



**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 COMMITTEES ON WAYS AND MEANS AND ON JUDICIARY

DATE: Wednesday, February 26, 2020 **TIME:** 1:10 p.m.

LOCATION: State Capitol, Room 211

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Craig Y. Iha,
Deputy Attorney General, at 587-2978)

Chairs Dela Cruz and Rhoads and Members of the Committees:

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 Hawai'i 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 28-8.3, 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.



**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 COMMITTEES ON WAYS AND MEANS & JUDICIARY
DECISION MAKING ON FEBRUARY 26, 2020 AT 1:10PM IN CR 211

SB 2391 RELATING TO THE HAWAIIAN HOMES COMMISSION

February 24, 2020

Aloha Chair Dela Cruz, Chair Rhoads, and members of the Committees:

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: 2/24/2020 4:24:31 PM

Testimony for JDC on 2/26/2020 1:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Leimomi Khan	Individual	Support	No

Comments:

Support. This is sensible legislation that clearly removes conflict of interest situations.

SB-2391

Submitted on: 2/25/2020 9:24:58 AM

Testimony for JDC on 2/26/2020 1:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
josephine tanimoto	Individual	Support	No

Comments:

I strongly support this Bill. I can remember the last two generations of Homestead leaderships seeking this address to issues affecting beneficiaries. Mahalo

LATE

SB-2391

Submitted on: 2/25/2020 7:45:28 PM

Testimony for JDC on 2/26/2020 1:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Support	No

Comments:

In strong support of the measure for independent counsel.