
A BILL FOR AN ACT

RELATING TO HIGHER EDUCATION.

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

1 SECTION 1. Section 26-35.5, Hawaii Revised Statutes, is
2 amended as follows:
3 1. By amending subsections (e) and (f) to read:
4 "(e) The attorney general, [~~or in the case of the board of~~
5 ~~regents of the University of Hawaii, its university general~~
6 ~~counsel,~~] or in the case of the board of directors of the Hawaii
7 health systems corporation under section 323F-3 or its regional
8 system boards under [+]section[+] 323F-3.5, the attorneys
9 retained by the board of directors of the Hawaii health systems
10 corporation or its regional system boards under section 323F-9,
11 shall represent and defend a member in any civil action for
12 which immunity is conferred under subsection (b), or when the
13 attorney general, or, [~~if the action involves a member of the~~
14 ~~board of regents, the university general counsel, or,~~] if the
15 action involves a member of the board of directors of the Hawaii
16 health systems corporation or its regional system boards, the
17 attorneys retained by the board of directors of the Hawaii



1 health systems corporation or its regional system boards,
2 determines that indemnification is available to the member under
3 subsection (c), and the member against whom the action is
4 brought has submitted a written request for representation and
5 has provided the attorney general[, ~~the university general~~
6 ~~counsel in the case of an action involving a member of the board~~
7 ~~of regents,~~] or the attorneys retained by the board of directors
8 of the Hawaii health systems corporation or its regional system
9 boards in the case of an action involving a member of the board
10 of directors of the Hawaii health systems corporation or its
11 regional system boards with all process or complaint served upon
12 the member within a reasonable period of time, but not more than
13 five days after being served with the process or complaint. The
14 attorney general[, ~~the university general counsel,~~] or an
15 attorney retained by the board of directors of the Hawaii health
16 systems corporation or its regional system boards may terminate
17 the representation and defense of the member at any time if,
18 after representation and defense is accepted, the attorney
19 general[, ~~the university general counsel,~~] or an attorney
20 retained by the board of directors of the Hawaii health systems
21 corporation or one of its regional system boards determines that



1 indemnification would not be available to the member under
2 subsection (c).

3 (f) A member may retain counsel of the member's own choice
4 at the member's own expense. If the member chooses to retain
5 counsel at the member's own expense, the State shall not
6 indemnify the member even though the member would have been
7 entitled to indemnification under subsection (c). The attorney
8 general [~~, or the university general counsel in the case of a~~
9 ~~member of the board of regents,~~] may enter an appearance in any
10 action in which the member is represented by counsel of the
11 member's own choice, even though no request for the appearance
12 has been made by the member."

13 2. By amending subsections (h) and (i) to read:

14 "(h) If the attorney general [~~, or the university general~~
15 ~~counsel in the case of a member of the board of regents,~~] denies
16 representation to the member under subsection (e) and the member
17 proceeds to judgment in the action for which representation was
18 denied, the member may commence an action against the State [~~or~~
19 ~~the University of Hawaii in the case of a member of the board of~~
20 ~~regents,~~] in the circuit court to recover reasonable costs and
21 fees incurred by the member in defending against that action,



1 including attorney's fees, court costs, investigative costs, and
2 expert witness fees. The State [~~or the University of Hawaii in~~
3 ~~the case of a member of the board of regents,~~] shall pay the
4 judgment or reimburse the member if the member has satisfied the
5 judgment in an action for which representation was denied;
6 provided the member was found not liable in that action or the
7 member establishes by a preponderance of the evidence that the
8 member is entitled to indemnification under subsection (c). A
9 finding of negligence against the member in the civil action for
10 which representation was denied shall not be binding upon the
11 circuit court in any action brought under this subsection. The
12 member shall commence any action under this subsection no later
13 than two years after entry of judgment in the action for which
14 the member was denied representation if no appeal is filed, or
15 two years after the conclusion of the final appeal from that
16 judgment if an appeal is filed.

17 (i) If the attorney general [~~, or the university general~~
18 ~~counsel in the case of a member of the board of regents,~~] denies
19 representation to the member under subsection (e) and the member
20 negotiates a compromise or settlement without an entry of
21 judgment in the action for which representation was denied, the



1 member may seek to introduce a bill in the legislature to secure
2 an appropriation to reimburse the member for the amount of the
3 settlement or that portion which constitutes a reasonable
4 settlement, and for reasonable costs and fees incurred by the
5 member in defending against that action, including attorney's
6 fees, court costs, investigative costs, and expert witness
7 fees."

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

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

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

18 (1) By the public utilities commission, the labor and
19 industrial relations appeals board, and the Hawaii
20 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)~~] (14) By the Kahoolawe island reserve commission;
- 12 [~~(16)~~] (15) By the division of consumer advocacy;
- 13 [~~(17)~~] (16) By the office of elections;
- 14 [~~(18)~~] (17) By the campaign spending commission;
- 15 [~~(19)~~] (18) By the Hawaii tourism authority, as provided in
16 section 201B-2.5;
- 17 [~~(20)~~] (19) By the division of financial institutions;
- 18 [~~(21)~~] (20) By the office of information practices; or
- 19 [~~(22)~~] (21) By a department, if the attorney general, for
20 reasons deemed by the attorney general to be good and
21 sufficient, declines to employ or retain an attorney



1 for a department; provided that the governor waives
2 the provision of this section."

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

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

15 SECTION 3. Section 40-82, Hawaii Revised Statutes, is
16 amended by amending subsection (c) to read as follows:

17 "(c) The University of Hawaii, from time to time, may
18 prepare for the review of the [~~university general counsel~~]
19 attorney general a list of all uncollectible accounts. Such
20 accounts as the [~~university general counsel~~] attorney general
21 finds to be uncollectible shall be entered into a special record



1 and be deleted from the accounts receivable records of the
2 university, which shall thereupon be relieved from any further
3 accountability for their collection; provided that no account
4 shall be so deleted until it shall have been delinquent for at
5 least two consecutive years. Any account entered in the special
6 record shall be transferred back to the current accounts
7 receivable if the [~~university general counsel~~] attorney general
8 finds that the account has become collectible."

9 SECTION 4. Section 46-71.5, Hawaii Revised Statutes, is
10 amended by amending subsection (c) to read as follows:

11 "(c) Notwithstanding subsection (a), the board of regents
12 of the University of Hawaii, or its designee, may agree to
13 indemnify, defend, and hold harmless a county agency, its
14 officers, agents, and employees when:

- 15 (1) The use of the county property will be for a
16 university purpose or a university function;
- 17 (2) The president of the University of Hawaii, or the
18 president's designee, following a favorable review by
19 the [~~university general counsel or the counsel's~~
20 ~~designee,~~] attorney general approves the indemnity
21 provision in writing; and



1 (3) The chief financial officer of the University of
2 Hawaii, pursuant to section 304A-108, has obtained an
3 insurance policy or policies in an amount sufficient
4 to cover the liability of the university that
5 reasonably may be anticipated to arise under the
6 indemnity provision, or has determined that it is not
7 in the best interest of the university to obtain
8 insurance."

9 SECTION 5. Section 107-10, Hawaii Revised Statutes, is
10 amended to read as follows:

11 **"§107-10 Acquiring of real property; prior approval.** No
12 real property or any right, title, or interest therein shall be
13 acquired by agreement, purchase, gift, devise, eminent domain,
14 or otherwise, for any purpose, by the State or any department,
15 agency, board, commission, or officer thereof, without the prior
16 approval of the attorney general as to form, exceptions, and
17 reservations. ~~[As to property acquired by the University of~~
18 ~~Hawaii, the attorney general may delegate to the University~~
19 ~~general counsel the authority to approve as to form, exceptions,~~
20 ~~and reservations.]~~ In cases involving acquisitions by the
21 University of Hawaii of interests in real property that do not



1 require legislative appropriations, the ~~[general counsel]~~
2 attorney general for the University of Hawaii ~~[may]~~ shall give
3 approval as to form, exceptions, and reservations."

4 SECTION 6. Section 304A-109, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) Service of process upon the university shall be made
7 by serving a filed and certified copy of the summons and of the
8 complaint ~~[on the university general counsel]~~ in accordance with
9 applicable court rules and chapter 634 ~~[or on any attorney in
10 the office of the university general counsel]~~."

11 SECTION 7. Section 304A-110, Hawaii Revised Statutes, is
12 amended by amending subsection (a) to read as follows:

13 "(a) Notwithstanding any other law to the contrary, the
14 board of regents may agree in writing to an indemnity provision
15 by which the university agrees to indemnify, defend, and hold
16 harmless any person, corporation, or entity that sponsors
17 research at the university when all of the following conditions
18 are satisfied:

19 (1) The person, corporation, or entity requires an
20 indemnity in writing as a condition for providing a



1 grant, benefit, service, or interest in or right to
2 use property;

3 (2) The president, or the president's designee, following
4 a favorable review by the [~~university general counsel~~
5 ~~or the counsel's designee,~~] attorney general approves
6 the proposed indemnification; and

7 (3) The chief financial officer, pursuant to section
8 304A-108, has obtained an insurance policy or policies
9 in an amount sufficient to cover the liability of the
10 university that may be reasonably anticipated to arise
11 under the indemnity provision or has determined that
12 it is not in the best interest of the university to
13 obtain insurance."

14 SECTION 8. Section 304A-321, Hawaii Revised Statutes, is
15 amended by amending subsection (f) to read as follows:

16 "(f) The independent audit committee shall engage in
17 operations relating to enterprise risk management including:

18 (1) Providing oversight of risk management, which shall
19 include determining overall strategy and influencing
20 the university's risk philosophy;



- 1 (2) Inquiring of the president of the University of
2 Hawaii, the chief financial officer of the university,
3 and external auditors about significant risks or
4 exposures faced by the university;
- 5 (3) Assessing steps that the president of the University
6 of Hawaii has taken or proposes to take to minimize
7 those risks to the university and periodically
8 reviewing compliance with those steps; and
- 9 (4) Reviewing with the [~~general counsel of the University~~
10 ~~of Hawaii,~~] attorney general, external auditors,
11 external counsel, and the chief financial officer of
12 the university legal and regulatory matters that, in
13 the opinion of the president of the University of
14 Hawaii, may have a material impact upon the financial
15 statements, related organization compliance policies,
16 and programs and reports received from regulators."

17 SECTION 9. Section 304A-1005, Hawaii Revised Statutes, is
18 repealed.

19 [~~["§304A-1005] University general counsel.~~] (a) ~~The board~~
20 ~~of regents may appoint or retain by contract one or more~~



1 ~~attorneys who are independent of the attorney general, to~~
2 ~~provide legal services for the university, including:~~

3 ~~(1) Representation of the university in civil actions to~~
4 ~~which the university is a party, either directly or~~
5 ~~through the acts or omissions of its officers or~~
6 ~~employees;~~

7 ~~(2) Advice and assistance to ensure the lawful and~~
8 ~~efficient administration and operation of the~~
9 ~~university;~~

10 ~~(3) Review and approval of documents relating to the~~
11 ~~acquisition of land or interest in land by the~~
12 ~~university; and~~

13 ~~(4) Any other legal service specified by the board of~~
14 ~~regents.~~

15 ~~The board of regents may fix the compensation of the attorneys~~
16 ~~appointed pursuant to this section. Attorneys appointed or~~
17 ~~retained by contract shall be exempt from chapters 76 and 89.~~

18 ~~(b) Nothing in this section precludes the board of regents~~
19 ~~from requesting and securing legal services from the department~~
20 ~~of the attorney general, for the university, the board of~~



1 ~~regents or its members, or the university's officers and~~
2 ~~employees, upon mutual agreement."]~~

3 SECTION 10. The department of the attorney general shall
4 determine any funding necessary, including additional positions
5 needed, to carry out the purposes of this Act.

6 SECTION 11. There is appropriated out of the general
7 revenues of the State of Hawaii the sum of \$ or so
8 much thereof as may be necessary for fiscal year 2019-2020 and
9 the same sum or so much thereof as may be necessary for fiscal
10 year 2020-2021 for the purposes of this Act.

11 The sums appropriated shall be expended by the department
12 of the attorney general for the purposes of this Act.

13 SECTION 12. Statutory material to be repealed is bracketed
14 and stricken. New statutory material is underscored.

15 SECTION 13. This Act shall take effect on July 1, 2019.



Report Title:

University of Hawaii; General Counsel; Repeal; Attorney General; Appropriation

Description:

Specifies that the attorney general shall represent the University of Hawaii in any litigation, render legal counsel to the university, and draft legal documents for the university. Repeals the authority of the board of regents of the University of Hawaii to appoint or retain general counsel independent of the attorney general to provide legal services for the university. Repeals the general counsel of the University of Hawaii. Appropriates funds. (Proposed SD1)

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