

Common Cause Hawaii

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Citizens Working for Open, Honest, Accountable Government

Wednesday, March 4, 1998

8:30 AM, Rm 211, 30 copies

Testimony to the Senate Ways and Means Committee Supporting SB 2983 SD 1.

First, thank you to the Chairs and committee members for the opportunity to offer testimony. I'm Larry Meacham, writing for the 1200 members of Common Cause Hawaii.

The Office of Information Practices is currently under the Attorney General's office, which has a conflict of interest in representing both executive agencies and the public. These two responsibilities often conflict when bureaucrats forget that citizens' tax money pays for their salaries and for developing government information, and that the records belong to the public, not the bureaucracy, as long as disclosure does not violate any individual's privacy. When the public, the media or public interest groups ask for government records, the bureaucrats stonewall, give us the runaround or dare us to take them to court. Going to the Attorney General's office often results in no action because they are in conflict, representing both the public and the agencies.

For example, Environment Hawaii, the Sierra Club Legal Defense Fund and Common Cause finally took DLNR to court for repeatedly holding illegal secret meetings and preparing minutes late or not at all. The AG defended DLNR. After much wasted time and money on both sides, we won 90% of the case in a summary judgement. In another example, a set of proposed rules on opening government records has sat in the AG's office for over a year without a response.

In contrast, OIP has been active in getting agencies to release many files and records that the public is entitled to see. Therefore, we support SB 2983 SD 1, to add sunshine law enforcement responsibilities and to put OIP under the Legislature, which has a good record of allowing the Legislative Auditor's office, the State Ethics Commission and the Legislative Research Bureau to be independent and impartial. Under the Legislature, OIP could continue its good work.

Without OIP to advocate for open records and open meetings, the tendency will be to shut out the public. Bureaucrats will make worse decisions, make more mistakes and waste more money because of lack of public input. Our best guarantee for honest and effective government is open records and meetings. We should preserve OIP and protect it under the Legislature. We urge you to pass SB 2983. Thank you for the opportunity to speak. I will try to answer any questions.

Common Cause Hawaii



THE LEAGUE
OF WOMEN VOTERS
OF HAWAII

TESTIMONY ON SB 2983 SD 1 RELATING TO THE OFFICE OF INFORMATION
PRACTICES BEFORE THE COMMITTEE ON WAYS & MEANS, WEDNESDAY, MARCH 4, 1998

Co-Chair Baker, Furuknaga and Members,

I am Jean Aoki, President of the League of Women Voters of Hawaii.

The League of Women Voters of Hawaii supports S.B. 2983. We support the transfer of the Office of Information Practices to the Legislative branch of government. As we understand it, the information requested by members of the public is mostly from agencies in the executive branch of government, and, therefore, the administration of OIP by the legislative branch helps to remove any perception of conflict of interest.

We strongly support the administration of the open meetings law by the OIP. For the public, knowing exactly where they can direct their inquiries and concerns about what is exempt from the sunshine law, and even knowing that there is an agency that will help them, would be most helpful. Contacting the Attorney General's office is not always easy. We have had difficulty reaching anyone there at times, and telephone messages have not always been returned. Knowing the heavy demands on the office and the need for the personnel to be out of the office tending to their responsibilities in Court or at government meetings, we have tended to overlook this.

It makes sense for the same agency to oversee the compliance of the open meeting requirements and the requirements for open government records. We would request that the staffing needs of the agency be considered for the expended responsibilities of this agency.

Thank you for this opportunity to testify.

TESTIMONY BEFORE THE SENATE COMMITTEE ON
WAYS AND MEANS

SB 2983 RELATING TO THE OFFICE OF INFORMATION PRACTICES

Wednesday, March 4, 1998

Members of the Committee, *I will be unable to attend* today's hearing due to my work schedule.

Please accept my written testimony in **STRONG SUPPORT OF SB 2983!**

Please consider the following:

- The Office of Information Practices (OIP) is entirely **unique** in the **functions** and **services** it offers to *both government agencies and the general public* alike.
- The Uniform Information Practices Act, Chapter 92F, Hawaii Revised Statutes, is a relatively new law. It covers a broad range of issues that affect the way government does business and the public accesses government information.
- **Statistics** and **surveys** taken by the OIP and reported on in its *1996 Annual Report* and monthly newsletters indicate that both government agencies and the general public feel much confusion and uncertainty still exist about this law and its functions. The **requests** to the OIP for **guidance, training, consultations, and mediation** from BOTH **government agencies and the general public** are apparently **endless**.

Therefore, the OIP has served this community by upholding and advocating the principles of *Open Government* in invaluable ways. If the OIP were eliminated, as proposed by the Governor earlier this year, which agencies would have the time, expertise, or manpower to continue these much needed functions for us? The **costs** of maintaining this one agency **are minimal** compared to what we gain from maintaining these services.

Citizens are far better served when those in government conduct their business in ways that are **uniform** and **consistent** with the **democratic principles** our lives have been founded on. *What one government employee gains from one OIP training session can have far reaching effects on opening the process of government.*

I feel that the Open Meetings Law, Chapter 92, Hawaii Revised Statutes would be well placed in the Office of Information Practices (OIP). The OIP is already responsible for maintaining "open government" through the administration of the UIPA. It is logical to consolidate the "open government" function by placing it in one of our "Government Watchdog" agencies.

In addition, I support the proposal to move the OIP to the Legislative branch for administrative purposes. This will free the OIP from the constrictions it now faces as part of the Administration under the Department of the Attorney General.

Placing the OIP under the Legislature, with the director appointed by the Governor, will create a fair balance of power. Also, funding for the OIP will always be a matter for the elected representatives of the people of the State to debate and decide.

Furthermore, the OIP will be able to watch over the operations of government in a more independent way, much like the State Auditor does now.

Please pass this bill. Thank you for the opportunity to comment.

**John Mathews
P.O. Box 1143
Honokaa, HI 96727**

LATE

Written Testimony From Stephen Romanelli in support of SB-2983, S.D. 1
Relating to the Information Practices Office
P.O.Box 11672,
Honolulu, Hawaii 96828 988-9277 March 4th, 1998

Senators,

I give my support to SB 2983 and hope it sails right into a revision of the state statutes. For the few Senators that heard my testimony on S.B. 3030 relating to OIP I apologize in advance for some repetition of that testimony. I am here to tell you that without your support on 2983 the Office Of Information Practices will be shut down.

The Office of Information Practices is still on the chopping block. To me it is a fact that unless this bill is passed the OIP will not survive. If the Office remains at the mercy of the Attorney General it is not a guess but a fact that the Office will lose its funding. Paraphrasing her interview on "Talk of the Islands", with J.P. Montal, of Hawaii Public Radio, Attorney General Bronster has said functions of the office can be handled by the Office of the Ombudsman. The Governor will impose a budget restriction that would defund the Office. The Office is under attack by the Governor and the Attorney General and given the chance they will demolish it.

Will we the people, really save anything or at least balance out if the office that was created to help government and all citizens in our right to access open non-confidential records is destroyed? No, we will not be saved and we will be sorry to see it ruined. According to Donna Wu, 1st Assistant to the Hawaii State Ombudsman, they average a total of Six Thousand and Five Hundred requests per year. She said without adequate funding for personnel and other resources they would not be able to handle all the additional Information Practice requests. She agreed with me that their usual work would not get done without a lot of new money and new hires flowing into their office.

In Governor Cayetano's press conference following the State of the State Address, he proposed eliminating the office to achieve some savings. Cayetano is quoted in the Star Bulletin as saying "What's important to me when I make a decision about that office is some assurance that the attorney generals office, for example, will be able to service the request of the public". This may turn into an Us and Them situation. Us being we the people of this state and them being the Governors office and Hawaii State government agencies. Government agencies will get all the help and opinions they need from various attorneys at the AG's office if they have any questions about other government agencies records. The AG's office is the lawyer for the Governor and State Agencies, not we the people. The AG's office is not charged with the responsibility of informing the public about their right to see records and they certainly will not right written opinions for private citizens, business, the media or especially other attorneys regarding public records. Our only alternative, we the people, will be to sue any government agency that is obviously not in compliance with the Uniform Information Practices Act.

Business and media may do just that but the vast majority of private citizens seeking a legal outcome because they have been denied access to information do not have the time or money in the pursuit of judicial redress.

If OIP is dismantled I'm sure people telephoning or writing the Attorney General's Office requesting access to public records would be instructed to contact the Ombudsman's office. The Office of Information Practices does a lot of work that could not be duplicated at all by the office of the Ombudsman or in a timely manner without adequate funding and personnel. If we examine OIP's annual reports for years 92 to 96, they handled approximately Seventeen Hundred telephone and approximately One Hundred written requests for assistance per year. They issue an average of 25 written legal opinions a year. Summations of interesting opinions are printed in OIP's monthly publication "OpenLine". An excellent resource in understanding the nature and complexity of OIP's written opinions is stored on the Hawaii State Bar Association's web site. All opinions written before the summer of 97' are recorded there in their totality. Will written requests for opinions regarding public files and the subsequent case work that is made in attempt to address those concerns magically disappear in 1999? Of course not.


If we examine OIP's 1997 annual report an attempt has been made to train government employees in small group workshops about the Uniform Information Practices Act and public access to information at various agencies such as Taxation, State public information office, University of Hawaii and Department of Hawaiian Homelands. That good effort, training employees in the basics, could be terminated in 1999. In the reports "Requests for Assistance, Guidance and Opinions" section it concludes with, "It is evident that without an increase in staffing, the case load will continue to backlog, the needs of the public and government agencies will go unanswered, and the purpose and spirit behind the UIPA will remain unrealized." Abolishing OIP would obfuscate public intelligence and is a confusing and embarrassing way to start the new millennium.

It's not the messenger that matters but the message and here is a quote from President Richard Nixon:
"Fundamental to our way of life is the belief that when information... is **systematically** withheld by those in power, the people soon become ignorant of their own affairs, distrustful of those who manage them, and eventually incapable of determining their own destinies."

This bill would make OIP an investigative watchdog regarding open meetings, a good revision. As expressed in the bill no agency is presently charged with that obligation. As I see it, when an open meeting takes place that falls under the definition of Chapter 92's "Sunshine Law" this is a public record being composed. Complaints of violations to the law need to be analyzed and fairly treated.

The Office Of Information Practices is a shiny beacon of light and liberty offering government and all citizens safe passage on the occasionally obscure and turbulent ocean of Tens of Thousands of government records.

Sincerely,


Stephen Romanelli



**STATE OF HAWAII
OFFICE OF HAWAIIAN AFFAIRS
711 KAPI'OLANI BOULEVARD, SUITE 500
HONOLULU, HAWAII 96813**

**TESTIMONY SUPPORTING THE PASSAGE OF SB 2983, SD1
BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS
RELATING TO THE OFFICE OF INFORMATION PRACTICES**

March 4, 1998; 9:00 AM, Conference Room 211

Aloha mai, Chairpersons Rosalyn Baker and Carol Fukunaga, and members of the Senate Committee on Ways and Means. I am Haunani Apoliona, Vice Chair of the Board of Trustees of the Office of Hawaiian Affairs (OHA), and Chair of OHA's Legislative and Governmental Affairs Committee (LAGA). On February 23, 1998, OHA's Board of Trustees voted to support SB 2983. I am here today on behalf of OHA's Board of Trustees to testify in support of the passage of SB 2983, SD1, RELATING TO OFFICE OF INFORMATION PRACTICES.

The Office of Hawaiian Affairs supports this Bill for the following reasons:

- Presently, there is no single agency charged with the responsibility to administer the State's Sunshine Laws (HRS Chapter 92). Assistance in resolving complaints of violation of the Sunshine Laws or requests for technical assistance on Sunshine Law matters are commonly provided by the State Attorney General. However, conflict is inherent in this arrangement because the Attorney General is simultaneously called upon to be a counselor, as well as, the prosecutor (enforcer) in these matters. Placing the administration of Chapter 92 under the Office of Information Practices centralizes this function and removes that conflict. However, the Office of Information Practices should not remain administratively attached to the Attorney General in order to avoid similar conflict with the departments, boards and commissions under the Executive Branch.
- There is a conflict with the Office of Information Practices remaining administratively attached to the Executive Branch and having oversight over OHA. Please note that: HRS, §10-4 states:

§10-4. There shall be an Office of Hawaiian affairs constituted as a body corporate which shall be a separate entity independent of the executive branch.



Oversight of OHA by the Office of Information Practices would not constitute independence from the executive branch unless the Office of Information Practices is moved administratively out of the Department of the Attorney General. The move of the Office of Information Practices from the Executive Branch to the Legislative Branch resolves this problem.

For the forgoing reasons, I urge this Committee to support SB 2983, SD1 and pass it out of committee.

Thank you very much for the opportunity to testify on behalf of OHA's Board of Trustees in support of SB 2983, SD1. I will be happy to answer any questions you or your committee members may have.

TESTIMONY OF THE STATE ATTORNEY GENERAL

ON S.B. NO. 2983, S.D. 1

RELATING TO OFFICE OF INFORMATION PRACTICES

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

DATE: Wednesday, March 4, 1998

TIME: 9:00 a.m.

PLACE: Conference Room 211
State Capitol
415 South Beretania Street

TESTIMONY PRESENTED BY:

Margery S. Bronster
Attorney General
State of Hawaii

or

Charleen M. Aina
Deputy Attorney General

Deliver 32 copies to Committee Clerk, Room 210, State Capitol

TESTIMONY OF THE STATE ATTORNEY GENERAL
ON S.B. NO. 2983, S.D. 1
RELATING TO THE OFFICE OF INFORMATION PRACTICES

The Honorable Co-Chairpersons and Committee Members:

The State Department of the Attorney General testifies to point out technical concerns about this measure, and to suggest that additional oversight to ensure compliance with the open meeting or Sunshine law is not needed.¹

The purpose of this bill is to increase the responsibilities of the Office of Information Practices to include oversight of the State's open meeting or Sunshine law.

Initially, it is important to understand that

- The Sunshine Law is part of Haw. Rev. Stat. chapter 92, but all of chapter 92 is not the Sunshine Law -- The Sunshine Law is set out in Part I, entitled "Meetings," of chapter 92
- State and county boards are "agencies," but not all state and county agencies are "boards" -- only state and county agencies that are "boards" are subject to the Sunshine Law
- The deliberations and decisions of state and county agencies that are not boards, e.g., state and county departments, offices, or other executive units headed by a single executive, are not subject to the Sunshine Law

¹We also note that while this measure expands the functions of the Office of Information Practices, the Administration, through S.B. No. 3030, proposed that the Office be down-sized as a cost-saving measure, given the Office's effectiveness during the initial ten years that the Office and the Uniform Information Practices Act have existed.

With this as background, we suggest the following revisions:

1. Given that the Sunshine Law is set out in Part I of chapter 92, revise the title of the new section added to Haw. Rev. Stat. chapter 92 by Section 3 of this bill, to read "Administration of this part" and direct that the new section is to be added to Part I of chapter 92.
2. Rather than add the sentence specified in Section 4 to subsection (a) of Haw. Rev. Stat. § 92-12, abandon the revision to Haw. Rev. Stat. § 92-17 proposed in Section 5 of the bill (because § 92-17 is in Part II of chapter 92 and not part of the Sunshine Law), and add an additional section to Part I of chapter 92 to read as follows:

§92- Oversight by office of information practices. Complaints of board non-compliance with the provisions of this part may be submitted to the office of information practices. The director of the office of information practices may forward complaints concerning board non-compliance with the requirements of this part to the Attorney General for enforcement, if the director is unable to resolve the complaint with the board in question.

3. As previously noted, deleting Section 5's amendment to Haw. Rev. Stat. § 92-17.
4. Inserting "part I of" before "chapter 92" on line 7, page 7 of the bill.
5. Given that the Sunshine Law is applicable to both state and county boards, insert "and county" between "state" and "boards" on line 8, page 7 of the bill.

We also suggest that if it is the Legislature's intent to make the Office of Information Practices responsible for enforcing the Sunshine Law, then rather than adding a clause to Haw. Rev. Stat. § 92-17 (a) (on page 3, lines 9-11), a new section directing Sunshine complaints to the Office should be added to part I of chapter 92.

Having made this last suggestion, we nonetheless believe that the bill's complaint resolution process is not necessary. The Attorney General is the State's chief legal officer. In that capacity, the Attorney General wears two hats -- the Attorney General advises public agencies (including boards), officers, and employees on legal issues to allow them to faithfully execute their duties and responsibilities; the Attorney General also is responsible for enforcing the law, i.e., initiating actions in the court to compel state officials and agencies (including boards), to comply with state law. By the State's Constitution and statutes, these are consistent, not conflicting responsibilities.

Presently, boards are advised and admonished to comply with the Sunshine Law by the deputy attorneys general assigned to provide legal services and support for their activities. Momentary strains in board-attorney relations are often traceable to advice provided on Sunshine Law related matters, and attest to an unappreciated effectiveness in the Department of Attorney General's oversight of Sunshine Law compliance.

Accordingly, we ask you to reconsider the wisdom of designating a second agency to "investigate" Sunshine Law complaints, given the Attorney General's and the county prosecutors' continued responsibility to prosecute violations of the Sunshine Law criminally. We suggest that if the Office is to have a Sunshine Law compliance oversight role, that its role be limited to receiving and resolving complaints administratively only. When the Office is unable to resolve a complaint administratively, the Office should be required to refer the matter to the Attorney General for judicial enforcement by civil or criminal proceedings. To demarcate the respective responsibilities of the Office and the Attorney General, we suggest that the term "investigating" be deleted from line 15 at page 7.

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES
ON S.B. 2983, S.D. 1

RELATING TO OFFICE OF INFORMATION PRACTICES

BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS

DATE: WEDNESDAY, March 4, 1998

TIME: 9:00 A.M.

PLACE: Conference Room 211
State Capitol

PERSON TESTIFYING:

Moya T. Davenport Gray
Director
Office of Information Practices

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON S.B. 2983, S.D. 1

RELATING TO OFFICE OF INFORMATION PRACTICES

Honorable Chairpersons and Committee Members:

The intent of the bill is to allow the Office of Information Practices ("OIP") to investigate complaints regarding open meetings law. Currently, when the OIP receives questions or complaints about government, the caller often asks questions about both open records and meetings. The OIP does not have jurisdiction over open meetings. While the OIP can assist the caller on records, it cannot assist with questions on open meetings and must refer the caller to the Department of the Attorney General. Thus, members of the public must have their one concern addressed by two different agencies.

This bill benefits the public without adding additional costs. The bill would add additional work to the OIP's caseload. However, we recognize that this body must make difficult fiscal choices for the State of Hawaii and therefore, we are not asking for additional positions.

We have reviewed the requirements of the bill and have preliminarily determined that many of the complaints can be handled through the OIP's "Attorney of the Day" service. In the last year, the OIP's number of telephone

requests for assistance have decreased. This decrease in “records” workload would allow an increase in the “meetings” workload.

Additionally, SB 2983, S.D. 1 benefits the public by moving the OIP from the executive to the legislative branch of government. Moving the OIP to the legislative branch of government does much to alleviate the perception that government operates behind closed doors. Shoring up an “institutionalized” assurance that government operates without secrecy contributes to the public’s trust of government.

The OIP supports the intent of this bill and is available to answer questions.

