

GOV. MSG. NO. 684

EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE  
GOVERNOR

April 30, 2008

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 3200 SD1 HD1

On April 29, 2008, Senate Bill No. 3200, entitled "A Bill for an Act Relating to Governmental Retention of Attorneys," became law without my signature, pursuant to Section 16 of Article III of the Constitution of the State of Hawaii.

The bill would require the Attorney General to retain an attorney for a legislative or judicial office if legal representation was requested for that office by the Chief Justice, or the Speaker and Senate President jointly, and the Attorney General declined to provide that representation on the ground of conflict of interest.

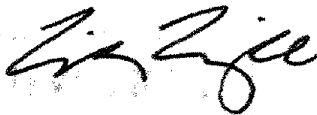
This measure is troubling because it would require the Attorney General to fund legal services from the budget of the executive branch for a separate branch of government. There appears to be no reason why such funding cannot come from the budget of the branch that is requesting the legal services. Moreover, there does not appear to be any pressing need for this legislation, as both the legislative and judicial branches of government have statutory authority to retain attorneys without the consent of the Attorney General.

However, the circumstances covered by the legislation are extremely limited. The legislation would be applicable only if there was a request for legal services, the request was declined by the Attorney General, and the specified reason by the Attorney General was conflict of interest. An argument can be made that if the Attorney General's stated reason for declining to provide representation is a conflict of interest and, thus, absent such a conflict the Attorney General would have provided legal services, the fiscal burden of the Attorney General's conflict of interest ought to fall on his department.

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and Members of the Senate  
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For the foregoing reasons, I allowed Senate Bill No. 3200 to become law as Act 45,  
effective April 29, 2008, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE

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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 trustees for any action involving the travel  
16 agency recovery fund;

17 (8) By the office of Hawaiian affairs;

18 (9) By the department of commerce and consumer affairs for  
19 the enforcement of violations of chapters 480 and 485;

20 (10) As grand jury counsel;

21 (11) By the Hawaiian home lands trust individual claims  
22 review panel;



- 1 (12) By the Hawaii health systems corporation, or its
- 2 regional system boards, or any of their facilities;
- 3 (13) By the auditor;
- 4 (14) By the office of ombudsman;
- 5 (15) By the insurance division;
- 6 (16) By the University of Hawaii;
- 7 (17) By the Kahoolawe island reserve commission;
- 8 (18) By the division of consumer advocacy;
- 9 (19) By the office of elections;
- 10 (20) By the campaign spending commission;
- 11 (21) By the Hawaii tourism authority, as provided in
- 12 section 201B-2.5; or
- 13 (22) By a department, in the event the attorney general,
- 14 for reasons deemed by the attorney general good and
- 15 sufficient, declines to employ or retain an attorney
- 16 for a department; provided that the governor thereupon
- 17 waives the provision of this section."

18 SECTION 2. New statutory material is underscored.

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

APPROVED this                      day of                      , 2008

GOVERNOR OF THE STATE OF HAWAII

