
A BILL FOR AN ACT

RELATING TO INDEPENDENT LEGAL COUNSEL.

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

1 SECTION 1. In the case *Nelson v. Hawaiian Homes*
2 *Commission*, Civil No. 07-1-1663-08 (JHC), Hawaii's first circuit
3 court held that the department of Hawaiian home lands has a
4 trust duty to its beneficiaries to take all reasonably necessary
5 steps, including filing a lawsuit against the State, to ensure
6 that the State fulfills its constitutional obligation to provide
7 sufficient funding to the department. The court found that the
8 department of Hawaiian home lands had breached that duty in the
9 past, ordered the department to prospectively fulfill its trust
10 responsibilities, and enjoined the department from violating
11 these obligations. Additionally, the court held that the
12 department of Hawaiian home lands' "duty of loyalty is to the
13 beneficiaries of the Hawaiian home lands trust - not the
14 governor or the department of budget and finance."

15 The legislature finds that, to fulfil its trust duty to
16 beneficiaries of the Hawaiian home lands trust and to comply
17 with the circuit court's order, the department of Hawaiian home



1 lands must have the authority to hire and retain legal counsel
2 for the purpose of representing the department in litigation,
3 rendering legal counsel, and drafting legal documents. The
4 legislature further finds that, since the interests of the
5 department in fulfilling its trust obligations may at times be
6 at odds with the interests of the State, any legal counsel
7 retained by the department must necessarily be independent of
8 the department of the attorney general.

9 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is
10 amended as follows:

11 1. By amending subsection (a) to read:

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

19 (1) By the public utilities commission, the labor and
20 industrial relations appeals board, and the Hawaii
21 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 Hawaii health systems corporation, or its
6 regional system boards, or any of their facilities;
- 7 (11) By the auditor;
- 8 (12) By the office of ombudsman;
- 9 (13) By the insurance division;
- 10 (14) By the University of Hawaii;
- 11 (15) By the Kahoolawe island reserve commission;
- 12 (16) By the division of consumer advocacy;
- 13 (17) By the office of elections;
- 14 (18) By the campaign spending commission;
- 15 (19) By the Hawaii tourism authority, as provided in
16 section 201B-2.5;
- 17 (20) By the division of financial institutions for any
18 action involving the mortgage loan recovery fund;
- 19 (21) By the office of information practices; [~~or~~]
- 20 (22) By the department of Hawaiian home lands; or



1 [~~22~~] (23) By a department, if the attorney general, for
2 reasons deemed by the attorney general to be good and
3 sufficient, declines to employ or retain an attorney
4 for a department; provided that the governor waives
5 the provision of this section."

6 2. By amending subsection (c) to read:

7 "(c) Every attorney employed by any department on a full-
8 time basis, except an attorney employed by the public utilities
9 commission, the labor and industrial relations appeals board,
10 the Hawaii labor relations board, the office of Hawaiian
11 affairs, the Hawaii health systems corporation or its regional
12 system boards, the department of commerce and consumer affairs
13 in prosecution of consumer complaints, insurance division, the
14 division of consumer advocacy, the University of Hawaii, the
15 Hawaii tourism authority as provided in section 201B-2.5, the
16 office of information practices, the department of Hawaiian home
17 lands, or as grand jury counsel, shall be a deputy attorney
18 general."



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on July 1, 2050.



Report Title:

Department of Hawaiian Home Lands; Independent Counsel

Description:

Authorizes the Department of Hawaiian Home Lands to employ and retain independent counsel. (HB2178 HD1)

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