

JAN 25 2017

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
18 speaker of the house of representatives and the

S.B. NO. 948

- 1 president of the senate jointly, and the attorney
2 general declines to provide such representation on the
3 grounds of conflict of interest, the attorney general
4 shall retain an attorney for the court, judicial, or
5 legislative office, subject to approval by the court,
6 judicial, or legislative office;
- 7 (3) By the legislative reference bureau;
- 8 (4) By any compilation commission that may be constituted
9 from time to time;
- 10 (5) By the real estate commission for any action involving
11 the real estate recovery fund;
- 12 (6) By the contractors license board for any action
13 involving the contractors recovery fund;
- 14 (7) By the office of Hawaiian affairs;
- 15 (8) By the department of commerce and consumer affairs for
16 the enforcement of violations of chapters 480 and
17 485A;
- 18 (9) As grand jury counsel;
- 19 (10) By the Hawaii health systems corporation, or its
20 regional system boards, or any of their facilities;
- 21 (11) By the auditor;
- 22 (12) By the office of ombudsman;

S.B. NO. 948

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

17 SECTION 2. Statutory material to be repealed is bracketed
18 and stricken.

19 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: *Neil D. Hill*

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BY REQUEST

S.B. NO. 948

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.

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

SB. NO. 948

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO GOVERNMENTAL RETENTION OF ATTORNEYS.

PURPOSE: The purpose of this bill is to authorize the Division of Financial Institutions (DFI) to employ and retain attorneys.

MEANS: Amend section 28-8.3(a), Hawaii Revised Statutes (HRS).

JUSTIFICATION: Section 28-8.3(a)(20), HRS, allows DFI to employ and retain attorneys only for actions involving the mortgage loan recovery fund. Almost all of DFI's needs for attorney assistance are outside the scope of what the statute allows. DFI staff attorneys would handle legal matters such as document drafting, legal research, consultation and negotiations, among others. Staff attorneys and the Commissioner of Financial Institutions (Commissioner) would be readily available to confer on potential legal and regulatory issues, conduct legal research, provide options and recommendations for resolution, and issue disposition, all enhancing DFI's efficiency and capacity.

This bill is consistent with existing statutory authority in section 454F-15(f) of the Secure and Fair Enforcement for Mortgage Licensing Act (authorized to retain attorneys to assist with examinations or investigations); section 454M-8.5(f) of the Mortgage Servicers law (authorized to retain professionals and specialists to assist with examinations or investigations); section 412:2-102 of the Code of Financial Institutions (authorized to hire as many professional employees as DFI requires); and section 449-1.9 of the Escrow Depositories law (authorized to contract with or employ

SB. NO. 948

qualified persons to assist in exercising the Commissioner's powers and duties). The requested amendment will help DFI better organize issues and provide possible solutions for the Department of the Attorney General to review and offer opinions due to the increased supervisory authority by DFI.

Impact on the public: The impact of this measure will be positive. Allowing DFI to hire and retain attorneys "in-house" will help streamline the regulatory process by improving the timely completion of regulatory actions and building dedicated subject matter expertise within DFI.

Impact on the department and other agencies: Minimal impact is anticipated. While the work DFI refers to the Department of the Attorney General will be narrower in scope, this will likely be offset by an increased volume of DFI enforcement activity resulting from increased regulatory responsibilities the agency has received in recent years.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-104.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval.