

Honolulu, Hawaii

MAR 01 2012

RE: S.B. No. 2858
S.D. 1

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

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2858 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Establish a process for a state 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.

Your Committee received testimony in support of this measure from the Office of the Governor; the Department of Public Safety; the Department of Human Resources Development; the Department of Commerce and Consumer Affairs; the Department of Taxation; the Department of Land and Natural Resources; the Office of Information Practices; the Board of Education; the Executive



Office on Aging; the Hawaii Public Housing Authority; the Office of Language Access; the Hawaii Community Development Authority; the League of Women Voters of Hawaii; the Hawaii Employers' Mutual Insurance Company, Inc.; and one private individual. Testimony in opposition to this measure was submitted by three Council Members of the County Council of Maui and one private individual.

Your Committee 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. If the Office upholds the agency's decision to deny the record request, the requestor may bring an action in circuit court for a de novo review of that decision. 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. As such, this measure establishes a uniform process for a state 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 recognizes the concerns that this measure lacks a reasonable time limit for an agency to file a complaint in circuit court to appeal an adverse decision. The Office of Information Practices suggested a time limit of thirty days based on the time period permitted for appeals of administrative and judicial decisions.

As such, your Committee has amended this measure by:

- (1) Requiring that an agency has thirty days from the date of the adverse decision to file a complaint in circuit court to initiate a special proceeding for judicial review;
- (2) Inserting a savings clause;
- (3) Inserting an effective date of July 1, 2050, to ensure further discussion; and
- (4) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report,



your Committee is in accord with the intent and purpose of S.B. No. 2858, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2858, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,

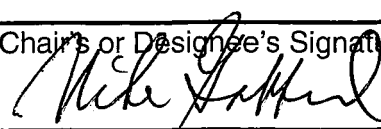


CLAYTON HEE, Chair



The Senate
 Twenty-Sixth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB2858	Committee Referral: JDL	Date: 2-7-12		
<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 type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)				✓
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam				✓
TOTAL	3	-	-	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes