



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
KA 'OIHANA O KA LOIO KUHINA  
THIRTY-THIRD LEGISLATURE, 2025**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 1239, RELATING TO INDEPENDENT LEGAL COUNSEL.

**BEFORE THE:**

HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

**DATE:** Friday, January 31, 2025 **TIME:** 2:00 p.m.

**LOCATION:** State Capitol, Room 325

**TESTIFIER(S):** Anne E. Lopez, Attorney General, or  
Craig Y. Iha, Deputy Attorney General

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Chair Tarnas and Members of the Committee:

The Department of the Attorney General opposes this bill.

The purpose of this bill is to allow the Hawaiian Homes Commission (HHC) to hire its own attorneys without the approval or participation of the Attorney General or the Governor. This bill also requires the State to pay the legal fees owed to the attorneys that the HHC hires.

The Attorney General serves as legal counsel to the State of Hawai'i, which statutory legal obligation includes providing legal services to state agencies. Because it is the largest legal entity of the State, with a number of diverse divisions, the Department of 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 utilizing attorneys representing state agencies within the Department of 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 the HHC would not possess the necessary breadth of knowledge and experience available with the Department of the Attorney General. Additionally, because the 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 Hawaiian Home Lands (DHHL), which is headed by the HHC, is also one of the nineteen principal departments of the executive branch of state government. The exposure to liability as a result of actions taken by departments on matters with significant legal and financial implications to the State makes it essential that the Department of the Attorney General be able to provide the necessary representation and counsel.

The Department of the Attorney General is also unique in its ability under the law to undertake concurrent representation of multiple state agencies or parties 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 or employees that have competing interests as long as it establishes appropriate safeguards, such as 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.

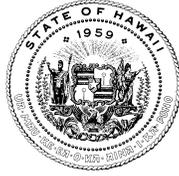
Notwithstanding the prohibition against employing or retaining private attorneys, state agencies may submit a waiver request to the Attorney General under section 28-8.3(a)(24), Hawaii Revised Statutes (HRS). Under this provision the Attorney General may determine that circumstances exist whereby representation by private attorneys is appropriate. In such circumstances, an agency may retain or employ its own attorney, provided that the Governor also waives the provision of section 28-8.3, HRS. Indeed, this avenue has been exercised by the DHHL in the past, without incident.

Further, page 4, lines 18-19, of the bill requires the State to pay for the HHC's outside attorneys. DHHL, however, is itself a principal executive department of the State. If the intent of the bill is to pay the attorneys from sources other than DHHL's trust funds, the Legislature would need to appropriate funds to DHHL for that purpose.

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

JOSH GREEN, M.D.  
GOVERNOR  
STATE OF HAWAII  
*Ke Kia'āina o ka Moku'āina 'o  
Hawaii*

SYLVIA J. LUKE  
LT. GOVERNOR  
STATE OF HAWAII  
*Ka Hope Kia'āina o ka Moku'āina  
'o Hawaii*



KALI WATSON  
CHAIRPERSON, HHC  
*Ka Luna Ho'okele*

KATIE L. LAMBERT  
DEPUTY TO THE CHAIR  
*Ka Hope Luna Ho'okele*

**STATE OF HAWAII**  
**DEPARTMENT OF HAWAIIAN HOME LANDS**  
*Ka 'Oihana 'Āina Ho'opulapula Hawaii'i*

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**TESTIMONY OF KALI WATSON, CHAIR**  
**HAWAIIAN HOMES COMMISSION**  
**BEFORE THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**  
**HEARING ON JANUARY 31, 2025 AT 2:00PM IN CR 325**

**HB 1239, RELATING TO INDEPENDENT LEGAL COUNSEL**

January 30, 2025

Aloha Chair Tarnas, Vice Chair Poepoe, and Members of the Committee:

The Department of Hawaiian Home Lands (DHHL) **strongly supports** this bill which authorizes the Hawaiian Homes Commission (HHC) to retain independent legal counsel, with any legal fees owed to be paid by the State, and also use the services of the Attorney General as needed.

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

The HHC is unique in its genesis through the Hawaiian Homes Commission Act, 1920, as amended, enacted by Congress, and subsequently incorporated as a provision of the State Constitution as a condition of statehood. Because of this history, the HHC should be allowed to retain independent legal counsel to ensure the trust obligation is being upheld and not be subject to seeking a waiver request each time the need for independent counsel arises.

At the same time, allowing the HHC to use the services of the Attorney General as needed provides the HHC the benefit of the Attorney General's expertise representing state agencies that are regulated by a variety of laws including but not limited to the Procurement Code, the Sunshine Law, and the Uniform Information Practices Act.

Thank you for your consideration of our testimony.

**HB-1239**

Submitted on: 1/30/2025 11:47:59 AM

Testimony for JHA on 1/31/2025 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Marion K A Kapuniaia	Individual	Support	Written Testimony Only

Comments:

Support.

Appropriate and just request. There is no justification for not allowing the DHHL to hire their own counsel.

Thank you, M Kapuniaia