



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTIETH LEGISLATURE, 2020**

ON THE FOLLOWING MEASURE:

S.B. NO. 2391, RELATING TO THE HAWAIIAN HOMES COMMISSION.

BEFORE THE:

SENATE COMMITTEE ON HAWAIIAN AFFAIRS

DATE: Thursday, January 30, 2020

TIME: 1:17 p.m.

LOCATION: State Capitol, Room 016

TESTIFIER(S): Clare E. Connors, Attorney General, or
Craig Y. Iha, Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill allows the Hawaiian Homes Commission (HHC) and the Department of Hawaiian Home Lands (DHHL) to hire their own attorneys without the approval or participation of the Attorney General or the Governor. This bill provides the HHC and DHHL the discretion to use the services of the Attorney General if the interests of the State, the HHC, and DHHL are "aligned." This bill also requires the State pay the legal fees owed to the attorneys hired by the HHC and DHHL.

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 the HHC and 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, which are 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 the HHC and 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 (HRS), 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, HRS. This avenue has been exercised by the HHC and DHHL in the past.

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

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII

JOSH GREEN
LT. GOVERNOR
STATE OF HAWAII



WILLIAM J. AILA, JR.
CHAIRMAN
HAWAIIAN HOMES COMMISSION

TYLER I. GOMES
DEPUTY TO THE CHAIRMAN

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

P. O. BOX 1879
HONOLULU, HAWAII 96805

TESTIMONY OF WILLIAM J. AILA, JR, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS
HEARING ON JANUARY 30, 2020 AT 1:17PM IN CR 016

SB 2391 RELATING TO THE HAWAIIAN HOMES COMMISSION

January 29, 2019

Aloha Chair Shimabukuro, Vice Chair Kahele, and members of the Committee:

The Department of Hawaiian Home Lands (DHHL) strongly supports this bill allowing the Hawaiian Homes Commission (HHC) or DHHL to retain independent legal counsel as needed and authorizing the HHC and DHHL to use the services of the Attorney General as needed and when the interests of the State, HHC, and DHHL are aligned. The HHC approved a similar measure, but it was not included in the Administration's legislative package.

The HHC and DHHL have a trust duty to its beneficiaries and in the fulfillment of this trust obligation, the HHC and DHHL may at times be at odds with the interests of the State. It is at these times that the HHC and DHHL must be assured that its counsel provides legal counsel strictly in the interest of its client. Independent counsel that is hired and retained by the HHC or DHHL eliminates any cloud of uncertainty that there is a conflict of interest as a result of representation by the Attorney General's office that also represents the State of Hawaii.

Thank you for your consideration of our testimony.

SB-2391

Submitted on: 1/29/2020 3:15:00 PM

Testimony for HWN on 1/30/2020 1:17:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Tanya Aynessazian	Individual	Support	No

Comments:

Thank you for allowing the opportunity to submit testimony. I strongly support this measure which provides for independent legal counsel for DHHL. This bill provides DHHL with the ability to prioritize the interests of its beneficiaries, which often conflict with the intent and interest of the State. The events on the Mauna Kea access road last year illustrate clearly that independent counsel is needed on behalf of beneficiaries rather than putting the Office of Attorney General inbetween a rock and a hard place, perpetuating conflict rather than objectively reviewing facts and assertions from all sides. This bill offers one solution that begins to minimize one specific aspect of the structural racism that exists in our government and how state agencies work together for some groups of people over others. This bill offers offers the State increased ability to provide a just and transparent path toward justice for kanaka, and thus for all residents of Hawaii.

SB-2391

Submitted on: 1/27/2020 8:00:38 PM

Testimony for HWN on 1/30/2020 1:17:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Benton Kealii Pang, Ph.D.	Individual	Support	No

Comments:



BEFORE THE SENATE COMMITTEE ON HAWAIIAN AFFAIRS

JANUARY 30, 2020

Senate Bill 2391

Relating to the Hawaiian Home Lands

Aloha Chair Shimabukuro, Vice Chair Kahele, and Members of the Committee,

Ka Lāhui Hawai'i Political Action Committee (KPAC) **STRONGLY SUPPORTS** Senate Bill 2391 which allows the Hawaiian homes commission or the department of Hawaiian home lands to retain independent legal counsel as needed.

Since 1959 there have been numerous instances where it has been clear that the interests of the State and the interests Kanaka Maoli beneficiaries of the Hawaiian Homes trust do not align. The most glaring has been the State's failure to fully fund the Department of Hawaiian Home Lands (DHHL) operational and administrative costs for years which forced beneficiaries into a 5 year lawsuit known as the 'Nelson Case' and contributed to the growing number of beneficiaries waiting for homesteads.

Another example, is the Mauna Kea Access road which sits on Hawaiian Home Lands. Beneficiaries have been occupying this road for 6 months, yet when DHHL needs legal counsel as to the disposition of the road it has to turn to the Attorney General whose office is also in charge of prosecuting the Kupuna who were arrested for protecting Mauna Kea in July 2019. Many of these Kupuna who were arrested are also Hawaiian Home Lands beneficiaries making plain the conflict of interests that exists and the impossibility of an unbiased legal opinion from the Attorney General's office as to who has jurisdiction over the Mauna Kea Access road and other matters related to DHHL Mauna lands.

Allowing DHHL to have independent legal counsel would allow that department to put the interests of the beneficiaries first, eliminate conflict of interests and provide parity for Kanaka Maoli who qualify.

Respectfully submitted,

M. Healani Sonoda-Pale
Chair, KPAC

SB-2391

Submitted on: 1/29/2020 12:11:35 AM

Testimony for HWN on 1/30/2020 1:17:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Kamakana Aquino	Individual	Support	No

Comments: