

STAND. COM. REP. NO.

109

Honolulu, Hawaii

FEB 10 2021

RE: S.B. No. 877

Honorable Ronald D. Kouchi
President of the Senate
Thirty-First State Legislature
Regular Session of 2021
State of Hawaii

Sir:

Your Committee on Hawaiian Affairs, to which was referred
S.B. No. 877 entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAIIAN HOMES
COMMISSION,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Allow the Hawaiian Homes Commission and Department of
Hawaiian Home Lands to retain independent legal counsel;
- (2) Authorize the Hawaiian Homes Commission and Department
of Hawaiian Home Lands to use the services of the
Attorney General as needed and when the interests of the
State, Hawaiian Homes Commission, and Department of
Hawaiian Home Lands are aligned; and
- (3) Provide that funds owed to independent legal counsel
shall be paid by the State.

Your Committee received testimony in support of this measure
from the Department of Hawaiian Home Lands and two individuals.
Your Committee received testimony in opposition to this measure
from the Department of the Attorney General.

Your Committee finds that the Department of Hawaiian Home
Lands has a trust duty to its beneficiaries under the Hawaiian



Homes Commission Act and in the fulfillment of this trust responsibility, the Department of Hawaiian Home Lands may at times be at odds with the interest of the State. The Department of Hawaiian Home Lands seeks to be assured that its counsel provide legal advice strictly in the interest of the Department and remove any appearance of a conflict of interest as a result of representation by the Department of the Attorney General, which represents the State of Hawaii.

Your Committee further finds that twenty-one other state agencies currently have the autonomy that this measure would provide to the Hawaiian Homes Commission and Department of Hawaiian Home Lands. Your Committee also notes its concern that there are currently no limits to the cost of independent legal counsel for the state agencies that retain such counsel.

Your Committee has heard the concerns from the Department of Attorney General that the Attorney General is best suited to provide legal advice in a cost effective and conflict-free manner to the Department of Hawaiian Home Lands. Additionally, private attorneys retained by the Hawaiian Homes Commission and the Department of Hawaiian Home Lands may not possess the necessary breadth of knowledge and experience available within the agency. In *State v. Klattenhoff*, 801 P.2d 548 (1990), the Hawaii Supreme Court ruled that the Department of Attorney General may assign deputies to represent agencies that have competing interests, and the Department has done this in past cases to ensure that all client agencies are vigorously and separately represented.

As affirmed by the record of votes of the members of your Committee on Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 877 and recommends that it pass Second Reading and be referred to your Committees on Ways and Means and Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Hawaiian Affairs,




MAILE S.L. SHIMABUKURO, Chair



The Senate
 Thirty-First Legislature
 State of Hawai'i

Record of Votes
Committee on Hawaiian Affairs
HWN

Bill / Resolution No.:*	Committee Referral:	Date:		
SB 877	Hwn, WAM / JDC	2/4/21		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is:				
<input checked="" type="checkbox"/> Pass, unamended 2312	<input type="checkbox"/> Pass, with amendments 2311	<input type="checkbox"/> Hold 2310		
<input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
SHIMABUKURO, Maile S.L. (C)	X			
KEOHOKALOLE, Jarrett (VC)	X			
ACASIO, Laura	X			
IHARA, Jr., Les	X			
FEVELLA, Kurt			X	
TOTAL	4		1	
Recommendation:				
<input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
				
Distribution:				
Original File with Committee Report	Yellow Clerk's Office	Pink Drafting Agency	Goldenrod Committee File Copy	

*Only one measure per Record of Votes