



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

ON THE FOLLOWING MEASURE:

S.B. NO. 889, S.D. 1, H.D. 1, RELATING TO ATTORNEY'S FEES.

LATE

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, March 27, 2013

TIME: 4:45 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Steve A. Bumanglag, or Michael S. Vincent, Deputy Attorneys General

Chair Luke and Members of the Committee:

The Department of the Attorney General (the "Department") supports this bill.

The purpose of this bill is to allow the Department to recover its attorney's fees when it prevails in a lawsuit. The Attorney General's office over the years has consistently taken the position that some courts have misinterpreted section 28-6, Hawaii Revised Statutes ("HRS"), section 28-6 in precluding an award of attorney's fees to the Department when it prevails in litigation where fee shifting statutes provide for the award of attorney's fees to the prevailing party. The purpose of fee shifting statutes is to deter the filing of baseless lawsuits. When a plaintiff does not have to fear the possible consequence of having to pay attorney's fees if they lose, they may be more likely to file meritless suits thus the State is forced to expend moneys to defend such lawsuits. Public moneys in these situations ought to be recovered for the State.

Some courts have misinterpreted section 28-6, HRS, and have refused to award the Department attorney's fees when it prevails in a lawsuit, and a deputy attorney general requests an award of attorney's fees. The purpose of section 28-6, HRS, was 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. The statute was not meant to prevent the Department from recovering attorney's fees in cases in which it prevails.

This bill amends section 28-6, HRS, by clarifying that, other than their state salary, the Attorney General and his deputies may not personally be compensated for performing their official duties. This bill amends section 28-6, HRS, by clarifying that a court should not misinterpret section 28-6, HRS, as prohibiting the court from ordering a losing party to pay the

Department's attorney's fees when it prevails in a lawsuit, as authorized by statute, a court rule, agreement, stipulation, or precedent.

We respectfully request passage of this bill.