

JAN 18 2013

A BILL FOR AN ACT

RELATING TO THE ATTORNEY GENERAL.

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

1 SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§28- Investigation and action required upon Federal
5 imposition of unconstitutional law or mandate. (a) The attorney
6 general shall investigate the constitutionality of any federal
7 law or mandate if either:

8 (1) The department of attorney general determines that a
9 constitutional question of any federal law or mandate
10 exists; or

11 (2) An inquiry or allegation of constitutional infirmity
12 of any federal law or mandate is made by the
13 legislature, or any of its members, the governor, or
14 the head of any department in accordance with
15 subsection (b).

16 (b) An inquiry or allegation of constitutional infirmity
17 shall be presented to the attorney general pursuant to section
18 28.3.



1 (c) If the attorney general's investigation concludes that
2 a federal law or mandate imposed upon the State may be in
3 violation of the U.S. Constitution, then the attorney general
4 shall take necessary and appropriate legal action to challenge
5 the federal law or mandate, to protect the interests of the
6 State, and to ensure that the citizens of the State will not be
7 subject to unconstitutional law or mandates of the federal
8 government.

9 (d) The attorney general shall prepare and submit an
10 annual report to the governor and the legislature at least
11 twenty days prior to the convening of each regular session. This
12 annual report shall detail the twelve months preceding the date
13 of the annual report and shall contain the following
14 information:

15 (1) List of all legal actions initiated under this
16 section, and a summary of the nature of each action;
17 and

18 (2) List of all investigations conducted under this
19 section for which the attorney general declined to
20 take legal action, and a summary of the reason legal
21 action was declined."



1 SECTION 2. Section 26-7, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "**§26-7 Department of the attorney general.** The department
4 of the attorney general shall be headed by a single executive to
5 be known as the attorney general.

6 The department shall administer and render state legal
7 services, including furnishing of written legal opinions to the
8 governor, legislature, and such state departments and officers
9 as the governor may direct; represent the State in all civil
10 actions in which the State is a party; investigate federal law
11 or mandates that are alleged or suspected to be unconstitutional
12 and take necessary and appropriate legal action; approve as to
13 legality and form all documents relating to the acquisition of
14 any land or interest in lands by the State; and, unless
15 otherwise provided by law, prosecute cases involving violations
16 of state laws and cases involving agreements, uniform laws, or
17 other matters which are enforceable in the courts of the State.
18 The attorney general shall be charged with such other duties and
19 have such authority as heretofore provided by common law or
20 statute.

21 There shall be within the department of the attorney
22 general a commission to be known as the commission to promote



1 uniform legislation which shall sit in an advisory capacity to
2 the attorney general and to the legislature on matters relating
3 to the promotion of uniform legislation. The composition of the
4 commission shall be as heretofore provided for the commission to
5 promote uniform legislation existing immediately prior to
6 November 25, 1959. The members of the commission shall be
7 nominated, and by and with the advice and consent of the senate,
8 appointed by the governor for terms of four years each, provided
9 that each member shall hold office until the member's successor
10 is appointed and qualified; and provided also that the
11 provisions of section 26-34, limiting the appointment of members
12 of boards and commissions to two terms and the duration of
13 membership to not more than eight consecutive years shall not be
14 applicable.

15 The functions and authority heretofore exercised by the
16 attorney general, high sheriff, and the commission to promote
17 uniform legislation as heretofore constituted are transferred to
18 the department of the attorney general established by this
19 chapter."

20 SECTION 3. New statutory material is underscored.

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

22



S.B. NO. 270

INTRODUCED BY:

Arundhati Saha



S.B. NO. 270

Report Title:

Attorney General; Unconstitutional Federal Mandates

Description:

Provides a mechanism by which the legislature, governor, and department heads may request investigation into the constitutionality of federal law and mandates; requires the attorney general to initiate legal action upon attorney general's conclusion that a federal law may be in violation; provides for annual report of the attorney general.

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