

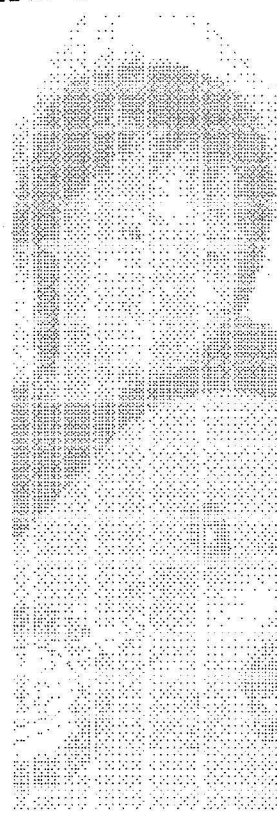
# LATE TESTIMONY

From: Linda Elento, Member of The Hawaii Down Syndrome Congress

To: COMMITTEE ON JUDICIARY  
Rep. Tommy Waters, Chair  
Rep. Blake Oshiro, Vice Chair

Re: JUD February 12, 2008, 2:05pm

**HB2686** In Support  
Relating to Administrative Procedures.



Thank you for the opportunity to present testimony in support of HB2686.

As a parent of a child with special needs, I have learned that being a legal expert is the only way to interpret federal law in regards to giving my child what the federal law mandates of our State: appropriate early intervention services and special education services so that he too may succeed.

Unless otherwise specified in State law, **please consider including before 91-3 a section that would require any agency proposing rules to require a legal review of the applicable federal laws at the onset of the proposed rule making process (such as by the State Attorney General). A legal consultation after the proposed rules are written will not uncover various interpretations, allowances and options that the proposed rules may be based on.** Let me give you an example.

*Individuals with Disabilities Education Improvement Act of 2004* provides for specific requirements for public hearing before policy changes are made. IDEA also mandates certain activities **and** authorizes activities in order for the Department of Education to receive federal grant money. That means choices are available for the State in how to spend the grant money, but also how to spend State money in regards to services for children with disabilities.

Chapter 56 is currently being re-written by the DOE to comply with a federal law signed into law over three years ago, to be Chapter 60. The legal interpretations and implications must be analyzed while rules are being re-written, not just consulted to ensure the new proposed rules comply with the federal laws. Although the proposed rules may comply with federal law, these options made available to States may never be discovered or discussed by the DOE, or elected group to propose the rules, or the Board of Education who recently voted to approve a final proposed chapter 60 rules for public hearing. Also note, some Rules such as the limits of number of days a parent can file for due process to request a reimbursement cannot be changed because HRS states 90 days, although the Federal law allows for up to two years. **RE: HB2186.**

Please consider the authority of the Board of Education and how BOE Policies fit into the DOE's Rules process. The BOE is the Policy Maker for the DOE. Please consider **BOE Policies being replaced altogether with the Administrative Rules.** It also might be sensible to remove the BOE policies that are duplicative of the HAR, ensuring changes are subject to chapter 91.



# HAWAII CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TDD: (808) 586-8692

February 12, 2008  
Rm. 325, 2:05 p.m.

To: The Honorable Tommy Waters, Chair, and Members of the House Committee on Judiciary

From: Sara Banks, Acting Chair, and Commissioners of the Hawai'i Civil Rights Commission

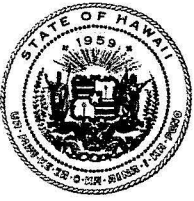
Re: H.B. No. 2686

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

The HCRC opposes H.B. No. 2686 which imposes significant mandatory affirmative requirements upon agencies engaged in Chapter 91 rulemaking.

The HCRC recognizes that the scope of agency rulemaking cannot exceed its statutory authority, and that an important purpose of the HRS Chapter 91 rulemaking process is to solicit and consider public input, through Chapter 91 notice and public hearing requirements. However, the proposed amendments to HRS §91-3, found in Section 2 of the bill, would: 1. Require direct solicitation of comments from "interested persons," with explanation of the reasons why each comment was not the basis for any change (modification, development and evaluation of alternatives, supplementation or improvement, or corrections) in the proposed rule, and does not warrant further agency response, pursuant to the proposed §91-3(4) and (7); and 2. Impose an evidentiary burden of proof on the rulemaking authority, which must be met prior to adoption of proposed rules, pursuant to the proposed §91-3(8).

These proposed amendments to the Chapter 91 rulemaking process will be unduly burdensome, making it difficult for agencies with expertise in the areas under their jurisdiction to engage in rulemaking pursuant to their statutory authority, and expose legitimate rulemaking to numerous legal challenges. For these reasons, the HCRC opposes H.B. No. 2686.



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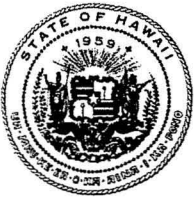
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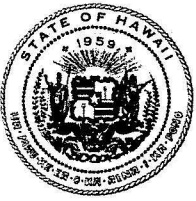
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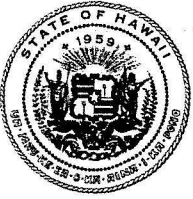
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