

February 16, 2021

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Rep. Mark M. Nakashima, Chair Rep. Scot Z. Matayoshi, Vice Chair

HB 1391 - RELATING TO THE HAWAIIAN HOMES COMMISSION

Allows the Department of Hawaiian Home Lands to retain independent legal counsel as needed. Authorizes the Department of Hawaiian Home Lands to use the services of the Attorney General as needed and when the interests of the State and the Department of Hawaiian Home Lands are aligned. Provides that funds owed to independent legal counsel shall be paid by the State.

Aloha Chair Nakashima, Vice Chair Matayoshi, and members of this committee,

My name is Homelani Schaedel, a beneficiary residing in Malu'ōhai, and a homestead leader in Kapolei. I am in strong support of this bill!

Paragraph (a) of this bill: “No department of the State other than the attorney general may employ or retain any attorney...”, and yet, there are currently twenty-one (21) commissions, departments, divisions, offices, etc. who are exempt from this provision.

I know firsthand of multiple grants, opinions, and projects delays, that Department of Hawaiian Home Lands (DHHL) staff responded to beneficiaries inquiries with “we’re waiting on the Attorney General’s (AG) office”.

My comments are in no way a reflection of the service provided by the hard working staff assigned to DHHL or who work in the AG’s office. On the contrary, like many departments’ they are overburdened, overwhelmed, and overworked!

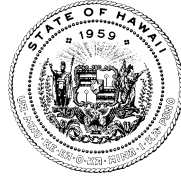
However, let us consider the old adage, “One servant cannot serve two masters”. During the Nelson Case, the AG’s office instructed the Hawaiian Homes Commission (HHC) to refuse to submit an estimation of administrative and operating cost. This advice adversely affected the outcome in the case, resulting in an appeal. During the course of the Nelson case, the AG’s office opposed the HHC’s position and lost multiple times.

DHHL has brought this request before the legislature for well over twenty (20) years and been denied. To protect the interest of, elevate, and provide effective service to HHCA beneficiaries, DHHL will from time to time require expeditious and un-bias legal advice and assistance. Your support and passage of this bill will provide the HHC and DHHL the same opportunity already extended to other departments.

Mahalo for the opportunity to share my mana’o.

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 HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
HEARING ON FEBRUARY 16, 2021 AT 2:00PM VIA VIDEOCONFERENCE

IN SUPPORT OF

HB 1391, RELATING TO THE HAWAIIAN HOMES COMMISSION

February 16, 2021

Aloha Chair Nakashima, Vice-Chair Matayoshi and Members of the Committee:

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

DHHL has a trust duty to its beneficiaries and in the fulfillment of this trust obligation, DHHL may at times be at odds with the interests of the State. It is at these times that DHHL must be assured that its counsel provides legal advice strictly in the interest of its client. Independent counsel that is hired and retained by 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.



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2021**

ON THE FOLLOWING MEASURE:

H.B. NO. 1391, RELATING TO THE HAWAIIAN HOMES COMMISSION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 16, 2021 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**

(For more information, contact Craig Y. Iha or Ryan K.P. Kanaka'ole, Deputy Attorneys General, at 587-2978)

Chair Nakashima 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. This bill provides DHHL the discretion to use the services of the Attorney General if the interests of the State and DHHL are "aligned." This bill also requires the State to pay the legal fees owed to the attorneys hired by DHHL.

The Attorney General serves as legal counsel to the State of Hawai'i, which legal obligation includes providing legal services to state agencies. Because it is the largest legal entity in the State, with a number of diverse divisions, the Attorney General is best suited to provide legal advice to its state clients on a broad array of matters and therefore, as a general matter, state agencies should be advised by deputy attorneys general. By locating attorneys representing state agencies within the Department of the Attorney General, state agencies benefit from the wide range of experience and expertise in a cost effective and conflict-free manner. Private attorneys retained by DHHL would not possess the necessary breadth of knowledge and experience available within the Department of the Attorney General. Additionally, because state agencies are regulated by a variety of laws not applicable in private practice – including the Procurement Code, the Sunshine Law, and the Uniform Information Practices Act – the Attorney General's expertise representing state agencies in these areas would be

difficult for private attorneys to duplicate, and certainly not without additional expense. Finally, because deputy attorneys general are separate and apart from the agencies they represent, they are insulated from political issues that may arise within an 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, 71 Haw. 598 (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 establishes 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 private attorneys, state agencies may submit a waiver request to the Attorney General pursuant to section 28-8.3, Hawaii Revised Statutes (HRS). Under this provision, the Attorney General may determine that circumstances exist whereby representation by private attorneys is appropriate. In such circumstances, an agency may retain or employ its own attorney, provided that the Governor also waives section 28-8.3, HRS. Indeed, this avenue has been exercised by DHHL in the past without incident.

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

HB-1391

Submitted on: 2/14/2021 8:06:24 PM

Testimony for JHA on 2/16/2021 2:00:00 PM

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

Comments:

Aloha e Committee Members,

Please support the passage of this bill to ensure that legal counsel truly supports the interests of Beneficiaries, DHHL and the HHCA.

mahalo,

Kamakana