

JAN 22 2016

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# A BILL FOR AN ACT

RELATING TO THE EMPLOYMENT OF ATTORNEYS BY PUBLIC CHARTER  
SCHOOLS.

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

1           SECTION 1. The legislature finds that, since 1994,  
2 Hawaii's public charter schools have provided parents, their  
3 children, and communities with innovative and meaningful  
4 alternatives to public education. Charter schools currently  
5 serve over ten thousand students, representing five per cent of  
6 Hawaii's public school children, in thirty-four schools  
7 throughout the islands.

8           Hawaii's charter schools offer parents and children a  
9 diverse array of educational approaches including online virtual  
10 educational schools; programs that emphasize science and  
11 technology; Hawaiian language immersion schools where  
12 instruction is delivered in Ōlelo Hawaii; Hawaiian-focused  
13 schools with curricula founded on the Hawaiian culture and  
14 language; and schools dedicated to the mainstreaming of special  
15 need students.



1 Pursuant to Act 130, Session Laws of Hawaii 2012, charter  
2 schools are now authorized by the public charter school  
3 commission, with continued oversight maintained by the board of  
4 education. Act 130 requires each charter school to operate  
5 under fixed term, bilateral, renewable contracts with the  
6 commission; these contracts are intended to outline the roles,  
7 powers, responsibilities, and performance expectations for each  
8 party. Current contracts are scheduled to terminate in June  
9 2017, and the charter school commission is now preparing to  
10 negotiate with charter school governing boards on the  
11 substantive provisions of the next round of charter contracts.

12 Bilateral contract negotiations, by their nature, often  
13 require sophisticated legal counsel for both parties in order to  
14 ensure that each side fully understands the legal obligations  
15 they are agreeing to undertake. Legal assistance may be  
16 particularly important in the charter school contract  
17 negotiation process insofar as non-compliance with contract  
18 terms may lead to charter revocation or charter non-renewal.  
19 This potential result carries serious consequences for charter  
20 school parents, students, and staff, as well as serious legal  
21 and financial consequences for charter school non-profit arms



1 and funders. However, charter schools have not been provided  
2 legal counsel and representation by the department of the  
3 attorney general in the current charter contract negotiation  
4 process and currently authorized schools are prohibited by  
5 statute from retaining their own independent legal counsel. The  
6 legislature finds that it is critical that charter schools and  
7 their governing boards are allowed meaningful access to legal  
8 counsel to provide crucial assistance in the development and  
9 negotiation of charter contracts.

10 The purpose of this Act is to exempt public charter schools  
11 and their governing boards from the statutory prohibition on  
12 retaining outside counsel and thereby allow them to contract  
13 with and retain independent legal counsel in the charter  
14 contract negotiation, charter revocation, and charter nonrenewal  
15 processes.

16 SECTION 2. Section 28-8.3, Hawaii Revised Statutes, is  
17 amended by amending subsection (a) to read as follows:

18 "(a) No department of the State other than the attorney  
19 general may employ or retain any attorney, by contract or  
20 otherwise, for the purpose of representing the State or the  
21 department in any litigation, rendering legal counsel to the



1 department, or drafting legal documents for the department;  
2 provided that the foregoing provision shall not apply to the  
3 employment or retention of attorneys:

4 (1) By the public utilities commission, the labor and  
5 industrial relations appeals board, and the Hawaii  
6 labor relations board;

7 (2) By any court or judicial or legislative office of the  
8 State; provided that if the attorney general is  
9 requested to provide representation to a court or  
10 judicial office by the chief justice or the chief  
11 justice's designee, or to a legislative office by the  
12 speaker of the house of representatives and the  
13 president of the senate jointly, and the attorney  
14 general declines to provide such representation on the  
15 grounds of conflict of interest, the attorney general  
16 shall retain an attorney for the court, judicial, or  
17 legislative office, subject to approval by the court,  
18 judicial, or legislative office;

19 (3) By the legislative reference bureau;

20 (4) By any compilation commission that may be constituted  
21 from time to time;



# S.B. NO. 2431

- 1           (5) By the real estate commission for any action involving
- 2           the real estate recovery fund;
- 3           (6) By the contractors license board for any action
- 4           involving the contractors recovery fund;
- 5           (7) By the office of Hawaiian affairs;
- 6           (8) By the department of commerce and consumer affairs for
- 7           the enforcement of violations of chapters 480 and
- 8           485A;
- 9           (9) As grand jury counsel;
- 10          (10) By the Hawaii health systems corporation, or its
- 11          regional system boards, or any of their facilities;
- 12          (11) By the auditor;
- 13          (12) By the office of ombudsman;
- 14          (13) By the insurance division;
- 15          (14) By the University of Hawaii;
- 16          (15) By the Kahoolawe island reserve commission;
- 17          (16) By the division of consumer advocacy;
- 18          (17) By the office of elections;
- 19          (18) By the campaign spending commission;
- 20          (19) By the Hawaii tourism authority, as provided in
- 21          section 201B-2.5;




- 1 (20) By the division of financial institutions for any
- 2 action involving the mortgage loan recovery fund;
- 3 (21) By the office of information practices; [~~or~~]
- 4 (22) By public charter schools as defined in section 302D-
- 5 1, for any action involving the charter contract
- 6 negotiation, charter revocation, or charter nonrenewal
- 7 processes; or
- 8 [~~(22)~~] (23) By a department, if the attorney general, for
- 9 reasons deemed by the attorney general to be good and
- 10 sufficient, declines to employ or retain an attorney
- 11 for a department; provided that the governor waives
- 12 the provision of this section."

13 SECTION 3. Statutory material to be repealed is bracketed  
 14 and stricken. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on July 1, 2016.

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INTRODUCED BY: ~~SC. Kirkman~~  




# S.B. NO. 2431

**Report Title:**

Public Charter Schools; Employment of Attorneys

**Description:**

Allows for an exemption to public charter schools and their governing boards from the statutory prohibition on retaining outside counsel.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

