



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:

H.B. NO. 2178, RELATING TO INDEPENDENT LEGAL COUNSEL.

BEFORE THE:

HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES, AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 3, 2016

TIME: 10:15 a.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Diane Erickson, Deputy Attorney General

Chair Ing and Members of the Committee:

The Department of the Attorney General opposes this bill.

The purpose of this bill is to allow the Department of Hawaiian Home Lands (DHHL) to hire its own attorneys without the approval or participation of the Attorney General or the Governor.

As a general matter, state agencies should be advised by deputy attorneys general. By locating the attorneys for state agencies within a single department, we are able to provide a wide range of experience and expertise to those agencies. Private attorneys retained by DHHL could not acquire the necessary breadth of knowledge and experience that the Department of the Attorney General already has. Additionally, because state agencies are regulated by a variety of laws, such as the Procurement Code, the Sunshine Law, and the Uniform Information Practices Act, not applicable to private practice, the Department of the Attorney General has a depth of expertise in representing state agencies that would be difficult to duplicate by private attorneys, and certainly not without additional expense. Finally, deputy attorneys general, being separate and apart from the state agencies they represent, are insulated from political issues that may arise within a state agency. This insulation permits the Department of the Attorney General to provide objective and high-quality legal counsel.

The Department of the Attorney General is also unique in its ability under the law to undertake concurrent representation of multiple state agencies that may have conflicting interests, something that private attorneys are not able to do under the Hawaii Rules of

Professional Conduct, the rules governing lawyers. In State v. Klattenhoff (1990), the Hawaii Supreme Court ruled that the Department of the Attorney General may assign deputies to represent agencies that have competing interests as long as it erects appropriate firewalls between those attorneys and takes steps to ensure that no prejudice is suffered by the clients. The Department of the Attorney General has done this in past cases to ensure that all client agencies are vigorously, and separately, represented. We have provided, and will continue to provide, vigorous and objective legal representation to DHHL.

Notwithstanding the prohibition against employing or retaining an attorney, agencies may submit a request to the Attorney General requesting that section 28-8.3, Hawaii Revised Statutes, be waived. Under certain circumstances deemed by the Attorney General to be good and sufficient, an agency may retain or employ its own attorney, provided that the Governor also waives section 28-8, Hawaii Revised Statutes.

For the foregoing reasons, we respectfully request that this bill be held in committee.

COUNTY COUNCIL

Mel Rapozo, Chair
Ross Kagawa, Vice Chair
Mason K. Chock
Gary L. Hooser
Arryl Kaneshiro
KipuKai Kualii
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

Jade K. Fountain-Tanigawa, County Clerk
Scott K. Sato, Deputy County Clerk

Telephone (808) 241-4188
Fax (808) 241-6349
Email cokcouncil@kauai.gov

Council Services Division
4396 Rice Street, Suite 209
Lihu'e, Kaua'i, Hawaii 96766

February 2, 2016

**TESTIMONY OF KIPUKAI KUALII
COUNCILMEMBER, KAUAI COUNTY COUNCIL
ON**

**HB 2178, Relating to Independent Legal Counsel
House Committee on Ocean, Marine Resources & Hawaiian Affairs
Wednesday, February 3, 2016
10:15 a.m.
Conference Room 325**

Dear Chair Ing and Members of the Committee:

Thank you for this opportunity to offer comments on HB 2178, Relating to Independent Legal Counsel. My testimony is submitted in my individual capacity as a member of the Kaua'i County Council, Chair of the Kaua'i County Council Economic Development & Intergovernmental Relations Committee, and member of the National Association of Counties Board of Directors.

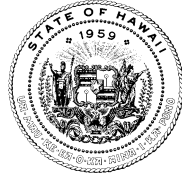
The purpose of this measure is to authorize the Department of Hawaiian Home Lands to employ and retain independent counsel. Since the interests of the department in fulfilling its trust obligations may at times be at odds with the interests of the State, it is necessary that legal counsel retained by the department be independent of the Department of the Attorney General.

For the reasons stated above, I urge the House Committee on Ocean, Marine Resources & Hawaiian Affairs to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

KIPUKAI KUALII
Councilmember, Kaua'i County Council

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

SHAN S. TSUTSUI
LT. GOVERNOR
STATE OF HAWAII

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES,
AND HAWAIIAN AFFAIRS**

IN SUPPORT OF

HB 2178 RELATING TO INDEPENDENT COUNSEL

February 3, 2016

Aloha Chair Ing and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) has a trust duty to its beneficiaries and in the fulfillment of its trust obligations may at times be at odds with the interests of the State. It is at these times that the Hawaiian Homes Commission (HHC) must be assured that its counsel provides legal guidance strictly in the interest of its client, the HHC and/or DHHL. Independent counsel that is hired and retained by DHHL eliminates any cloud of uncertainty that there is a conflict of interest that DHHL is represented by the Attorney General's office that also represents the State of Hawaii.

HB 2178 grants to DHHL the authority to hire and retain legal counsel for the purpose of representing the department in litigation, rendering legal counsel, and drafting legal documents.

DHHL requests that the Committee on Ocean, Marine Resources, and Hawaiian Affairs pass HB 2178 out of Committee.

Thank you for your consideration of our testimony



Association of Hawaiian Civic Clubs

P. O. Box 1135
Honolulu, Hawai`i 96807

HB 2178 RELATING TO INDEPENDENT LEGAL COUNSEL

HOUSE COMMITTEE ON OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS

Wednesday; 02/03/16; 10:15 am; Room 325

Aloha Chairman Ing, Vice Chair Lowen and members of the House Committee on Ocean, marine resources and Hawaiian affairs. I am Annelle Amaral, president of the Association of Hawaiian Civic Club. I regret not addressing the committee in person today but I am a delegate to the Native Hawaiian `Aha currently in session.

By way of introduction to the committee, however, the first Hawaiian Civic Club was established by Prince Kuhio when he was in the US Congress trying to pass the Hawaiian Homes Act. He needed advocacy here at home and with a group of prominent Hawaiians formed the Hawaiian Civic Club of Honolulu in 1918. Ninety six years later we are an association of sixty seven clubs throughout Hawaii and sixteen states on the continent and hold annual conventions taking up issues important to the Hawaiian people.

Given our common roots, the civic clubs have always taken a special interest in the Department of Hawaiian Home Lands (DHHL). We were made aware of cases aggravated by the State with regard to legal issues involving the commission and/or beneficiaries. On several occasions our membership passed resolutions advocating for independent counsel for the commissioners and beneficiaries of the Department of Hawaiian Home Lands. While AHCC resolutions in the legislature did not pass, it took an independently filed lawsuit by a beneficiary to assert "...loyalty to the beneficiaries of the Hawaiian Home Lands trust..."

Just as it did with the Office of Hawaiian Affairs, the ability to hire independent counsel should be able alleviate legal questions and problems that arise between the commission, beneficiaries and State government without the need for a lawsuit.

We urge the passage of this bill. Mahalo for the opportunity to submit testimony.

Contact: Jalna.keala2@hawaiiantel.net

From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 12:30 PM
To: omhstestimony
Cc: schha.associations@gmail.com
Subject: Submitted testimony for HB2178 on Feb 3, 2016 10:15AM

HB2178

Submitted on: 2/2/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Danner	SCHHA	Comments Only	No

Comments: The SCHHA Does Not Support giving DHHL, the right to independent counsel, but rather, the Hawaiian Homes Commission, as established by the Hawaiian Homes Commission Act.

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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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 7:57 AM
To: omhtestimony
Cc: elamafarms@gmail.com
Subject: Submitted testimony for HB2178 on Feb 3, 2016 10:15AM

LATE

HB2178

Submitted on: 2/3/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick L. Kahawaiolaa	Keaukaha Community Association	Support	No

Comments: Aloha it is becoming increasingly important that in order to better serve the beneficiaries of the Hawaiian Homes Commission Act and the inherent conflict of having the State's AG represent the DHHL and the beneficiaries is not a situation that is in our best interest. I hope this body shall see fit to do the right thing in providing the ability for legal services to the body whose SOLE purpose is to work on behalf of the native Hawaiians as defined by the ACT. Mahalo for your consideration

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Sent: Wednesday, February 03, 2016 7:51 AM
To: omhstestimony
Cc: believe2achieve.hi@gmail.com
Subject: *Submitted testimony for HB2178 on Feb 3, 2016 10:15AM*

HB2178

Submitted on: 2/3/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Quenton Browm	Individual	Support	No

Comments:

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Sent: Wednesday, February 03, 2016 7:49 AM
To: omhtestimony
Cc: mwainani@gmail.com
Subject: *Submitted testimony for HB2178 on Feb 3, 2016 10:15AM*

HB2178

Submitted on: 2/3/2016
Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Brown	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 6:25 AM
To: omhtestimony
Cc: duke@sandwichisles.net
Subject: Submitted testimony for HB2178 on Feb 3, 2016 10:15AM

LATE

HB2178

Submitted on: 2/3/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Marion K A Kapuniai	Individual	Support	No

Comments: Will provide necessary undivided attention to, and clear the cloud of conflict of interest. Thank you! M Kapuniai

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COUNCIL FOR NATIVE HAWAIIAN ADVANCEMENT

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TESTIMONY IN SUPPORT OF HB 2178 RELATING TO INDEPENDENT LEGL COUNSEL

COMMITTEE ON OCEAN, MARINE RESOURCES & HAWAIIAN AFFAIRS (OMH)
Wednesday, February 3, 2016

Chair Ing, Vice Chair Lowen and members of the OMH Committee, on behalf of the Council for Native Hawaiian Advancement (CNHA), I support HB 2178 with amendments to include independent counsel for the Hawaiian Homes Commission.

Specifically, the added language should read as follows:

(22) By the Hawaiian Homes Commission or the Department of Hawaiian home lands

Founded in 2001, CNHA is a Native Hawaii non-profit membership organization with more than 150 voting members. CNHA's mission is to enhance the well being of Hawaii through the cultural, political, economic, and community development of Native Hawaiians. At our Annual Native Hawaiian Convention, we convene a homestead caucus in partnership with the Sovereign Councils of the Hawaiian Homelands Assembly and work throughout the year with homestead leaders from across the state.

In 2012, CNHA adopted a policy priority requesting the Hawaiian Homes Commission fund and retain separate legal counsel to represent the interests of the beneficiaries at all Hawaiian Homes Commission meetings. The Native Hawaiian policy center supported legislation introduced in 2013 and 2014 supporting independent counsel for the Hawaiian Homes Commission.

The Hawaiian Homes Commission (HHC) has a trust responsibility and fiduciary duty to beneficiaries of the Hawaiian Homes Commission Act (HHCA). To avoid any conflicts of interest, the HHC must have the ability to consult with independent legal counsel to protect the interests of HHCA beneficiaries.

CNHA supports HB 2178 to authorize the Department of Hawaiian Home Lands to employ and retain independent counsel for the Hawaiian Homes Commission.

Mahalo for the opportunity to provide testimony on this measure.

Michelle Kauhane
President & CEO

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From: mailinglist@capitol.hawaii.gov
Sent: Tuesday, February 02, 2016 8:55 PM
To: omhtestimony
Cc: moikehajr@gmail.com
Subject: Submitted testimony for HB2178 on Feb 3, 2016 10:15AM

HB2178

Submitted on: 2/2/2016
Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Roger Kanealii	Individual	Support	No

Comments: I fully support the right of the Hawaiian Homes commission to retain legal counsel for issues that there is or may be a conflict of interest with the State attorney General who is there to represent the interest of the state and not in the interest of the beneficiaries of the Hawaiian Homes trust.

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Sent: Tuesday, February 02, 2016 6:59 PM
To: omhtestimony
Cc: naregion9@gmail.com
Subject: *Submitted testimony for HB2178 on Feb 3, 2016 10:15AM*

HB2178

Submitted on: 2/2/2016
Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Derek Kimura	Individual	Support	No

Comments:

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Sent: Tuesday, February 02, 2016 4:41 PM
To: omhtestimony
Cc: kamakane73@gmail.com
Subject: *Submitted testimony for HB2178 on Feb 3, 2016 10:15AM*



HB2178

Submitted on: 2/2/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kama Hopkins	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 8:13 AM
To: omhtestimony
Cc: elamafarms@gmail.com
Subject: Submitted testimony for HB2339 on Feb 3, 2016 10:15AM

LATE

HB2339

Submitted on: 2/3/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Patrick L. Kahawaiolaa	Keaukaha Community Association	Support	No

Comments: Aloha like our support for HB 1931 and because the facts are clear that the blood quantum for successors was lower first in 1986 we have come to the conclusion that for the sake of our future and the continuity of a lessee's ohana on an awarded tract of Hawaiian Home lands be approved and sent on to the DOI for Congressional approval and CONSENT. A reservation we would like to be clearly be stated is that the lowering of the blood quantum is for the benefits of the original lessee's family and not to transfer the lease to anyone or entity that cannot show a direct line to the original lessee. Mahalo for your support

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 7:48 AM
To: omhtestimony
Cc: mwainani@gmail.com
Subject: *Submitted testimony for HB2339 on Feb 3, 2016 10:15AM*

HB2339

Submitted on: 2/3/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Michelle Brown	Individual	Support	No

Comments:

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From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 03, 2016 10:00 AM
To: omhtestimony
Cc: dkapua@gmail.com
Subject: Submitted testimony for HB2178 on Feb 3, 2016 10:15AM

HB2178

Submitted on: 2/3/2016

Testimony for OMH on Feb 3, 2016 10:15AM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Kapua Keliikoa-Kamai	Individual	Support	No

Comments: Aloha kakou, HB 2178. RELATING TO INDEPENDENT LEGAL COUNSEL. Authorizes the Department of Hawaiian Home Lands to employ and retain independent counsel. I stand in FULL SUPPORT and request passage of HB 2127 out of your committee. It is very disheartening that the beneficiaries, through our Hawaii Homes Commissioner's, have to seek this type of separation from the State and it's council. But, as we've seen in several cases (i.e. Nelson, Kalima, etc.) it is the only way for the DHHL, HHC's and our beneficiaries to progress. Again, please PASS BILL HB 2127. Mahalo for this opportunity to testify. Aloha, Kapua Keliikoa-Kamai, Concerned Wai'anae Resident

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