

# **SB 948, HD1**

**RELATING TO  
GOVERNMENTAL RETENTION  
OF ATTORNEYS.**

**IAC, LAB, FIN**

# SB948 HD1



Submit Testimony

**Measure Title:** RELATING TO GOVERNMENTAL RETENTION OF ATTORNEYS.

**Report Title:** Attorneys; Division of Financial Institutions

**Description:** Revises the Division of Financial Institution's exemption from the general prohibition against departmental employment or retention of attorneys by removing the reference to mortgage loan recovery fund actions. (SB948 HD1)

**Companion:** [HB1082](#)

**Package:** Governor

**Current Referral:** IAC, LAB, FIN

**Introducer(s):** KOUCHI (Introduced by request of another party)

<a href="#">Sort by Date</a>		<b>Status Text</b>
1/25/2017	S	Introduced.
1/25/2017	S	Passed First Reading.
1/25/2017	S	Referred to JDL/CPH, WAM.
1/30/2017	S	The committee(s) on JDL/CPH has scheduled a public hearing on 02-03-17 9:30AM in conference room 016.
2/3/2017	S	The committee(s) on CPH recommend(s) that the measure be PASSED, UNAMENDED. The votes in CPH were as follows: 5 Aye(s): Senator(s) Baker, Nishihara, S. Chang, Espero, Ihara; Aye(s) with reservations: none ; 0 No(es): none; and 2 Excused: Senator(s) Kidani, Ruderman.
2/3/2017	S	The committee(s) on JDL recommend(s) that the measure be PASSED, UNAMENDED. The votes in JDL were as follows: 4 Aye(s): Senator(s) Keith-Agaran, K. Rhoads, Gabbard, L. Thielen; Aye(s) with reservations: none ; 0 No(es): none; and 1 Excused: Senator(s) Kim.
2/9/2017	S	Reported from JDL/CPH (Stand. Com. Rep. No. 98) with recommendation of passage on Second Reading and referral to WAM.
2/9/2017	S	Report adopted; Passed Second Reading and referred to WAM.

2/24/2017	S	The committee(s) on WAM will hold a public decision making on 02-27-17 9:35AM in conference room 211.
2/27/2017	S	The committee(s) on WAM recommend(s) that the measure be PASSED, UNAMENDED. The votes in WAM were as follows: 8 Aye(s): Senator(s) Tokuda, English, Galuteria, Harimoto, K. Kahele, Riviere, Shimabukuro, Taniguchi; Aye(s) with reservations: none ; 0 No(es): none; and 3 Excused: Senator(s) Dela Cruz, Inouye, Wakai.
3/3/2017	S	Reported from WAM (Stand. Com. Rep. No. 852) with recommendation of passage on Third Reading.
3/3/2017	S	One Day Notice 03-07-17.
3/7/2017	S	Report adopted; Passed Third Reading. Ayes, 25; Aye(s) with reservations: none . Noes, 0 (none). Excused, 0 (none). Transmitted to House.
3/7/2017	H	Received from Senate (Sen. Com. No. 303).
3/9/2017	H	Pass First Reading
3/9/2017	H	Referred to IAC, LAB, FIN, referral sheet 27
3/10/2017	H	Bill scheduled to be heard by IAC on Wednesday, 03-15-17 9:00AM in House conference room 429.
3/15/2017	H	The committees on IAC recommend that the measure be PASSED, WITH AMENDMENTS. The votes were as follows: 7 Ayes: Representative(s) Ohno, Choy, Cachola, Ito, Onishi, Tokioka, Ward; Ayes with reservations: none; Noes: none; and 1 Excused: Representative(s) Woodson.
3/17/2017	H	Reported from IAC (Stand. Com. Rep. No. 1111) as amended in HD 1, recommending passage on Second Reading and referral to LAB.
3/17/2017	H	Passed Second Reading as amended in HD 1 and referred to the committee(s) on LAB with none voting aye with reservations; none voting no (0) and Representative(s) Ichiyama, McKelvey, Oshiro, Souki excused (4).
3/17/2017	H	Bill scheduled to be heard by LAB on Tuesday, 03-21-17 10:00AM in House conference room 309.

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# A BILL FOR AN ACT

RELATING TO GOVERNMENTAL RETENTION OF ATTORNEYS.

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

1           SECTION 1. Section 28-8.3, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3           "(a) No department of the State other than the attorney  
4 general may employ or retain any attorney, by contract or  
5 otherwise, for the purpose of representing the State or the  
6 department in any litigation, rendering legal counsel to the  
7 department, or drafting legal documents for the department;  
8 provided that the foregoing provision shall not apply to the  
9 employment or retention of attorneys:

10           (1) By the public utilities commission, the labor and  
11 industrial relations appeals board, and the Hawaii  
12 labor relations board;

13           (2) By any court or judicial or legislative office of the  
14 State; provided that if the attorney general is  
15 requested to provide representation to a court or  
16 judicial office by the chief justice or the chief  
17 justice's designee, or to a legislative office by the



1 speaker of the house of representatives and the  
2 president of the senate jointly, and the attorney  
3 general declines to provide such representation on the  
4 grounds of conflict of interest, the attorney general  
5 shall retain an attorney for the court, judicial, or  
6 legislative office, subject to approval by the court,  
7 judicial, or legislative office;

8 (3) By the legislative reference bureau;

9 (4) By any compilation commission that may be constituted  
10 from time to time;

11 (5) By the real estate commission for any action involving  
12 the real estate recovery fund;

13 (6) By the contractors license board for any action  
14 involving the contractors recovery fund;

15 (7) By the office of Hawaiian affairs;

16 (8) By the department of commerce and consumer affairs for  
17 the enforcement of violations of chapters 480 and  
18 485A;

19 (9) As grand jury counsel;

20 (10) By the Hawaii health systems corporation, or its  
21 regional system boards, or any of their facilities;



- 1 (11) By the auditor;
- 2 (12) By the office of ombudsman;
- 3 (13) By the insurance division;
- 4 (14) By the University of Hawaii;
- 5 (15) By the Kahoolawe island reserve commission;
- 6 (16) By the division of consumer advocacy;
- 7 (17) By the office of elections;
- 8 (18) By the campaign spending commission;
- 9 (19) By the Hawaii tourism authority, as provided in
- 10 section 201B-2.5;
- 11 (20) By the division of financial institutions [~~for any~~
- 12 ~~action involving the mortgage loan recovery fund~~];
- 13 (21) By the office of information practices; or
- 14 (22) By a department, if the attorney general, for reasons
- 15 deemed by the attorney general to be good and
- 16 sufficient, declines to employ or retain an attorney
- 17 for a department; provided that the governor waives
- 18 the provision of this section."

19 SECTION 2. Statutory material to be repealed is bracketed  
 20 and stricken.

21 SECTION 3. This Act shall take effect on July 1, 2090.



**Report Title:**

Attorneys; Division of Financial Institutions

**Description:**

Revises the Division of Financial Institution's exemption from the general prohibition against departmental employment or retention of attorneys by removing the reference to mortgage loan recovery fund actions. (SB948 HD1)

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





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March 16, 2017

The Honorable Aaron Ling Johanson  
Chair, House Committee on Labor & Public Employment  
Hawaii State House of Representatives  
Hawaii State Capitol, Room 426  
Honolulu, Hawaii 96813

Dear Chair Johanson:

The Department of Commerce and Consumer Affairs ("Department") would appreciate your consideration in scheduling a public hearing at your earliest convenience for the following measure:

<u>Measure</u>	<u>Title</u>	<u>Referral</u>	<u>Package</u>
S.B. No. 948, H.D. 1	Relating to Governmental Retention of Attorneys	IAC, LAB, FIN	Governor's

The Department supports the passage of the measure listed above, as it would help to improve consumer protection for the people of Hawaii by giving the Department's Division of Financial Institutions the ability to build up in-house legal expertise similar to other divisions in the Department.

Please feel free to contact me at (808) 586-2850 if you have any questions on S.B. No. 948, H.D. 1. Thank you for your consideration of this measure.

Sincerely,

CATHERINE P. AWAKUNI COLÓN  
Director, Department of Commerce and Consumer Affairs

c: Speaker Joseph M. Souki  
The Honorable Daniel Holt  
Office of the Governor, Policy





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GOVERNOR  
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**PRESENTATION OF THE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE HOUSE COMMITTEE ON  
LABOR AND PUBLIC EMPLOYMENT

THE TWENTY-NINTH LEGISLATURE  
REGULAR SESSION OF 2017

TUESDAY, MARCH 21, 2017  
10:00 a.m.

**TESTIMONY ON S.B. NO. 948, H.D. 1  
RELATING TO GOVERNMENTAL RETENTION OF ATTORNEYS**

TO THE HONORABLE AARON LING JOHANSON, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Iris Ikeda, Commissioner of Financial Institutions ("Commissioner"),  
testifying on behalf of the Department of Commerce and Consumer Affairs  
("Department") in strong support of this administration bill, S.B. No. 948, H.D. 1,  
Relating to Governmental Retention of Attorneys.

Under Haw. Rev. Stat. §28-8.3(a)(20), the Division of Financial Institutions ("DFI"  
or "Division") can employ and retain attorneys for any action involving the mortgage  
loan recovery fund. The purpose of this bill is to enable DFI to employ and retain

attorneys for other purposes. This would increase DFI's efficiency and capacity and streamline the regulatory process by improving the timely completion of regulatory actions and by building dedicated subject matter expertise within DFI.

The Department believes that staff attorneys would make DFI's work more efficient, effective, and streamlined to assist with the questions and inquiries from applicants, licensees and consumers, as well as from division staff. The current limitation on the scope of work a DFI attorney may perform is problematic because almost all of DFI's needs for legal expertise fall outside the scope of what the statute allows. The Division has been fortunate to have had staff members at different times who happened to be attorneys, and during their tenure at DFI, their legal skills have proven to be a valuable resource. But with no official staff attorney positions in DFI, the Division cannot rely on having legal resources and talent at its disposal, nor can it count on developing a depth of specialized knowledge and skills relevant to the industries that it regulates.

DFI staff attorneys and the Commissioner would be able to confer on potential legal and regulatory issues, legal research scope and development, options and recommendations for resolution, and issue disposition, all enhancing the Division's efficiency and capacity. DFI staff attorneys would also help identify and organize legal issues and provide possible solutions for discussion and consideration with the AG's office.

This bill will not supplant the division's need for assistance from the Department of the Attorney General, especially with regard to licensing enforcement. DFI has an excellent working relationship with the deputies of the Department of the Attorney General ("DAGs") who assist DFI, and relies heavily on the legal services that are provided. DFI expects that this working relationship will be enhanced if it has in-house legal resources that can conduct review, research and analysis of evolving financial regulation at the federal and international level and in other states, and can better anticipate the needs of DAGs as matters are prepared for possible prosecution.

This bill is consistent with existing statutory authority in Section 454F-15(f), HRS, of the SAFE Act (authorization to retain attorneys to assist with examinations or investigations); Section 454M-8.5(f), HRS, of the Mortgage Servicers law (authorization to retain professionals and specialists to assist with examinations or investigations); Section 412:2-102, HRS, of the Code of Financial Institutions (authorization to hire as many professional employees as DFI requires); and Section 449-1.9, HRS, of the Escrow Depositories law (authorization to contract with or employ qualified persons to assist in exercising the Commissioner's powers and duties).

The Division notes that 40 states have staff attorneys to assist the bank departments interpret, provide guidance, and draft legislation and enforcement orders. Other state bank departments with fewer than 25 employees also have at least one staff attorney as staff to the department.

TESTIMONY ON SENATE BILL No. 948, H.D. 1  
March 21, 2017  
Page 4

DFI strongly supports this administration bill, S.B. No. 948, H.D. 1, and respectfully requests that it be passed with an amendment replacing the "July 1, 2090" effective date to "upon its approval".

Thank you for this opportunity to testify. I would be pleased to respond to any questions that you may have.

# **SB 948, HD1**

## **Late Testimony**