

JAN 17 2024

A BILL FOR AN ACT

RELATING TO SPECIAL COUNSEL.

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

1 SECTION 1. Chapter 28, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§28- Special counsel; appointment. (a) The attorney
5 general may appoint a special counsel pursuant to this section
6 when the attorney general determines that:

7 (1) An investigation of a person or matter is warranted;

8 (2) The investigation or prosecution of, or any other
9 legal or administrative action against that person or
10 matter by the department may present a conflict of
11 interest for the department; and

12 (3) Under the circumstances, it would be in the public
13 interest to appoint an outside special counsel to
14 assume responsibility for the matter.

15 (b) When matters are brought to the attention of the
16 attorney general that may warrant consideration of appointment
17 of a special counsel, the attorney general may:



- 1 (1) Appoint a special counsel;
- 2 (2) Direct that an initial investigation consisting of
- 3 factual inquiries or legal research as the attorney
- 4 general deems appropriate be conducted to better
- 5 inform the attorney general's decision; or
- 6 (3) Conclude that, under the circumstances of the matter,
- 7 the public interest would not be served by removing
- 8 the investigation from the normal processes of the
- 9 department and that the appropriate division of the
- 10 department should handle the matter; provided that if
- 11 the attorney general reaches this conclusion, the
- 12 attorney general shall take appropriate steps to
- 13 mitigate any conflicts of interest, including recusal
- 14 of the attorney general or particular deputy attorney
- 15 generals.

16 (c) A special counsel appointed pursuant to this section
17 shall:

- 18 (1) Be a lawyer with a reputation for integrity and
- 19 impartial decision-making ability and appropriate
- 20 experience to ensure that the investigation will be
- 21 conducted ably, expeditiously, and thoroughly, and



1 that investigative and legal decisions will be
2 supported by an informed understanding of the law and
3 department policies;

4 (2) Be selected from outside the state government; and

5 (3) Agree that their responsibilities as special counsel
6 shall take first priority in their professional lives
7 and that it may be necessary to devote their full time
8 to the investigation depending on its complexity and
9 stage.

10 (d) The attorney general shall consult with the
11 administrative services manager of the department to ensure an
12 appropriate method of appointment and that the special counsel
13 undergoes an appropriate background investigation and detailed
14 review of ethics and conflicts of interest issues.

15 (e) The attorney general shall establish the jurisdiction
16 of a special counsel and provide the special counsel with a
17 specific factual statement of the matter to be investigated;
18 provided that the jurisdiction of a special counsel:

19 (1) Shall include the authority to investigate and
20 prosecute crimes committed in the course of, and with
21 intent to interfere with, the special counsel's



1 investigation, including perjury, obstruction of
2 justice, destruction of evidence, and intimidation of
3 witnesses, and to conduct appeals arising out of the
4 matter being investigated or prosecuted; and

5 (2) May include civil or administrative authority, which
6 shall be specifically granted by the attorney general.

7 If the special counsel concludes during the investigation
8 that additional jurisdiction is necessary to fully investigate
9 and resolve the matters assigned or to investigate new matters
10 that have become known, the special counsel shall consult with
11 the attorney general, who shall determine whether to include the
12 additional matters within the special counsel's jurisdiction or
13 assign them elsewhere.

14 If the special counsel concludes during the investigation
15 that administrative remedies, civil sanctions, or other
16 governmental action outside the criminal justice system might be
17 appropriate, the special counsel shall consult with the attorney
18 general with respect to the appropriate division of the
19 department to take any necessary action.



1 (f) All personnel in the department shall cooperate with
2 the special counsel to the fullest extent possible, and the
3 department shall:

4 (1) Provide the special counsel with the names, resumes,
5 and other pertinent information of appropriate
6 personnel available to assist the special counsel;

7 (2) Provide the special counsel with the resumes and other
8 pertinent information of specific personnel requested
9 by the special counsel;

10 (3) Make reasonable efforts to assign department employees
11 and other personnel selected by the special counsel to
12 assist the special counsel; and

13 (4) Hire or assign additional personnel or contract with
14 persons outside of the department as needed, without
15 regard to chapter 103D.

16 The special counsel shall assign the duties and supervise
17 the work of assigned personnel and contracted persons while they
18 are assigned to the special counsel.

19 (g) A special counsel shall exercise within the scope of
20 their jurisdiction, the full power and independent authority of
21 the attorney general or any deputy attorney general to perform



1 all investigative and prosecutorial functions and determine
2 whether and to what extent to inform or consult with the
3 attorney general or others within the department regarding the
4 conduct of their duties and responsibilities. A special counsel
5 shall not be subject to the day-to-day supervision of any
6 official of the department; provided that:

7 (1) A special counsel shall comply with the rules,
8 procedures, practices, and policies of the department
9 and consult with appropriate divisions within the
10 department for guidance with respect to established
11 rules, practices, policies, and procedures, including
12 ethics and security rules and procedures; provided
13 further that a special counsel may consult directly
14 with the attorney general when the special counsel
15 concludes that the extraordinary circumstances of any
16 particular decision would render compliance with
17 required departmental procedures inappropriate;

18 (2) The attorney general may request that a special
19 counsel provide an explanation for any investigative
20 or prosecutorial step, and after review, conclude that
21 the action is so inappropriate or unwarranted under



1 established departmental practices that it should not
2 be pursued; provided further that in conducting the
3 review, the attorney general shall give great weight
4 to the views of the special counsel and if the
5 attorney general concludes that a proposed action by
6 the special counsel should not be pursued, report to
7 the legislature as specified in subsection (j);

8 (3) A special counsel and staff shall be subject to
9 disciplinary action for misconduct and breach of
10 ethical duties pursuant to the same standards and
11 extent as other employees of the department, and
12 inquiries into these matters shall be handled through
13 the appropriate division of the department upon the
14 approval of the attorney general; and

15 (4) A special counsel may be disciplined or removed from
16 office only by the attorney general for misconduct,
17 derelection of duty, incapacity, conflict of interest,
18 or for other good cause, including violation of
19 departmental policies; provided further that the
20 attorney general shall inform the special counsel in



1 writing of the specific reason for the disciplinary
2 action or removal.

3 (h) The department shall provide the special counsel with
4 all appropriate resources; provided that the special counsel
5 shall:

6 (1) Develop a proposed budget for review and approval by
7 the attorney general within a time-period agreed upon
8 by the special counsel and the department following
9 the special counsel's appointment; and

10 (2) Report to the attorney general the status of the
11 investigation with a budget request pursuant to a
12 schedule agreed upon by the special counsel and the
13 department.

14 (i) The special counsel shall provide the attorney general
15 with a confidential report at the conclusion of the
16 investigation with the findings and explanation of the
17 conclusions and decisions reached by the special counsel.

18 (j) The attorney general shall submit a report to the
19 legislature, which shall include an explanation, upon each of
20 the following actions:

21 (1) The appointment of a special counsel;



1 (2) The removal of any special counsel; and

2 (3) The conclusion of the special counsel's investigation,
3 including, to the extent consistent with applicable law, a
4 description and explanation of instances, if any, in which the
5 attorney general concluded that a proposed action by a special
6 counsel was so inappropriate or unwarranted under established
7 departmental practices that it should not be pursued; provided
8 that the attorney general may toll the notification period in
9 this subsection upon a finding that legitimate investigative or
10 privacy concerns require confidentiality until the
11 confidentiality is no longer needed.

12 (k) The attorney general may release the reports in
13 subsection (j) to the public if the attorney general determines
14 that the release would be in the public interest; provided that
15 the release complies with applicable legal restrictions.

16 All other releases of information by any department
17 employee, including the special counsel and staff, concerning
18 matters handled by special counsels shall be governed by the
19 generally applicable departmental guidelines concerning public
20 comment with respect to investigations and relevant law.



1 (l) In cases in which the attorney general is recused, the
2 responsibilities of the attorney general in this section shall
3 be performed by the first deputy attorney general.

4 (m) No private right of action at law shall arise pursuant
5 to this section.

6 (n) For purposes of this section:

7 "Department" means the department of the attorney general.

8 "Conflict of interest" includes instances in which the
9 subject of an investigation pursuant to section 28-2.5 includes
10 the state government or any public officer or public employee
11 for whom the attorney general or the department is required to
12 provide services under the law.

13 "State government" means any department, board, bureau,
14 commission, division, office, council, or agency of the State, a
15 public benefit corporation, or public authority having at least
16 one member appointed by the governor."

17 SECTION 2. Section 28-2.5, Hawaii Revised Statutes, is
18 amended by amending subsection (a) to read as follows:

19 "(a) The attorney general shall investigate alleged
20 violations of the law when directed to do so by the governor, or
21 when the attorney general determines that an investigation would



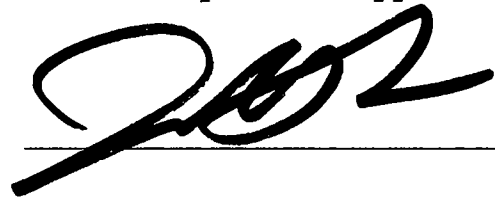
1 be in the public interest [-]; provided that the attorney general
2 may appoint a special counsel pursuant to section 28- to
3 assume the attorney general's powers and responsibilities over
4 the investigation if the attorney general determines that the
5 investigation would present a conflict of interest for the
6 attorney general or the department of the attorney general. For
7 the purposes of this subsection, "conflict of interest" has the
8 same meaning as defined in section 28- ."

9 SECTION 3. Statutory material to be repealed is bracketed
10 and stricken. New statutory material is underscored.

11 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

A large, bold, handwritten signature in black ink is written over a horizontal line. The signature is stylized and appears to be the initials 'JOS'.

S.B. NO. 2107

Report Title:

Attorney General; Department of the Attorney General;
Investigations; Conflict of Interest; Special Counsel;
Appointment

Description:

Allows the Attorney General to appoint a special counsel to assume the Attorney General's powers and responsibilities over an investigation of a person or matter when the investigation or prosecution of, or any other legal or administrative action against the person or matter by the Department of the Attorney General, may present a conflict of interest.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

