



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-NINTH LEGISLATURE, 2017**

LATE

ON THE FOLLOWING MEASURE:

H.B. NO. 72, RELATING TO THE DEPARTMENT OF THE ATTORNEY GENERAL.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY

DATE: Tuesday, February 7, 2017

TIME: 2:00 p.m.

LOCATION: State Capitol, Room 325

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Robyn Chun, Deputy Attorney General

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General opposes this bill.

This bill establishes a "legislative division" in the Department of the Attorney General (the "Department") "to administer and render state legal services, pursuant to section 26-7, 28-3, or 28-4, Hawaii Revised Statutes (HRS) or any other law, that the department may provide to the legislature, its respective chambers, its committees, one or more of its individual members in connection with their public duties, or the legislature's attached service agencies." See section 1(a) at 1. This legislative division may not be later abolished by the Attorney General. See section 1(b) at 1.

This bill also requires that the Attorney General prepare a status report for the Legislature describing the progress made on implementing this bill. This report is due no later than 20 days before the 2018 legislative regular session. See section 2(3) at 2. This bill also makes an appropriation to be used to establish the legislative division. See section 3 at 2.

This bill encroaches on the internal management and organization of the Department of the Attorney General. The existing statutory structure imposes a duty on the Department to advise and represent the Legislature in civil and criminal actions. See sections 26-7, 28-1, 28-3, HRS. To meet this obligation, the Department has

represented the Legislature in litigation (*e.g. Hussey et al. v. Say*, 139 Hawaii 181 (2016)) and regularly advises individual legislators and legislative committees on legislation and responds to other inquiries from legislators. The manner in which the Department's resources are allocated to meet this obligation depends on the Attorney General's assessment of the legal needs of all of the departments and agencies of the State (Haw. Rev. Stat. § 28-4) as well as, the Governor and Lieutenant Governor and is entirely a matter of the internal management of the Department and its attorneys.

The current statutory framework allows the Department to maintain its independence while advising the 3 branches of government in a unified and cohesive manner. See *Island-Gentry Joint Venture v. State of Hawai'i*, 57 Hawai'i 259, 554 P.2761 (1976) (Attorney General has exclusive authority to control and manage all litigation in which the State has an interest unless authority to do so in specific matters has been expressly granted to another department or agency). In addition, it gives the Attorney General the authority to hire outside counsel to represent the State when there is a conflict or when specific subject matter expertise is needed. See Haw. Rev. Stat. §28.8.3.

The existing statutory structure is also responsive to the needs of the Legislature. As previously mentioned, the Legislature is entitled to seek advice and counsel from the Department of the Attorney General. Haw. Rev. Stat. §§ 26-7, 28-3. The Attorney General may also employ outside counsel to represent the Legislature where there is a conflict. Haw. Rev. Stat. § 28-8.3. Further, the Legislature is authorized to employ its own staff attorneys to compliment the legal work that the Department provides. Cite.

In short, the existing framework balances the need for an independent legal advisor for the State with the Legislature's need for legal advice and representation. If there is any dissatisfaction with the service the Department is providing, the Attorney General has not been informed of that and it should be brought to his attention so that it can be addressed. If, for some other reason, the existing statutory framework is not working for the Legislature, that needs to be addressed as well.

For the foregoing reasons, the Department of the Attorney General asks that this bill be held in committee.

Thank you for the opportunity to testify on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Friday, February 3, 2017 3:18 PM
To: JUDtestimony
Cc: mendezj@hawaii.edu
Subject: *Submitted testimony for HB72 on Feb 7, 2017 14:00PM*

Categories: Blue Category

HB72

Submitted on: 2/3/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Javier Mendez-Alvarez	Individual	Oppose	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

Do not reply to this email. This inbox is not monitored. For assistance please email webmaster@capitol.hawaii.gov