

OIP KEY BILLS TESTIMONY

| Bill | Testifier | Position | Phone | Fax |
|---------------|------------------------------------------------------|---------------|----------|----------|
| | | | | |
| SB2983 | OHA, Haunani Apoliona | In Favor | 594-1888 | 594-1865 |
| | Open Government Coalition of Hawaii, Stirling Morita | In Favor | 525-8613 | |
| | Society of Professional Journalists, Christie Wilson | In Favor | 244-3981 | |
| | Hawaii Clean Elections, Toni Worst | In Favor | 531-7448 | 599-5669 |
| | Common Cause Hawaii, Larry Meacham | In Favor | 533-6996 | |
| | League of Women Voters of Hawaii, Jean Aoki | In Favor | 531-7448 | |
| | Stephen Romanelli | In Favor | 988-9277 | |
| | Beverly Ann Deepe Kever | In Favor | 956-3781 | |
| | John Mathews | In Favor | unknown | |
| | Office of the Attorney General | ¹ | | |
| | | | | |
| SB3030 | Office of the Attorney General | In Favor | | |
| | League of Women Voters of Hawaii, Jean Aoki | Against | 531-7448 | |
| | Common Cause Hawaii, Larry Meacham | Against | 533-6996 | |
| | City Council of Honolulu, Andy Mirikitani | Against | 547-7000 | |
| | Stephen Romanelli | Against | 988-9277 | |
| | John Mathews | Against | unknown | |
| | Office of the Ombudsman, Yen L. Lew | Non-committal | 587-0770 | |

¹ Questions necessity of OIP administrating Sunshine

Common Cause Hawaii

P.O. Box 235353 Honolulu, HI 96823-3505 Tel. (808) 533-6996

Citizens Working for Open, Honest, Accountable Government

Testified

Friday, February 13, 1998
8:30 AM, Rm 016, 30 copies

Testimony to the Senate CPI Committee Supporting SB 2983.

First, thank you to the Chair 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. The two sides 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 us, 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.

Recently, 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 instance, a set of proposed rules on opening government records has been sitting 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 we are entitled to see. Therefore, a current proposal to eliminate OIP and disperse its functions to historically unfriendly corporation counsels in the counties would be a serious mistake.

We instead support the solution offered in SB 2983, to put OIP under the Legislature, which has a good record of allowing the Legislative Auditor's office and the State Ethics Commission to be independent and impartial. The Legislative Research Bureau has also been consistently objective in its reports. Under the Legislature, OIP could continue its good work.

I would also like to propose two amendments. The first would be in Section 6 on page 2, to have an commission choose the OIP Director, as in the Elections Office, Ethics Commission, etc. This would further insulate OIP from politics. The second suggestion is to award OIP two positions to cope with the extra load of enforcing Chapter 92, the Sunshine Law (page 7). There are 200 boards and agencies to monitor for compliance. This requires staff.

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.

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

NOT
affair

To: Senators David Ige and Wayne Metcalf, Co-Chairmen of Senate Committee
Friday, February 13, 9 AM.

From: Toni Worst, President

Hearing: Senate Committee on Commerce, Consumer Protection,
and Information Technology to be held on Friday, February 13, 9 AM

RE: **SB 2983.**

TESTIMONY IN SUPPORT OF OFFICE OF INFORMATION PRACTICES

Chairs Ige and Metcalf: Thank you for hearing this bill. I'm sorry I cannot testify in person.

Hawai'i Clean Elections supports preserving the Office of Information Practices (OIP). Since its inception, this office has provided the public an assurance that information which should be publicly available will not be unreasonably and unduly withheld from public view. We believe OIP serves an important watchdog purpose and that without it the public interest could and probably would be imperiled by those in government who would like to escape the bright light of public scrutiny and conduct public business comfortably behind closed doors.

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.

We urge legislators to resist budgetary shortfall claims as a good reason to eliminate it. Supporting the "good government" institutional structures which help preserve the public's declining trust in government will be much more cost-effective in the short and long run.

We also urge you to approve transferring OIP to the legislative branch. We think OIP can function more effectively in a more independent setting, whereas currently they could be publicly perceived as 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, O'ahu • Graduate Students Org. of U.H. • Univ. of Hawaii Student Caucus • Sierra Club-Hawaii Chapter. Supporting Neighborhood Boards (so far): Liliha • Kalihi Valley • Ko'olaupoa • Makiki • Waialae-Kahala • Kailua • Wahiawa

TESTIMONY PRESENTED

TO THE SENATE COMMITTEE ON COMMERCE, CONSUMER PROTECTION
AND INFORMATION TECHNOLOGY BY BEVERLY ANN DEEPE KEEVER
SUPPORTING S.B. 2983 TO STEAMLINE OPEN GOVERNMENT IN HAWAII

9 a.m., Friday, February 13, 1998, State Capitol Room 016

Co-Chairs David Ige and Wayne Metcalf and Committee Members:

My name is Beverly Ann Deepe Kever, a journalism educator who has taken an active role for the past 18 years in facilitating open government in Hawaii. That Hawaii's state and local government records up to now has been so much more open in the past decade is significantly due to the initiative of some members of this Committee.

I support the language of this bill. This bill seems designed to streamline the state and local governments in Hawaii by making them more open, accessible and uniform for the public.

This bill would facilitate making the Office of Information Practices (OIP) what it was truly intended to be in 1988 when the Legislature passed what has been codified as H.R.S. Chapter 92F.

That intention was to create an office that would serve the interests of the public with a minimum of interference from the state executive branch, specifically the Department of Attorney General, which was responsible only for the administration of OIP. But interference has grown to the extent that enhancing OIP's independence by transferring its functions for government records to the Legislative branch now seems desirable.

Likewise, making one central office in the state responsible for administering the "Sunshine Law," as codified in H.R.S. Chapter 92, seems likely to streamline uniform interpretation of the public meetings statute and thus to reduce confusing, contradictory or obfuscating versions from an array of sources at the state and local levels of government.

I also urge this Committee to try to persuade the Legislature to ensure the staffing and budget necessary for OIP to take on these additional duties and to implement its existing statutory responsibilities. During this period of growing economic and employment uncertainties, Hawaii's residents more than ever before need to be able to turn to a reliable, efficient and effective agency ensuring them access to both public meetings and records at both the state and local levels of government.

Without such a user-friendly agency ensuring such access, the public is likely to perceive government as the main preserve of the powerful and the wealthy.

Beverly Ann Deepe Kever



Testified

testimony on S.B. 2983 RELATING TO OFFICE OF INFORMATION PRACTICES
BEFORE THE COMMITTEE ON COMMERCE, CONSUMER PROTECTION AND INFOR-
MATION TECHNOLOGY, Friday, February 13, 1998

Co-Chairs Senators Ige and Metcalf 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 expanded responsibilities of this agency.

Thank you for this opportunity to testify.

Not timely

LATE

TESTIMONY BEFORE THE SENATE COMMITTEE ON
COMMERCE CONSUMER PROTECTION AND INFORMATION TECHNOLOGY

SB 2983 RELATING TO THE OFFICE OF INFORMATION PRACTICES

Friday, February 13, 1998

Members of the Committees, 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!!**

I am aware that there is difficulty with and considerable frustration about the enforcement of the Open Meetings Law. I feel this law is 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



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

late testimony

**TESTIMONY SUPPORTING THE PASSAGE OF SENATE BILL 2983
BEFORE THE COMMITTEE ON COMMERCE CONSUMER PROTECTION
AND INFORMATION TECHNOLOGY**

**RELATING TO THE OFFICE OF INFORMATION PRACTICES
February 13, 1998; 9:00 AM, Conference Room 16**

Aloha kakahiaka Co-Chairmen Ige and Metcalf and members of the Committee on Commerce Consumer Protection and Information Technology. I am Trustee Haunani Apoliona, Chair of the Legislative and Governmental Affairs (LAGA) Committee of the Office of Hawaiian Affairs (OHA) which met on February 5, 1998, to review this measure.

I testify in support of SB 2983 RELATING TO THE OFFICE OF INFORMATION PRACTICES for the following reasons:

1. Presently, there is no single agency that administers 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 called upon to be a counselor, as well as, the prosecutor (enforcer) in these matters at the same time. Placing the administration of Chapter 92 under the Office of Information Practices removes that conflict. However, the Office of Information Practices should not remain administratively attached to the Attorney General in order to avoid similar conflict.

2. Please note that HRS §10-4 states:

HRS §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 and pass it out of committee.

Thank you very much for the opportunity to testify in support of SB 2983.

OPEN GOVERNMENT COALITION OF HAWAII

(Not open)

Testimony submitted to Senate via fax: 586-6659

To: Senate Comm. on Commerce, Consumer Protection, and
Information Technology

Hearing date: Friday, February 13, 1998. 9 AM.

Copies required: 30

Testimony on SB 2983, Relating to the Office of Information Practices, submitted on behalf of the Open Government Coalition of Hawaii.

The Open Government Coalition of Hawaii supports the Office of Information Practices as an important mechanism for assuring and administering public access.

OIP was created by statute following a long and exhaustive investigation and hearing process a decade ago.

It would be a major mistake to let OIP fall victim to short-sighted budget considerations. The public's right to know is as important, or even more important, in bad economic times as in good.

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.

The Coalition is concerned about problems that OIP has experienced in recent years that have reduced its effectiveness.

We therefore support the intent of SB 2983, which would protect the functions of the office by transferring it to the Legislative branch of government, if this would result in a stronger and more effective agency that promotes the goal of openness in government.

Submitted by:
Stirling Morita, for the Open Government Coalition of Hawaii,
a network of organizations concerned about Freedom of
Information policies in our state.

Contact the Coalition at 525-8613.

la's testimony
Testimony

Written Testimony on SB 2983 Relating to Information Practices Office
From Stephen Romanelli
P.O.Box 11672,
Honolulu, Hawaii 96828
988-9277

February 13th, 1998

Senators,

I give my support to SB 2983 with one exception of one subsection which I hope will be removed.

I very much appreciate 92F-42 subsection 11 on page 6 referring to inform the public of their right to access records pertaining to the individual.

92F-42 subsection 13 on the same page has to do with the rules for the collection of fees. I hope it can be removed or substantially altered especially regarding searching and reviewing. I will not repeat my Testimony from SB 3030 which has to do with the exact same thing except to say most public records are compiled for the purpose of being accessed in the future by the public. They are bought and paid for and may be readily available. As impoverishment appears to entangle more citizens of this beautiful state for what reasons should they pay for what is now free? Why should a determination be made for a so called public interest when the public is waiting in line right now to find interesting things about government.

Sincerely,


Stephen Romanelli



Society of Professional Journalists

HAWAII CHAPTER

P.O. Box 3141
Honolulu, Hawaii 96802

Submitted via Fax

Senate Committee on Commerce, Consumer Protection, and
Information Technology. Friday, February 13, 9 AM.

Required copies: 30

Testimony on SB SB2983, Relating to the Office of
Information Practices.

Submitted on behalf of the Society of Professional
Journalists, Hawaii Pro Chapter. Christie Wilson,
President.

The Society of Professional Journalists supports the intent
of SB 2983, which would retain and strengthen the Office of
Information Practices by making it a legislative agency, and
giving it additional responsibilities for handling complaints
regarding open meeting provisions of Chapter 92.

SPJ believes public has benefited from having a central
agency that sets uniform standards for disclosure of
government information, and serves as an alternative to
costly litigation in situations where there are disputes
about disclosure.

If this bill will result in a secure and strengthened OIP,
and provide the public a more effective agency to guide
government officials in the disclosure of public information,
we would enthusiastically support it.

Contact:

Christie Wilson
President, SPJ Hawaii Professional Chapter
and
City Editor, The Maui News
(808) 244-3981
email: editor@maui.net

TESTIMONY OF THE STATE ATTORNEY GENERAL

LATE

ON S.B. NO. 2983

RELATING TO THE OFFICE OF INFORMATION PRACTICES

**BEFORE THE SENATE COMMITTEES ON COMMERCE CONSUMER
PROTECTION AND INFORMATION TECHNOLOGY, AND ON JUDICIARY**

DATE: Friday, February 13, 1998

TIME: 8:30 a.m.

PLACE: Conference Room 016
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 30 copies to Committee Clerk, Room 215, State Capitol

TESTIMONY OF THE STATE ATTORNEY GENERAL

ON S.B. NO. 2983

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 may not be necessary.

The purpose of this bill is to expand the responsibilities of the Office of Information Practices to include responsibility for administering the open meeting or Sunshine law.

Initially, it is important to understand that the Sunshine Law while contained in Haw. Rev. Stat. chapter 92, consists only of the provisions in part I of chapter 92. It is also critical to recognize that the Sunshine Law applies to state and county boards and commissions, including the county councils, but does not include every state or county agency. Thus, meetings of staff from state and departments or offices headed by a single executive do not come within the ambit of the Sunshine Law. The language of the bill suggests that this distinction may not be appreciated. To avoid confusion, the Sunshine Law's term "board" should replace the references to "agency" when the Sunshine Law is being discussed in this 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, 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.

We suggest that the bill's complaint resolution process is not necessary. 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, attesting to an unappreciated effectiveness in the Department of Attorney General's oversight of Sunshine Law compliance.

At the very least, however, 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 role should 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.

Thank you for allowing us to bring these concerns to your attention.