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S.B. NO. 1208

A Bill for an Act Relating to the University of Hawaii.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Act 115, Session Laws of Hawaii 1998, authorized the University of Hawaii to appoint its own attorneys. Based on this authorization, the university has established the office of the senior vice president for legal affairs and university general counsel.

The purpose of this Act is to clarify the role of the Office of the senior vice president for legal affairs and university general counsel (general counsel) by:

- (1) Establishing service of process requirements for the university;
- (2) Specifying the university general counsel, and not the attorney general, represent members of board of regents in civil actions; and
- (3) Recognizing the university general counsel as the attorney authorized to provide legal services to the university regarding uncollectable accounts and certain types of real property acquisitions.

SECTION 2. Chapter 304, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§304- Service of process. (a) Service of process upon the University of Hawaii shall be made by serving a filed and certified copy of the summons and of the complaint on the university general counsel in accordance with applicable court rules and chapter 634 or on any attorney in the office of the university general counsel.

(b) Service of process upon an officer or employee of the University of Hawaii being sued in their official capacity shall be made by serving the University of Hawaii and by delivering a copy of the summons and of the complaint to that officer or employee in accordance with applicable court rules and chapter 634.”

SECTION 3. Section 26-35.5, Hawaii Revised Statutes, is amended as follows:

1. By amending subsections (e) and (f) to read:

“(e) The attorney general, or in the case of the board of regents of the University of Hawaii, its university general counsel, shall represent and defend a member in any civil action for which immunity is conferred under subsection (b), or when the attorney general, or, if the action involves a member of the board of regents, the university general counsel, determines that indemnification is available to the member under subsection (c), and the member against whom the action is brought has submitted a written request for representation and has provided the attorney general, or the university general counsel in the case of an action involving a member of the board of regents, with all process or complaint served upon the member within a reasonable period of time, but not more than five days after being served with the process or complaint. The attorney general, or the university general counsel, may terminate the representation and defense of the member at any time if, after representation and defense is accepted, the attorney general, or the university

general counsel, determines that indemnification would not be available to the member under subsection (c).

(f) A member may retain counsel of the member's own choice at the member's own expense. If the member chooses to retain counsel at the member's own expense, the State shall not indemnify the member even though the member would have been entitled to indemnification under subsection (c). The attorney general, or the university general counsel in the case of a member of the board of regents, may enter an appearance in any action in which the member is represented by counsel of the member's own choice, even though no request for the appearance has been made by the member.'

2. By amending subsections (h) and (i) to read:

“(h) If the attorney general, or the university general counsel in the case of a member of the board of regents, denies representation to the member under subsection (e) and the member proceeds to judgment in the action for which representation was denied, the member may commence an action against the State or the University of Hawaii in the case of a member of the board of regents, in the circuit court to recover reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees. The State or the University of Hawaii in the case of a member of the board of regents, shall pay the judgment or reimburse the member if the member has satisfied the judgment in an action for which representation was denied; provided the member was found not liable in that action or the member establishes by a preponderance of the evidence that the member is entitled to indemnification under subsection (c). A finding of negligence against the member in the civil action for which representation was denied shall not be binding upon the circuit court in any action brought under this subsection. The member shall commence any action under this subsection no later than two years after entry of judgment in the action for which the member was denied representation if no appeal is filed, or two years after the conclusion of the final appeal from that judgment if an appeal is filed.

(i) If the attorney general, or the university general counsel in the case of a member of the board of regents, denies representation to the member under subsection (e) and the member negotiates a compromise or settlement without an entry of judgment in the action for which representation was denied, the member may seek to introduce a bill in the legislature to secure an appropriation to reimburse the member for the amount of the settlement or that portion which constitutes a reasonable settlement, and for reasonable costs and fees incurred by the member in defending against that action, including attorney's fees, court costs, investigative costs, and expert witness fees.’

SECTION 4. Section 40-82, Hawaii Revised Statutes, is amended to read as follows:

“**§40-82 Uncollectible accounts.** (a) The directors, boards, or executive heads of executive departments may from time to time prepare and submit for the review of the attorney general a list of all uncollectible accounts in their departments. Such accounts as the attorney general finds to be uncollectible shall be entered in a special record and be deleted from the accounts receivable records of the departments, which shall thereupon be relieved from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two consecutive years. Any account entered in the special record shall be transferred back to the current accounts receivable if the attorney general finds that the facts as alleged and presented to the attorney general were not true, or that the account has become collectible.

As used in this section, “uncollectible account” means an account with regard to which:

- (1) The debtor or party causing damage to property belonging to the State is no longer within the jurisdiction of the State;
- (2) The debtor or party causing damage to property belonging to the State cannot be located;
- (3) The party causing damage to property belonging to the State is unknown or cannot be identified;
- (4) The debtor has filed bankruptcy and has listed the State as a creditor; or
- (5) Any other account as may be deemed by the attorney general to be uneconomical or impractical to collect.

(b) The judiciary may from time to time prepare lists of all delinquent fines and restitution, which in its judgment are uncollectible. The fines or restitution that the judiciary finds to be uncollectible shall be entered in a special record and be deleted from the other books kept by the judiciary, and the judiciary shall thereupon be released from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two years. Any fines or restitution so written off may be transferred back to the judiciary’s accounts receivable if the judiciary finds that the alleged facts as previously presented to it were not true, or that the fines or restitution are in fact collectible, or that the fines or restitution have become collectible. Nothing in this section shall preclude a person to whom restitution is owed from pursuing collection of the debt.

(c) The judiciary shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, which shall summarize the types and amounts of uncollectible delinquent fines and restitution that either were:

- (1) Entered in a special record and deleted from the judiciary’s other books; or
- (2) Transferred back to the judiciary’s accounts receivable.

(d) The University of Hawaii may from time to time prepare for the review of the university general counsel a list of all uncollectible accounts. Such accounts as the university general counsel finds to be uncollectible shall be entered into a special record and be deleted from the accounts receivable records of the university, which shall thereupon be relieved from any further accountability for their collection; provided that no account shall be so deleted until it shall have been delinquent for at least two consecutive years. Any account entered in the special record shall be transferred back to the current accounts receivable if the university general counsel finds that the account has become collectible.

(e) The university shall submit an annual report to the legislature, no later than twenty days prior to the convening of each regular session, which shall summarize the types and amounts of uncollectible delinquent fines and restitution that either were:

- (1) Entered in a special record and deleted from the university’s other books; or
- (2) Transferred back to the university’s accounts receivable.”

SECTION 5. Section 107-10, Hawaii Revised Statutes, is amended to read as follows:

“§107-10 Acquiring of real property; prior approval. No real property or any right, title, or interest therein shall be acquired by agreement, purchase, gift, devise, eminent domain, or otherwise, for any purpose, by the State or any department, agency, board, commission, or officer thereof, without the prior approval of the attorney general as to form, exceptions, and reservations. As to property acquired

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by the University of Hawaii, the attorney general may delegate to the University general counsel the authority to approve as to form, exceptions, and reservations. In cases involving acquisitions by the University of Hawaii of interests in real property that do not require legislative appropriations, the general counsel for the University of Hawaii may give approval as to form, exceptions, and reservations.’”

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon its approval.

(Approved June 13, 2001.)

Note

1. Edited pursuant to HRS §23G-16.5.