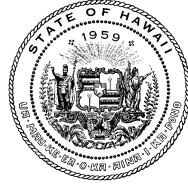


DAVID Y. IGE
GOVERNOR

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To: The Honorable Mark M. Nakashima, Chair;
The Honorable Scot Z. Matayoshi, Vice Chair;
and Members of the House Committee on Judiciary & Hawaiian Affairs

From: Kevin Wakayama, Tax Compliance Administrator, Department of Taxation,
formerly Supervising Deputy Attorney General, Tax Division, Department of the
Attorney General

Date: Wednesday, February 16, 2022
Time: 2:00 P.M.
Place: Via Video Conference, State Capitol

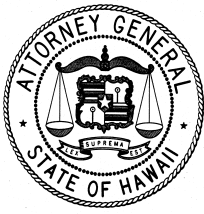
Re: H.B. 2231, Relating to State Departments

The Department of Taxation (Department) supports H.B. 2231 and offers the following comments for the committee's consideration.

H.B. 2231 amends section 28-8.3, Hawaii Revised Statutes (HRS), to authorize the Department to employ or retain attorneys to represent the Department in litigation, render legal counsel, and draft legal documents. The measure is effective on July 1, 2022.

The tax environment today is very complex and requires full time attention to the events of non-compliance. The best and brightest tax accountants and tax attorneys develop schemes to avoid paying taxes. The complex nature of our work requires litigating tax attorneys to be situated next to our auditors collaborating with them in all phases of the compliance function. It is essential that we have our litigating tax attorneys within our office, guiding us through the litigation process.

Thank you for the opportunity to testify.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO.2231, RELATING TO STATE DEPARTMENTS.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Wednesday, February 16, 2022 **TIME:** 2:00p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Gary S. Sukanuma, Supervising Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill and provides the following comments.

This bill amends section 28-8.3, Hawaii Revised Statutes (HRS), to allow the Department of Taxation (DOTAX) to employ its own in-house lawyers or to retain private legal attorneys to provide it legal counsel and representation in litigation matters. The Department does not support the proposed measure for the reasons below.

First, it would not be in the best interest of the Executive Branch, and the State as a whole, to allow DOTAX to have its own independent litigation lawyers. As part of the Executive Branch, it is for DOTAX to receive legal advice that is consistent with the advice given to the other state agencies and with careful consideration of the interests of the Executive Branch as well as the State. This important need for consistency is precisely why section 28-8.3, HRS, mandates the Department to engage and oversee outside representation in instances where a private attorney with specific expertise is needed by the State.

Moreover, because deputy attorneys general are independent from the agencies they represent, they are insulated from political issues that may arise within an agency. This permits the Department to provide objective and high-quality legal counsel.

State agencies, such as DOTAX, also benefit from the Department's wide range of experience and expertise. Indeed, many departments and agencies receive legal services from several divisions within the Department that can collaborate and assist

one another when necessary to be able to provide the most comprehensive legal services possible. For instance, DOTAX routinely receives services from the Tax and Charities, Civil Recoveries, Criminal Justice, Administrative, and Employment Law Divisions. An independent in-house or private lawyer team will not have this same breadth of knowledge and experience.

It should be noted that the Tax and Charities Division handles all of DOTAX's civil litigation tax enforcement cases with a team of dedicated tax lawyers, including four veteran tax deputies with a combined total of more than seventy-five years of experience litigating tax cases for the State. But, as noted above, if specialized expertise is ever needed in a particular case, the Department is authorized to engage private attorneys to assist in representing the State. Therefore, it is in the State's best interest for the Department to continue providing vigorous and objective legal representation to DOTAX.

If the intended purpose of this measure is to catch more tax violators or to raise more tax revenues, this measure will not achieve that purpose. This is because catching tax offenders requires that the offenders first be identified, which is the job of DOTAX's Compliance Division. That division includes the Office Audit, Field Audit, Collections, and Special Enforcement Section Branches whose purpose is to conduct tax investigations and audits to identify tax violators against whom tax assessments can be made. Once assessed, a taxpayer can either pay the assessment or challenge the assessment. If challenged in court, the Department appears for DOTAX to represent it in the court-filed case. Thus, because the attorneys are not involved in the front-end identification and assessment of taxes against tax violators, the employment of in-house counsel or retention of private attorneys will not expand the Compliance Division's ability to seek out and identify tax violators. Therefore, we submit that if the intent is to increase the State's ability to catch more tax violators and collect unpaid taxes, the way to do that is to provide the Compliance Division with the resources to conduct more and better investigations and audits that result in quality assessments that can be defended by the Department on appeal.

Based on the foregoing, the Department of the Attorney General opposes this measure. Please feel free to contact us should you have any questions or if you would like to meet to discuss this matter.

Thank you for the opportunity to testify.