



**WRITTEN TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
KA 'OIHANA O KA LOIO KUHINA
THIRTY-SECOND LEGISLATURE, 2024**

ON THE FOLLOWING MEASURE:

S.B. NO. 2107, RELATING TO SPECIAL COUNSEL.

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Friday, March 1, 2024 **TIME:** 9:55 a.m.

LOCATION: State Capitol, Room 211 and Videoconference

TESTIFIER(S): **WRITTEN TESTIMONY ONLY.**
(For more information, contact Robyn B. Chun,
Deputy Attorney General, at (808) 586-0618)

Chair Dela Cruz and Members of the Committee:

The Department of the Attorney General (Department) opposes this bill.

The purpose of this bill is to add a new section to chapter 28, Hawaii Revised Statutes, that authorizes the Attorney General to appoint a special counsel when: (i) an investigation of a person or matter is warranted; (ii) the investigation or prosecution of a person or matter may present a conflict of interest for the Department; and (iii) it is deemed to be in the public's interest to have an outside counsel assume responsibility for the matter.

The Attorney General already has the ability to appoint special deputy attorneys general and may specify the duties and powers of such deputies. See section 28-8, Hawaii Revised Statutes. When conflicts of interests arise that implicate the Attorney General personally, or the Department of the Attorney General as a whole, the Department has a range of options to resolve them. For example, the Attorney General may request any of the four county prosecuting attorneys to investigate and prosecute criminal acts when she or the Department has an unresolvable conflict of interest. The county prosecuting attorney may then exercise his or her prosecutorial discretion without involvement or interference by the Attorney General. The creation of the Department of Law Enforcement provides another avenue for criminal investigation that does not require the involvement of the Attorney General.

Moreover, as the only cabinet-level official that cannot be removed by the Governor without the advice and consent of the Senate, the Attorney General is uniquely insulated from political pressure and influence. See article V, section 6, of the Hawaii Constitution. This allows the Attorney General to perform her duties, including administrative, civil, and criminal investigations, in an unbiased and apolitical manner. This bill, while well-intended, is ultimately unnecessary.

The Department asks this Committee to defer this bill.