not acquire the necessary breadth of knowledge and experience that the Department of the Attorney General's office already has. Additionally, because state agencies are regulated by a variety of laws such as the Procurement Code, Sunshine law, and Uniform Information Practices not applicable to private practice, the Department of the Attorney General

has a depth of expertise in representing state agencies that would be difficult to duplicate by private attorneys, and certainly not without additional expense. Finally, deputy attorneys general, being separate and apart from the state agencies they represent, are insulated from the political issues that may arise within a state agency. This insulation permits the Department of the Attorney General to provide objective legal counsel.

Notwithstanding the prohibition against employing or retaining an attorney, departments may submit a request to the Attorney General requesting that section 28-8.3, HRS, be waived. Under certain circumstances, deemed by the Attorney General to be good and sufficient, a department may retain or employ its own attorney, provided that the Governor waives section 28-8.

We respectfully request that this bill be held in committee.