

Common Cause Hawaii

P.O. Box 235353 Honolulu, HI 96823-3505 Tel. 533-6996
Citizens Working for Open, Honest, Effective Government

April 2, 1998

Testimony to the House Finance Committee Supporting SB 2983 SD2 HD1.

First, thank you to the Chair and committee members for the opportunity to offer testimony. I'm Larry Meacham, representing the 1,200 members of Common Cause Hawaii.

We support this bill because it preserves the very important functions of the Office of Information Practices. OIP has emerged as the major entity that preserves the balance between the public's right to know and privacy rights. They have also written dozens of opinions and trained hundreds of civil servants in correct information practices and thus saved the state large amounts of money that would otherwise be expended on lawsuits. Based on the record, we believe OIP would also do a good job administering the open meetings laws. The original suggestion was to place OIP under the Legislature, but it could also be under the Lieutenant Governor, as the Campaign Spending Commission has been.

Finally, we ask that attention also be paid to preserving OIP's budget, which has already been reduced over a third in recent years. Any more drastic cuts would cripple its operations.

Thank you again for the opportunity to offer testimony. I will try to answer any questions.

Hawai'i Clean Elections (HI.CLEAN)

c/o League of Women Voters, 49 South Hotel Street, Rm. 314, Honolulu, HI 96813
ph. 808-531-7448 or 988-4889, fx. 599-5669 or 988-7488 Email: worst@lava.net

To: Chairman Calvin Say
House Finance Committee

From: Toni Worst, President

Hearing: House Committee on Finance to be held on
Thursday, April 2, 1998 at 7 pm

RE: **SB 2983, SD 2, HD 1.**

TESTIMONY IN SUPPORT OF OFFICE OF INFORMATION PRACTICES

Chairman Say: Thank you for hearing this bill.

Hawai'i Clean Elections supports the work of Office of Information Practices (OIP) because it has provided a great public service: namely, the assurance that information which should be publicly available will not be unreasonably and unduly withheld from public view.

In our case, we are very interested in the financial disclosure and campaign spending reports filed by candidates, and we want to ensure that those records continue to be free and accessible to the public.

We commend Moya Gray and her staff for doing much with little. We believe the relatively small budget that is allocated to this office is a tiny enough public price to pay for some measure of institutionalized assurance that government will operate without too much secrecy, which helps to contribute to public trust of government. Supporting the "good government" institutional structures which help preserve the public's declining trust in government and ability to keep a sharp eye on the operations of government will be very cost-effective in the short and long run.

We approve of the plan to transfer OIP to the lieutenant governor's office for independent reporting, and we believe that the office will be less constrained in their functions and decisions by political considerations. We urge you to give them the autonomy to continue their public service in protecting the public's right-to-know.

Thank you for this opportunity to testify.

HI.CLEAN Members: League of Women Voters • Common Cause Hawai'i • Advocates for Consumer Rights • Hawai'i Green Party • Graduate Students Org. of U.H. • Univ. of Hawaii Student Caucus • Sierra Club, Hawaii Chapter • Life of the Land. Supporting Neighborhood

HONOLULU COMMUNITY-MEDIA COUNCIL

P.O.Box 22415 Honolulu, Hawaii 96823-2415 Telephone (808) 983-4744

TESTIMONY IN FAVOR OF SB 2983 HD1, RELATING TO THE OFFICE OF INFORMATION PRACTICES

Officers:

Prof. Richard S. Miller
Chair

Jean King
Vice Chair

Ah Joek Ku*
Secretary

Dr. Sarah K. Vann
Treasurer

House Finance Committee, Rm 308, State Capitol, April 2, 1998,
7:00 PM

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Vanessa Chong
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Warren Iwasa
Gerald Kato
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Richard Turner
John W. White
Janice Wolf, Esq.
Jovita Zimmerman

*Funding Member
**Emeritus

Chairman Say, Vice Chairman Kawakami, and distinguished members of the Finance Committee.

I am Professor (Emer.) Richard S. Miller, Chair of the Honolulu Community-Media Council. I first want to express my appreciation for your willingness to consider my testimony.

While it is difficult for our 51 members to be present at this hour, we are deeply concerned about the future of the Office of Information Practices.

We are strongly in favor of this bill in its current form. We believe that the OIP actually saves the State money by avoiding expensive litigation.

The Honolulu Community-Media Council was instrumental in the creation and adoption of the Uniform Information Practices Act (UIPA) and has supported the OIP since its creation.

The Media Council recognizes that two important but often conflicting values are at stake:

First, is the importance of open government in a free and democratic society. Without an open government there can be no real freedom. And we should all recall that many Hawai'i citizens have fought with outstanding bravery and sacrificed much to preserve freedom. Openness in government requires both public access to public records and public decision-making, which should be hidden behind closed door for only the most compelling of reasons.

- Second, is the vital importance of the right of privacy of the individual: The right not to have private information about an individual made public without a compelling State interest. This right of individual privacy is separately recognized in our own State Constitution. **It is an essential element of human dignity.**

The Office of Information Practices has proved itself to be an important organ in sorting out the intricate issues involved in deciding under the UIPA when information should be made public and when, because of overriding privacy concerns, it should not.

Without the OIP it would be necessary in every case where an information seeker differs with the possessor of the information -- a governmental officer -- to bring suit to resolve the conflict. The costs of litigation in such cases would likely outweigh by many times the cost to the public of the Office of Information Practices. In consequence, we believe that the OIP is a money-saver for the State because it forecloses a substantial amount of expensive litigation.

Equally important, the OIP, notwithstanding any backlog it may have because of insufficient personnel, provides a much faster response to a request for information than the courts could possibly provide. The speed with which the OIP operates should increase substantially, and the number of cases requiring adjudication by OIP should decline, as the OIP completes its work on developing rules and regulations on which all can rely.

In short, the OIP is an efficient and money-saving device for serving the important functions of protecting both openness and privacy.

For this reason, the Media Council strongly urges the retention of the OIP and the passage of the bill extending the jurisdiction of the OIP to the Open Meeting Law. This will reaffirm the Legislature's commitment to maintain the OIP as a strong and effective office.

Further, as a way of insulating the OIP from conflicts of interest, we agree that moving OIP to a neutral setting, such as the Office of the Lieutenant Governor, seems to be a very good idea. Thank you for considering this testimony.

TESTIMONY PRESENTED TO THE HOUSE FINANCE COMMITTEE

ON S.B. 2983, S.D. 2, H.D.1

BY BEVERLY ANN DEEPE KEEVER,

URGING INCREASED RESOURCES AND GREATER RESPONSIBILITIES

FOR OIP TO COUNTER UNCERTAINTIES & LACK OF CONSUMER CONFIDENCE

7 p.m., Thursday, April 2, 1998, State Capitol Room 307

Chairman Say and Members of the House Finance Committee:

My name is Beverly Ann Deepe Keever, a journalism educator who has taken an active role in passage just a decade ago -- about this same time of year -- of the bill that led to establishment of the Office of Information Practices.

About this bill, S.B. 2983, S.D. 2, H.D. 1, I propose that during Hawaii's current economic crisis the role of the Office of Information Practices be considerably enhanced. OIP should become what the state desperately needs -- an effective clearinghouse for state and city/county government information.

My reason is based on what might be called a law in information science. That law began to form during World War II. Then, a great body of research developed based on studying the role of rumors in World War II -- including those that proliferated in Hawaii. That research shows that rumors arise in situations of uncertainty and threat, when authoritative information is in short supply. This statement is based on the excellent summary of this vast research made by Professor Eleanor Singer.

For example, she notes the research of Tamotuse Shibutani about "improvised news" -- that rumors arise in any situation in which the demand for information exceeds its authoritative supply. Without an authoritative source of information, citizens and even officials during times of crisis will fill the information void with rumors or "improvised news." These rumors--or nonauthoritative news-- will thus worsen the very crisis that needs to be addressed.

Therefore during this period of growing economic and employment uncertainties, Hawaii's residents more than ever before need to be able to turn to a centralized clearinghouse for authoritative information -- whether it is information gained from meetings or from records.

More than ever before, OIP needs even more funds and staffing--not less. Fewer resources may actually worsen the very economic crisis and sagging consumer confidence that Legislators are seeking to ameliorate.

Without enlarging OIP to become a centralized clearinghouse of official information, the public is likely to perceive government as the main preserve of the powerful and the wealthy.

Without giving citizens--and even other officials--fast access to official information, Legislators may actually escalate Hawaii's accelerating economic crisis that they erroneously think they are addressing through dangerous and irrational budget cuts.

Thank you for considering these comments.



Beverly Ann Deepe Keever

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TESTIMONY ON S.B. 2983, SD2, HD1 RELATING TO OFFICE OF INFORMATION PRACTICES BEFORE THE COMMITTEE ON FINANCE, April 2, 1998

Chair Say, Members of the Finance Committee,

My name is Jean Aoki, and I am the President of the League of Women Voters of Hawaii.

The League of Women Voters of Hawaii is in strong support of S.B.2983, SD2, HD1. We applaud the assignment of the administration of the open meeting law to the Office of Information Practices.

Professor Richard Miller's column in this morning's Advertiser which I'm assuming has been submitted to this committee as testimony, states the case for the continuation of OIP eloquently, leaving no doubt that in terms of its value to the community and the cost effectiveness of the agency to the State and our citizen taxpayers, we cannot afford to eliminate this office.

We would like to add to that that without the OIP, the only recourse citizens have to settle disputes with the State over the release of certain records or to address abuses of the open meetings law is the courts, and this shuts out the overwhelming majority of our citizens including organizations like ours who do not have the financial resources to use this avenue.

We feel strongly that an agency such as the OIP is vital to making democracy work in this state.

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
FINANCE

SB 2983 RELATING TO THE OFFICE OF INFORMATION PRACTICES

Thursday, April 2, 1998

Please accept my *written testimony* in **STRONG SUPPORT OF SB 2983** and consider:

- 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**.
- **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 are still uncertain about many of their *RIGHTS* and *RESPONSIBILITIES* under Chapter 92F, Hawaii Revised Statutes (the Uniform Information Practices Act). The **requests** to the OIP for **guidance, training, consultations, and mediation** from **BOTH government agencies and the general public** are apparently **endless**.

In addition, if we eliminate the OIP we run the risk that the amount of **litigation for access to government records** in Hawaii **would begin to rise** and approach the national average. The **costs in time and resources** involved in advising and defending agencies **combined with the costs of settlements** that the State will surely have to pay may offset any savings gained by the elimination of the OIP. Further, even if some money is saved, we would no longer benefit from the trainings and the quick answers the OIP is able to provide.

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 current version of the House budget, 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.*

Finally, might I suggest that the OIP be moved into 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.

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

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



Society of Professional
Journalists

HAWAII CHAPTER

P.O. Box 3141
Honolulu, Hawaii 96802

April 2, 1998.

House Finance Committee
State Capitol Room 308
Honolulu, Hawaii

Re: SB 2983, SD 2, HD 1 Relating to the Office of Information Practices

The Society of Professional Journalists, Hawaii chapter, supports the Office of Information Practices as an important agency for administering public access. Much work and study went into the formation of OIP a decade ago, and it would be unfortunate to let OIP be gutted because of budget-cutting.

The need for the public to know what is going on in its government doesn't change in good time or bad.

OIP provides a uniform approach to information policies statewide as well as an alternative to litigation, and has been praised as a model approach by national freedom-of-information advocates.

While Hawaii Chapter SPJ is bothered by problems that OIP has experienced in recent years that have reduced its effectiveness, the chapter feels it is a mechanism that should be preserved.

We support the intent of SB 2983, which would protect the functions of the office by transferring OIP from the attorney general's office to the lieutenant governor's office.

The measure would do the following:

- Reduce the possibility of conflicts between OIP and the attorney general's office, which acts as attorney for agencies.
- Prevent costs from dramatically increasing both in private and public sectors. While the savings might be difficult to quantify, staffers' time would not be taken up by processing requests for information. This means less time to do other jobs and tends to lead to the need for more staff in the future.

Without OIP, there could be more litigation and more resulting costs to the state, given the batting average of government attorneys on public record cases.

Stirling Morita
FOI Committee Chairman
Hawaii Chapter, SPJ

HD 2

Written Testimony From Stephen Romanelli in support of SB 2983 ~~S.D.2~~
Relating to the Information Practices Office
P.O.Box 11672, Honolulu, Hawaii 96828 988-9277 April 2nd, 1998

Representatives,

I give my partial support to SB 2983. Office of Information Practices should not be moved to the Lieutenant Governors Office. OIP should be moved to the legislature as stated in the original Senate bill.

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.

Both the Governor and the Attorney General have made public comments with their plans to dismantle the Office. The Office is under attack by the Governor and the Attorney General and given the chance they will demolish it. If no action is taken here and now and the Office remains at the mercy of the Attorney General the Office will loose it's funding. If the Office is moved to the Lieutenant Governors office it will still be part of the Governors Branch of the government and it will not survive there.

It saddens me to hear that some who supposedly govern the rest of us have not learned an essential lesson: government gets more complex, yearly. Will we the people, really save anything if the office that was created to make government approachable is abandoned, the office created to help government and all citizens in our authority to access open non-confidential records is stopped because of budget cutting? Attorney General Bronster has said functions of the office can be handled by the Office of the Ombudsman. Donna Wu, 1st Assistant to the State Ombudsman, has said the usual Ombudsman Office work would not get done without a lot of new money and new hires flowing into their office because of Information Practice requests.

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 write opinions for private citizens, business, the media or especially other attorneys regarding public records. Our only alternative 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 majority of 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.

Freedom of Information is not free. Public agency records, collected and filed arbitrarily or methodically did not get there for free. This agency is charged with telling government and all citizens what is rightfully theirs to see. The cost of OIP is justice.

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 Thousand of government records.

Sincerely, Stephen Romanelli



OFFICE OF THE LIEUTENANT GOVERNOR
STATE OF HAWAII
STATE CAPITOL
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HOUSE COMMITTEE ON FINANCE
THE HONORABLE CALVIN SAY, CHAIR
THE HONORABLE BERTHA C. KAWAKAMI, VICE-CHAIR

TESTIMONY OF THE OFFICE OF LIEUTENANT GOVERNOR

ON SB 2983, SD2, HD1
RELATING TO OFFICE OF INFORMATION PRACTICES

April 2, 1998

The Administration's proposal to streamline the organizational support structure of the Uniform Information Practices Act was introduced in SB 3030. This bill, SB 2982, SD2, HD1, attaches the Office of Information Practices to the Office of the Lieutenant Governor. However, the Attorney General has opined that only principal departments of the executive branch can have administratively attached commissions or agencies. The Office of the Lieutenant Governor is not a principal department, therefore, if the Legislature wishes to continue the Office of Information Practices as a separate entity by attaching it administratively to the Office of the Lieutenant Governor as provided in SB 2983, SD 2, HD 1, the bill must be amended to create a temporary Office of Information Practices for a special purpose within the Office of the Lieutenant Governor for administrative purposes.

See attached Exhibit 1, for language: transfers Commission on the Status of Women to the Office of Lieutenant Governor.

ACT 151

- (6) What type of transportation vehicles may be suitable and immediately available for the park and ride aspect of the project and whether public or private services should be used:
Health and safety requirements and how those requirements can be met expeditiously to expedite the implementation of the pilot project;
Ways to secure federal funding, for both the park and ride component and the child care component;
The logistics for selecting participants for the project and the establishment of reasonable fees for the services which will offset all direct costs to the state; and
Issues related to ceded lands and the existing quitclaim deed covenants restricting the uses of Aloha stadium to recreational purposes only.

SECTION 5. The task force shall submit a progress report on the planning of the project to the legislature twenty days prior to the convening of the 1996 session.

SECTION 6. This Act shall take effect on July 1, 1995.

(Approved June 13, 1995.)

ACT 151

H.B. NO. 929

A Bill for an Act Relating to the Commission on the Status of Women.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the present placement of the Hawaii state commission on the status of women within the department of human services is inappropriate. The legislature finds that the broad scope of responsibilities assigned to the commission under chapter 367, Hawaii Revised Statutes (HRS), exceed the statutory mandate of the department of human services as defined in chapters 26 and 346, HRS. Moreover, the legislature is well aware of the tremendous workload and budget constraints within the department of human services. In view of these considerations, the legislature finds that housing the commission on the status of women elsewhere would help to alleviate some of these concerns by eliminating the need for the department to oversee an office whose function and focus is frequently outside the scope of the department's mandate.

The legislature further finds that, for the purposes of Article V, section 6, of the State Constitution, the Hawaii state commission on the status of women is a unique statewide temporary agency created for the special purpose of developing long-range goals and coordinating research, planning, programming, and action on the opportunities, needs, problems, and contributions of women in Hawaii. The special purpose of the commission is confirmed by its broad interdepartmental nature, which is recognized in its statute through the representation of: the office of the attorney general; the governor's committee on children and youth; the superintendent of education; the president of the University of Hawaii; the director of labor and industrial relations; the director of the human resources development; and the director of human services on the commission as ex officio members. As chapter 367-3, HRS, indicates, the duties of the commission are broad and involve coordination with a number of different state departments, none of which is complementary with the mission of the commission, which is to improve the education, social, legal, political, and employment status of Hawaii's women. Therefore, the governor has

indicated that the office of the lieutenant governor is the appropriate administrative location for the commission.

Accordingly, the purpose of this Act is to transfer the Hawaii state commission on the status of women to the office of the lieutenant governor.

SECTION 2. Section 26-1, Hawaii Revised Statutes, is amended to read as follows:

****§26-1 Office of the lieutenant governor.** (a) Except as otherwise provided by law, the lieutenant governor is designated the secretary of State for intergovernmental relations and shall perform the duties and functions heretofore exercised by the secretary of Hawaii. The duties and functions shall include, but not be limited to, supervision of elections, recordation of all legislative and gubernatorial acts, certification of state documents, and maintenance of an official file of rules [and regulations promulgated] adopted by state departments as provided in chapter 91. The lieutenant governor may employ staff as necessary without regard to the provisions of chapters 76 and 77, except for six permanent election positions pursuant to section 11-5.

(b) The lieutenant governor, with the approval of the governor, may designate some other officer of the government of the State to authenticate documents on behalf of the lieutenant governor during the lieutenant governor's temporary absence [without] outside the State or during the lieutenant governor's illness whenever the documents require the signature of the lieutenant governor. The person shall affix the person's own signature to the document with the words, "for the lieutenant governor" following and the signature shall be deemed to satisfy the requirement of the lieutenant governor's signature on the document. The designation and approval shall be in writing and shall be filed in the office of the governor and a copy thereof, certified by the governor, shall be filed with the public archives. The person so designated shall serve without additional compensation and the lieutenant governor shall be responsible and liable on the lieutenant governor's official bond for all acts done by the person so designated in the performance of the duties on behalf of the lieutenant governor.

Nothing in this section shall be construed to authorize the person to exercise and discharge the powers and duties of the office of the governor as provided by the first paragraph of Article V, section 4, of the Constitution of the State. The person shall not be authorized to exercise any powers whenever a successor to the lieutenant governor assumes the duties of the lieutenant governor pursuant to Article V, section 4, of the Constitution.

(c) In addition to the functions and duties provided by law, the lieutenant governor shall assume administrative responsibility for the Hawaii state commission on the status of women.

SECTION 3. Section 367-2, Hawaii Revised Statutes, is amended to read as follows:

****§367-2 State commission on status of women: membership.** (a) There is created a temporary state commission on the status of women for a special purpose within the [department of human services] office of the lieutenant governor for administrative purposes.

(b) The commission shall consist of [not fewer than fifteen nor more than twenty-five] thirteen members[. The membership], which shall include:

- (1) Ex officio, [the director of the office of children and youth,] the superintendent of education, the president of the University of Hawaii, the director of labor and industrial relations, the director of human

Ian Lind
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Written testimony of Ian Lind in support of
SB 2983, SD2, HD1
"Relating to Office of Information Practices"

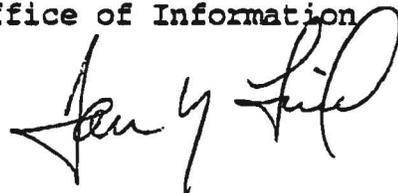
Hearing of the House Finance Committee
Thursday, April 2, 1998. 7 PM Agenda.
Submitted via Fax.

I am writing to express support for SB 2983, SD2, HD1, which would move the Office of Information Practices to the Office of the Lt. Governor for administrative purposes, and adds jurisdiction over open meeting provisions of the statute.

My support for the bill is based on more than 15-years experience in dealing with agencies regarding issues of open meetings and records. I also served as a member of the Governor's Special Committee on Privacy and Public Records, which held statewide hearings a decade ago that led to adoption of the state's existing information statute.

OIP has made a significant contribution to the ability of state and county agencies to respond effectively to requests for information and records. OIP provides a resource for the public, but equally important, it is a resource for agencies that much make decisions about disclosure. Its efforts to establish a uniform basis for responding to information requests have been extremely valuable.

This bill appears to solve problems that have been identified with OIP. Both this measure and the Office of Information Practices deserve your support.



TESTIMONY OF THE STATE ATTORNEY GENERAL

ON S.B. NO. 2983, S.D. 2, H.D. 1

RELATING TO OFFICE OF INFORMATION PRACTICES

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: Thursday, April 2, 1998
TIME: 7:00 p.m.
PLACE: Conference Room 308
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 45 copies to Committee Clerk, Room 306, State Capitol

TESTIMONY OF THE STATE ATTORNEY GENERAL

ON S.B. NO. 2983, S.D. 2, H.D. 1

RELATING TO THE OFFICE OF INFORMATION PRACTICES

The Honorable Chairperson and Committee Members:

The State Department of the Attorney General does not support adoption of this measure. Another oversight agency to ensure compliance with the open meeting or Sunshine law is not needed.¹

The purpose of this bill is to confer an additional responsibility on the Office of Information Practices to oversee board compliance with the State's open meeting law or Sunshine Law. The bill implements this purpose by adding a new section to Haw. Rev. Stat. ch. 92 that directs the Director of the Office of Information Practices to (1) administer the entire chapter (p.1, line 20), (2) establish a complaints filing, investigation and response process to receive and resolve complaints about board non-compliance with the Sunshine Law's requirements (p.2, line 2), and (3) refer unresolved complaints to the Attorney General or appropriate county prosecutor for enforcement (p.2, line 12).

Hawaii has had an open meeting law since 1959, although the one state and county boards are required to adhere to today was not enacted until 1975. By design, the statute directs how state and county boards and commissions, including the county councils but not the State

¹The Governor has also suggested that given what the Office of Information Practices has accomplished since its founding, it is no longer necessary to maintain the Office's current staffing or funding level. The Office has heightened awareness of the public records law in the community and among government agencies, published opinions that elaborate upon and apply the provisions of our public records law to real situations, and established procedures that facilitate access to government records. In H.B. No. 2994 and its Senate counterpart, S.B. No. 3030, the Administration proposed that the Office be down-sized as a cost-saving measure.

Legislature, are to conduct their meetings. Like most statutes, the Sunshine Law, which is set out only in part I of Haw. Rev. Stat. ch.92,² is implemented by the state and county boards to which its provisions are directed. Members and staff of state and county boards are expected to know the law, or request advice and counsel from the Attorney General or a county's corporation counsel or county attorney, when they are uncertain as to the Sunshine Law's requirements and are unable to faithfully execute the responsibilities that the Sunshine Law imposes.

For at least the past twenty years, governors have convened annual orientation sessions for members of state boards at the beginning of each member's term, to familiarize them with the Sunshine Law's existence and requirements. In addition, the Attorney General regularly responds to questions posed by board members and staff, other state agencies, the media, organizations such as Common Cause, the Sierra Club, League of Women Voters, and individuals interested in a particular matter before a state board, about the way in which a board has or has not handled a meeting-related situation. The Attorney General has advised before, during, and after meetings that a board will not or has not satisfied all of the Sunshine Law's requirements, and has suggested alternatives for avoiding or remedying shortcomings. We have also conducted investigations to determine whether we would be able to meet the Sunshine Law's "wilful

²This is emphasized by Haw. Rev. Stat. § 92-1's declaration (" (1) It is the intent of this part to protect the people's right to know;"), by the introductory phrase in § 92-2 ("As used in this part") and § 92-6(a) ("This part shall not apply"), by the provision of § 92-6(b) ("Notwithstanding provisions in this section to the contrary, this part shall apply to . . ."), and the enforcement and penalty provisions in § 92-12 ("(a) The attorney general and the prosecuting attorney shall enforce this part"), §92-12(b) ("The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy"), and § 92-13 ("Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, . . ."). It is also confirmed by Section 1 of Act 166, Haw. Sess. Laws 364 (1975) and its accompanying legislative history. Conversely, not all of the provisions of Parts II and III relate to board meetings, and most of the provisions of Part III apply only to state entities, but are not limited to state boards.

violation” prerequisite for voiding board action for violation of the Sunshine Law, or initiating a criminal misdemeanor prosecution against a board member, staffer, or other individual who violates the Sunshine Law.

Given all of this, we ask you to reconsider the wisdom of designating a second agency to “investigate” Sunshine Law complaints. We believe that oversight by another agency for state and county board compliance with the Sunshine Law 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.

However, if the Legislature nonetheless believes that additional oversight responsibility is needed, then we suggest the following technical revisions:

1. Rewrite the Ramseyer directions in SECTION 2 of the bill to read as follows:

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to Part I to be appropriately designated and to read as follows:

2. Substitute “part” for every reference to “chapter” in the title and contents of the new

section added to Haw. Rev. Stat. Chapter 92 by SECTION 2 of the bill, including at page 1, line 19, and page 2, lines 1 and 3.

3. Insert "part I of" before "chapter 92" at page 7, lines 3 and 8 of the bill.

Finally, because this bill assigns the Office of Information Practices to the Office of the Lieutenant Governor for administrative purposes, and Article V, Section 6 of the State Constitution requires that all offices of the state government be allocated by law to one of the state's twenty departments, if the Legislature continues to believe that functions of the Office should be a part of the Office of the Lieutenant Governor, it should assign those functions, i.e., Sunshine Law oversight and Uniform Information Practices Act administration, to the Lieutenant Governor to avoid a constitutional problem. A section to transfer the Office's functions and staff to the Lieutenant Governor should be added, and the provisions of Sections 3 and 4 of the bill replaced with the following:

SECTION 3. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to Part I to be appropriately designated and to read as follows:

§92- Oversight by lieutenant governor. Complaints of board non-compliance with the provisions of this part may be submitted to the lieutenant governor. The lieutenant governor may forward unresolved complaints concerning board non-compliance with the requirements of this part to the Attorney General or the prosecuting attorney for enforcement, if the lieutenant governor is unable to resolve the complaint with the board in question.

To clearly demarcate the enforcement responsibility which will remain with the Attorney General and county prosecutors, from the Lieutenant Governor's administrative oversight responsibility, "investigating" at page 2, line 2 and page 7, line 5 should be deleted. The Lieutenant Governor's will work administratively to resolve complaints. If they remain unresolved, the Attorney General or county prosecutor for investigation and, if appropriate, enforcement civilly or criminally.

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON S.B. 2983, S.D. 2, H.D. 1

RELATING TO OFFICE OF INFORMATION PRACTICES

BEFORE THE HOUSE COMMITTEE ON FINANCE

DATE: THURSDAY, April 2, 1998

TIME: 7:00 P.M.

PLACE: Conference Room 308
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. 2, H.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.

Additionally, both government and the public would clearly benefit by assuring that government operate without secrecy.

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

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

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Deliver to Room 308 (45 copies)

TESTIMONY OF THE OFFICE OF INFORMATION PRACTICES

ON S.B. 2983, S.D. 2, H.D. 1

RELATING TO OFFICE OF INFORMATION PRACTICES

The Honorable Chairperson and Committee Members:

The Office of Information Practices (“OIP”) requests that your committee make one clarification to the bill that the OIP believes is consistent with the bill’s intent.

Specifically, section 7 of the bill states that “[a]ll rights, powers, functions, and duties of the existing office of information practices are transferred to the office of lieutenant governor.” As currently worded, this provision may be read as transferring the OIP’s “rights, powers, functions and duties” to the Office of the Lieutenant Governor so that the Lieutenant Governor would directly assume and be responsible for exercising the OIP’s “rights, powers, functions, and duties.” This reading of section 7 of the bill appears to eliminate the OIP, which is inconsistent with the bill’s other provisions proposing to assign certain responsibilities to the OIP under chapter 92, HRS. Section 7 of the bill also directly conflicts with section 5 of the bill that places the OIP within the Office of the Lieutenant Governor, “for administrative purposes only.”

The OIP requests that section 7 of the bill be amended to be consistent with the bill's other provisions under which the OIP exercises its "rights, powers, functions, and duties" as a separate office attached to the Office of the Lieutenant Governor for administrative purposes only. Such an amendment would be consistent with the original intent of the Legislature, when it established the UIPA in 1988, that the UIPA be enforced and administered by a separate and distinct specialized office rather than by an executive department as one of its many functions. The OIP's suggested clarification to section 7 is attached for your committee's consideration.

The OIP also recommends the deletion of the second and third paragraphs of section 7 of the bill. These two last paragraphs of section 7 addressed personnel matters that arose when the bill originally proposed to move the OIP to the Legislature. Since the bill currently proposes to keep the OIP in the executive branch of State government, the second and third paragraphs of section 7 are no longer applicable and results in confusion.

Thank you for the opportunity to testify on this bill.

SUGGESTED AMENDMENT TO SECTION 7
OF SENATE BILL NO. 2983, S.D. 2, H.D. 1

SECTION 7. [All] When transferred to the office of the lieutenant governor for administrative purposes only, the office of information practices shall retain all rights, powers, functions, and duties [of the existing office of information practices are transferred to the office of the lieutenant governor] set forth in chapter 92F, Hawaii Revised Statutes; provided that no employee shall suffer any loss of salary, prior service credit, vacation, sick leave, or other employee benefit or privilege, as consequence of the transfer.

[Deletion of second and third paragraphs]

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Kindly distribute this testimony to the House Finance Committee for a hearing at 7:00 pm in State Capitol Room 308 on Thursday, April 2, 1998.

'98 ABR -1 P4:11

Thank you very much!

Prof. Dick Miller

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