A BILL FOR AN ACT

RELATING TO LEGAL REPRESENTATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. Section 28-8.3, Hawaii Revised Statutes, is amended to read as follows:

"§28-8.3 Employment of attorneys. (a) No department of the State other than the attorney general may employ or retain any attorney, by contract or otherwise, for the purpose of representing the State or the department in any litigation, rendering legal counsel to the department, or drafting legal documents for the department; provided that the foregoing provision shall not apply to the employment or retention of attorneys:

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

(2) By any court or judicial [or legislative] office of the State; provided that if the attorney general is requested to provide representation to a court or judicial office by the chief justice or the chief
justice's designee[,] or to a legislative office by the
speaker of the house of representatives and the
president of the senate jointly[,] and the attorney
general declines to provide such representation on the
grounds of conflict of interest, the attorney general
shall retain an attorney for the court[,] or
judicial[,] or legislative] office, subject to approval
by the court[,] or judicial[,] or legislative] office;
(3) By the legislative reference bureau;
(4) By any compilation commission that may be constituted
from time to time;
(5) By the real estate commission for any action involving
the real estate recovery fund;
(6) By the contractors license board for any action
involving the contractors recovery fund;
(7) By the office of Hawaiian affairs;
(8) By the department of commerce and consumer affairs for
the enforcement of violations of chapters 480 and
485A;
(9) As grand jury counsel;
By the Hawaii health systems corporation, or its regional system boards, or any of their facilities;

By the auditor;

By the office of ombudsman;

By the insurance division;

By the University of Hawaii;

By the Kahoolawe island reserve commission;

By the division of consumer advocacy;

By the office of elections;

By the campaign spending commission;

By the Hawaii tourism authority, as provided in section 201B-2.5;

By the division of financial institutions;

By the office of information practices; or

By a department, if the attorney general, for reasons deemed by the attorney general to be good and sufficient, declines to employ or retain an attorney for a department; provided that the governor waives the provision of this section.

For purposes of this section, the term "department" includes any department, board, commission, agency, bureau, or
officer of the State[→]; provided that the term "department"
shall not include a member or group of members of the
legislature.

(c) Every attorney employed by any department on a full-
time basis, except an attorney employed by the public utilities
commission, the labor and industrial relations appeals board,
the Hawaii labor relations board, the office of Hawaiian
affairs, the Hawaii health systems corporation or its regional
system boards, the department of commerce and consumer affairs
in prosecution of consumer complaints, insurance division, the
division of consumer advocacy, the University of Hawaii, the
Hawaii tourism authority as provided in section 201B-2.5, the
office of information practices, or as grand jury counsel, shall
be a deputy attorney general.

(d) All attorneys retained by contract, whether by the
attorney general or a department, shall be retained in
accordance with chapter 103D.

(e) The attorney general shall not represent:

(1) The legislature as a whole;
(2) A house of the legislature; or
(3) A member or group of members of the legislature.
Nothing in this section shall be construed to limit or otherwise interfere with the right of the legislature, a house of the legislature, or a member or group of members of the legislature, when acting in their official capacities, to retain an attorney to represent its respective office. If a member or group of members of the legislature is sued in their official capacity, the house to which the member or members belongs shall provide, at that house's cost, legal representation to the member or members; provided that any member may refuse representation by the house."

SECTION 2. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

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

INTRODUCED BY: [Signature]

JAN 23 2019
Report Title:
Attorney General; Legislature

Description:
Clarifies that the attorney general shall not represent the legislature and individual legislators acting in their official capacity. Requires the respective house to provide legal representation for any member who is sued in the member's official capacity unless the member declines such representation.

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