

Honolulu, Hawaii

APR 27 2012

RE: S.B. No. 2858
S.D. 1
H.D. 2
C.D. 1

Honorable Shan S. Tsutsui
President of the Senate
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sirs:

Your Committee on Conference on the disagreeing vote of the Senate to the amendments proposed by the House of Representatives in S.B. No. 2858, S.D. 1, H.D. 2, entitled:

"A BILL FOR AN ACT RELATING TO OPEN GOVERNMENT,"

having met, and after full and free discussion, has agreed to recommend and does recommend to the respective Houses the final passage of this bill in an amended form.

The purpose of this measure is to:

- (1) Establish a process for a state or county agency to seek judicial review by a circuit court of a decision rendered by the Office of Information Practices that directs the agency to disclose a requested record under the Uniform Information Practices Act or prohibits disclosure under the Sunshine Law;
- (2) Require a circuit court to consider the opinions and rulings of the Office of Information Practices as precedent unless found to be palpably erroneous; and



- (3) Specify that the opinion or ruling upholding the agency's denial of access to the requestor shall be reviewed de novo unless the action to compel disclosure was brought because an agency failed to make a record available as required under section 92F-15.5(b), Hawaii Revised Statutes, after the Office of Information Practices rendered a decision for disclosure and the agency did not appeal within thirty days of that decision.

Your Committee on Conference finds that the Uniform Information Practices Act allows members of the public whose record requests are denied by a government agency to have the Office of Information Practices review the agency's denial. However, the Uniform Information Practices Act does not provide a similar process for a government agency to file an action in circuit court to appeal an adverse decision rendered by the Office of Information Practices. Accordingly, this measure establishes a uniform process for a state or county agency to seek judicial review of a decision rendered by the Office of Information Practices that directs the agency to disclose a requested record.

Your Committee on Conference has amended this measure by:

- (1) Clarifying that a government agency may file a complaint to seek judicial review of the final decision rendered by the Office of Information Practices in the circuit court where the request for access to a record was made, the prohibited act occurred, or the agency's principal place of business is located;
- (2) Clarifying that a government agency may not appeal a decision made by the Office of Information Practices unless the agency follows the established appeals process established by this measure;
- (3) Changing the effective date to January 1, 2013; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the managers of your Committee on Conference that is attached to this report, your Committee on Conference is in accord with the intent and purpose of S.B. No. 2858, S.D. 1, H.D. 2, as amended herein, and recommends




that it pass Final Reading in the form attached hereto as S.B.
No. 2858, S.D. 1, H.D. 2, C.D. 1.

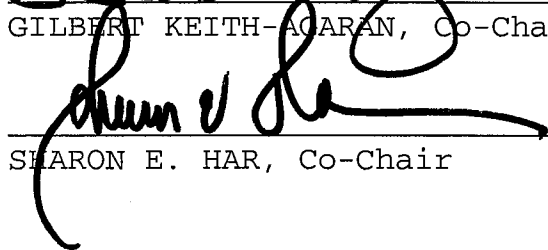
Respectfully submitted on behalf
of the managers:

ON THE PART OF THE HOUSE

ON THE PART OF THE SENATE


GILBERT KEITH-ADARAN, Co-Chair


CLAYTON HEE, Chair


SHARON E. HAR, Co-Chair


MAILE SHIMABUKURO, Co-Chair



Hawaii State Legislature

CCR 105-12

Record of Votes of a
Conference Committee

Bill / Concurrent Resolution No.: SB 2858, SD 1, HD 2	Date/Time: 4/26/12 2:42 pm
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The recommendation of the House and Senate managers is to pass with amendments (CD).

The Committee is reconsidering its previous decision.

<input type="checkbox"/> The recommendation of the Senate Manager(s) is to AGREE to the House amendments made to the Senate Measure	<input type="checkbox"/> The recommendation of the House Manager(s) is to AGREE to the Senate amendments made to the House Measure.
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Senate Managers	A	WR	N	E	House Managers	A	WR	N	E
HEE, Clayton, Chr.	/	/			KEITH-AGARAN, Gilbert S.C., Co-Chr.	/	/		
SHIMABUKURO, Maile S.L., Co-Chr.	/			/	HAR, Sharon E., Co-Chr.	/			/
SLOM, Sam				/	TOKIOKA, James Kunane	/			/
					RIVIERE, Gil	/			
TOTAL	2			1	TOTAL	3			1

A = Aye WR = Aye with Reservations N = Nay E = Excused

Senate Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted	House Recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted
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Senate Lead Chair's or Designee's Signature: 	House Lead Chair's or Designee's Signature:
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