

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Government Operations

From: Paul T. Tsukiyama, Director

Date: Monday, March 2, 2009, 10:00 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 1646
Relating to Freedom of Information

Thank you for the opportunity to testify on S.B. No. 1646. The Office of Information Practices ("OIP") supports the intent of this bill in part and opposes this bill in part as explained below.

First, OIP strongly supports the intent to provide OIP with the ability to enforce part I of chapter 92, HRS (the "Sunshine Law") as part of its function of administering the Sunshine Law. However, OIP believes that attempting to provide enforcement powers by adding the term "and enforce" to section 92-1.5, HRS, at page 2 line 3, is ambiguous in that it does not specifically set forth which provisions OIP is to enforce and how it may do so. It creates further ambiguity because enforcement is separately addressed in section 92-12, which specifically states at subsection (a): "The attorney general and the prosecuting attorney shall enforce this part."

At a minimum, OIP believes that its power to enforce should be included under section 92-12 and that the extent of its power to civilly enforce compliance with the statute's open meeting requirements should be

expressly stated with the attendant power to adopt administrative rules that may be necessary. Further, OIP believes that section 92-12(a) should be amended to clarify that the attorney general and the prosecuting attorney shall enforce the criminal penalties provision of the Sunshine Law, section 92-13, if that is what the Legislature intends.

Second, OIP opposes section 3 of the bill which would require OIP to determine whether to waive any fee assessed to access a government record under the Uniform Information Practices Act (Modified), chapter 92F, HRS (“UIPA”), if it determines that the public’s interest is served by a waiver. OIP notes that the proposed amendment is placed within section 92-21, HRS, which currently solely addresses costs for physical copies of records. OIP notes that under its adopted administrative rules, fees may be charged by an agency for the search, review and segregation of records and all other lawful costs, which would include but not be limited to the copying costs under section 92-21. It is unclear whether the intent of this bill is to solely address the cost of reproduction under section 92-21 or is meant to address all fees that may be charged by an agency in responding to a UIPA request.

Assuming the bill intends to address all costs, OIP notes that its administrative rules were adopted in compliance with the Legislature’s direction to OIP at section 92F-42(13), HRS, to “set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of fees when the public interest would be served[.]” In accordance with that provision and after public hearings held, OIP implemented section 2-71-32, Hawaii Administrative Rules, which requires the agency maintaining the record, not OIP, to determine whether a waiver of fees would be in the public interest at

the time it is responding to the request and calculating its applicable fees in accordance with the standard set out in the rule. OIP developed this standard after considering the UIPA's intent, looking to the federal freedom of information law and federal policy guidance, balancing the competing interests of the requesters and the taxpayers, and taking into consideration the objections and concerns of those who testified during the public hearings on the rule. OIP purposefully did not address in the waiver provision lawful fees that may be charged in accordance with statutes outside of the UIPA.

Given the foregoing, OIP believes that its administrative rules already provide an efficient process and a carefully considered standard for the granting of public interest waivers. Moreover, Requesters may complain to OIP about an agency's determination regarding the waiver. Because OIP receives very few valid complaints regarding waivers, OIP does not believe there is sufficient reason to alter the current standard and procedure adopted by administrative rule process. Additionally, OIP does not believe that transferring the burden of granting waivers on OIP is an efficient use of resources, given OIP's limited resources to perform its core functions of providing informal legal guidance, training, advisory opinions, investigations and appeal determinations under the Sunshine Law and the UIPA. Accordingly, OIP requests that section 3 of the bill be deleted in its entirety.

Thank you for the opportunity to testify.



P.O. Box 22703 • Honolulu, Hawaii 96823 • (808) 286-2285 • info@commoncausehawaii.org

Senate JGO Committee
Monday 3/2/09 at 10:00 AM in Room 016
Senate Bill 1646

TESTIMONY

Nikki Love, spokesperson, Common Cause Hawaii

Chair Taniguchi, Vice Chair Takamine, and Committee Members,

I am testifying in **support of SB1646** relating to freedom of information.

This bill clarifies that the Office of Information Practices has the authority to enforce the sunshine law, and also grants OIP the authority to waive fees to access government records when it is in the public interest.

These changes pave the way to better implementation of the sunshine law, promising citizens better access to government records and ability to participate fully in public meetings. These aspects of open government are critical to a healthy and vibrant democracy.

We urge you to pass this measure and improve the sunshine law in Hawaii.

Mahalo.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON S.B. 1646 RELATING TO FREEDOM OF INFORMATION

Committee on Judiciary and Government Operations
Monday, March 2, 2009
10:00 a.m.
Conference Room 016

Testifying: Jean Aoki, LWV Legislative Liaison

Chair Taniguchi, Vice Chair Takamine, members of JGO,

The League of Women Voters strongly supports SB 1646 which sensibly gives the Office of Information practices not only administrative responsibilities but enforcement powers over the Sunshine Law. Going through the Attorney General's Office or even to the courts for relief is too daunting for most citizens. This bill still does not take away the right from anyone to appeal to the courts if not satisfied by the decision of OIP.

A reminder to agencies that copies of records should be provided with reasonable charges for the cost of searching, redacting if necessary, and copying is most welcome. The fees should not be used to deter people from seeking information they want or need.

This bill provides that fees be waived if it determines that the public's interest is served by a waiver. There is the provision that the waivers must not unduly disrupt operations of the agency. Together, these provisions may both respect the major responsibilities of the agencies while easing the access to information by the public.

At the federal level, many good-government groups together urged our new president and our incoming congress to act quickly on a number of key government openness issues. They asked the president to for bold leadership in encouraging transparency. Among many many other points, they called for a policy that urges agencies to proactively disclose information where possible rather than waiting for Freedom of Information Act requests. We heartily endorse all that.

Thank you for hearing SB1646. We urge its passage. Thank you.



AMERICANS FOR DEMOCRATIC ACTION

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February 28, 2009

TO: Chair Brian Taniguchi, Dwight Takamine Vice-Chair and
Members of the Senate Judiciary and Government Operations Committee

FROM: Americans for Democratic Action/Hawaii
Barbara Polk, Legislative Committee Chair

RE: SUPPORT FOR SB1646 Relating to Freedom of Information

Chair Taniguchi, Vice-Chair Takamine and members of the Judiciary Committee. Thank you for the opportunity to testify on this bill.

Americans for Democratic Action/Hawaii strongly supports SB 1646. This bill increases the access of individuals to information and requires compliance with the law. Without a means of enforcement, the law is meaningless

Thank you for this opportunity to testify.

From: Joel Fischer [jfisher@hawaii.edu]
Sent: Friday, February 27, 2009 1:14 PM
To: JGO Testimony
Subject: SB1646;JGO;3/2/09;10AM;Rm016

SB1646, Relating to Freedom of Information
JGO; Chair, Sen Taniguchi

PLEASE PASS THIS BILL!

The OIP absolutely must have the ability to enforce Chapter 92 to enhance the transparency of government documents. We have just (barely) survived 8 years of government obstructionism. This bill is in the spirit of the changes to allow greater freedom of information in Washington DC.

With this act in place, our state will almost immediately move to far greater transparency.

Thank you very much for supporting this bill.

Aloha, joel

Dr. Joel Fischer, ACSW
Professor
University of Hawai'i, School of Social Work
Henke Hall
Honolulu, HI 96822

"It is reasonable that everyone who asks justice should DO justice."
Thomas Jefferson

"There comes a time when one must take a position that is neither safe, nor politic, nor popular, but one must take it because one's conscience tells one that it is right."
Dr. Martin Luther King, Jr.

"Never, never, never quit."
Winston Churchill