



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

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, March 12, 2013

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

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

Chair Rhoads 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 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. Where a plaintiff does not have to fear the possible consequence of having to pay attorney's fees if they lose, the State is forced to expend moneys to defend such lawsuits. Public moneys in these situations ought to be recovered for the State. HRS § 28-6 is a statute that was enacted back in 1866 when fee shifting statutes were not in existence.

Some courts have misinterpreted section 28-6, Hawaii Revised Statutes (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.



Sierra Club Hawai'i Chapter

PO Box 2577, Honolulu, HI 96803
808.538.6616 hawaii.chapter@sierraclub.org

LATE

HOUSE COMMITTEE ON JUDICIARY

March 12, 2013, 10:00 A.M.
(Testimony is 1 page long)

TESTIMONY COMMENTING ON SB 889 SD1 WITH PROPOSED AMENDMENTS

Aloha Chair Rhoads and Members of the Committee:

The Sierra Club, Hawai'i Chapter, with 10,000 dues-paying members and supporters, respectfully offers the following comments on SB 889 SD1. This measure allows the State to collect fees and costs when it is the prevailing party in litigation matters.

The Sierra Club is still in the process of reviewing this bill. We note, however, in many circumstances a prevailing party cannot collect costs against the State. *See, e.g.*, Haw R. App. P. Rule 39 (“In cases involving the State of Hawai'i or an agency or officer thereof, if an award of costs against the State is authorized by law, costs shall be awarded in accordance with the provisions of this rule; otherwise costs shall not be awarded for or against the State of Hawai'i, its agencies, or its officers acting in their official capacities.”). Costs -- photocopying, expert witness fees, transcripts, travel expenses, and the like -- can sometimes be a significant part of the expense of litigation. It creates an unfair standard if the State is entitled to collect costs but other parties cannot. Such a result may create the potential for abuse and minimize the incentive to promptly settle litigation matters.

Accordingly, we propose inserting the following language.

This section shall not be interpreted as a prohibition on an award of attorney's fees and litigation costs to the department of the attorney general when the State is the prevailing party in a court action~~[, as]~~ and when all parties would otherwise be authorized by statute, rule of court, agreement, stipulation, or precedent to receive attorney's fees and litigation costs if they were a prevailing party.

Mahalo for the opportunity to testify.

SB889

Submitted on: 3/9/2013

Testimony for JUD on Mar 12, 2013 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
TROY ABRAHAM	Individual	Support	No

Comments: i support urgent passage of this bill to lower attorney fees

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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