

MAR 10 2010

SENATE CONCURRENT RESOLUTION

REQUESTING THE JUDICIARY TO REPORT ON THE USE AND EXTENT OF
JUDICIARY BOARDS AND ASSOCIATED PUBLIC PARTICIPATION.

1 WHEREAS, the Sunshine Law, chapter 92, Hawaii Revised
2 Statutes, was first passed in 1975 as H.B. No. 126 and Senate
3 Stand. Com. Rep. No. 878, which addresses that bill states, in
4 relevant part:

5
6 "(6) The judicial branch is specifically excluded
7 from the operation of the bill in deference
8 to the doctrine of "separation of powers."
9

10 (7) Quasi-judicial boards in exercise of
11 adjudicatory functions are also specifically
12 exempted because closed deliberation is
13 traditional in quasi-judicial proceedings.";
14 and
15

16 WHEREAS, the House Stand. Com. Rep. No. 485 (1975 House
17 Journal) and Conf. Com. Rep. No. 34 (1975 House Journal) reports
18 do not contain (with respect to H.B. No. 126) any similar
19 language regarding "separation of powers"; and
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21 WHEREAS, the Senate Stand. Com. Rep. No. 878 notes that
22 boards in the exercise of adjudicatory functions have
23 traditionally closed deliberations; and
24

25 WHEREAS, the judicial branch has both adjudicative and
26 non-adjudicative (administrative) functions; and
27

28 WHEREAS, as described in the declaration of policy and
29 intent of the Sunshine Law, "it is the policy of this State that
30 the formation and conduct of public policy - the discussions,
31 deliberations, decisions, and action of governmental agencies -
32 shall be conducted as openly as possible."; and
33



1 WHEREAS, the Uniform Information Practices Act (UIPA or
2 Open Records Law), chapter 92F, Hawaii Revised Statutes, defines
3 "agency" to include the judicial branch but not "the
4 non-administrative functions of the courts of this State"; and
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6 WHEREAS, Senate Stand. Com. Rep. No. 2580 for H.B.
7 No. 2002, Regular Session of 1988, addressed the inclusion of
8 the Judiciary in the definition of "agency" by stating, "as
9 under current law, the Legislature and Judiciary are also
10 included", which Conf. Com. Rep. No. 112-88 further explained,
11 in relevant part:
12

13 "3. Definitions. The bill includes the crucial
14 definitions: the all-inclusive "government
15 records" definition, the "personal records"
16 definition taken from the current Chapter
17 92E, HRS, and a definition of "agency" which
18 includes both the Legislature and the
19 Judiciary. The definition of "agency"
20 excludes the "non-administrative records of
21 the Judiciary." The intent of this language
22 is to preserve the current practice of
23 granting broad access to the records and
24 court proceedings. The records of the
25 Judiciary which will be affected by this
26 bill are the administrative records."; and
27

28 WHEREAS, the UIPA Open Records Law retains this distinction
29 between adjudicatory and administrative functions of the
30 Judiciary, requires that the administrative records of the
31 Judiciary be subject to the UIPA Open Records law, does not
32 infringe upon Judiciary's inherent adjudicatory powers, and has
33 not been found to be unconstitutional; and
34

35 WHEREAS, the Legislative Reference Bureau has studied other
36 states' application of the Sunshine Law (or equivalents) and has
37 reported that:
38

39 "Research indicates that five states explicitly
40 extend applicability of their state sunshine law or
41 open meeting requirements to courts or judicial
42 entities: Connecticut, Maryland, Missouri, Montana,
43 and Nebraska. Although expressed somewhat
44 differently by each state, the open meeting



1 applicability is generally limited in four of these
2 states to the administrative functions or the
3 exercise of rulemaking authority of the court.
4 Montana appears to apply its open meeting law only
5 to the state supreme court, but apparently without
6 limitation to administrative or rulemaking
7 functions."; and
8

9 WHEREAS, in the 2009 Regular Session, a bill was filed
10 which proposed to exclude only the adjudicatory functions of the
11 judicial branch from the Sunshine Law; and
12

13 WHEREAS, S.B. No. 2029 and H.B. No. 1935, Regular Session
14 of 2010, propose the following amendments to the Sunshine Law:
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- 16 (1) Amends the definition of "board" in section 92-2,
17 Hawaii Revised Statutes, to include the Judiciary and
18 any entity created by court order;
19
- 20 (2) Amends section 92-6, Hawaii Revised Statutes, to
21 clarify that the adjudicatory functions of the
22 judicial branch are exempt from chapter 92 meeting
23 requirements; and
24
- 25 (3) Ensures that Judicial branch boards are not subject to
26 Executive branch oversight; and
27

28 WHEREAS, the extent of the use of boards by the judicial
29 branch as described under section 92-2, Hawaii Revised Statutes,
30 is not clearly known; and
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32 WHEREAS, the effect of the above proposed amendments may
33 require further understanding of the need for resources or other
34 considerations; now, therefore,
35

36 BE IT RESOLVED by the Senate of the Twenty-fifth
37 Legislature of the State of Hawaii, Regular Session of 2010, the
38 House of Representatives concurring, that the Judiciary is
39 requested to provide the Legislature with a report detailing the
40 findings, recommendations, and resource requirements of
41 implementing the above described Sunshine Law amendments,
42 including specific information regarding:
43



- 1 (1) What judicial branch boards, as defined in the above
2 described bills, exist, existed, or were established
3 since January 1, 2001;
4
- 5 (2) How many meetings did each of the boards listed in
6 paragraph (1) hold;
7
- 8 (3) For each board listed in paragraph (1), provide
9 information on:
10
- 11 (A) The level of public participation (i.e. by a
12 non-judiciary, non-lawyer layperson) in meetings
13 of the board, including by means of membership on
14 the board (if any);
15
- 16 (B) Whether the board gives the public notice and an
17 agenda for meetings; and
18
- 19 (C) Whether and how the board affords the public an
20 opportunity to submit data or oral testimony to
21 the board at its meetings;
22
- 23 (4) If the public is not noticed or allowed to participate
24 in the board meetings, for each such board, list and
25 explain who participates in the meetings and the
26 reasons for excluding the public; and
27
- 28 (5) For each board listed in paragraph (1), provide the
29 reports created by the board; and
30

31 BE IT FURTHER RESOLVED that the Judiciary is requested to
32 report its findings and recommendations to the Legislature no
33 later than twenty days prior to the convening of the Regular
34 Session of 2011; and
35

36 BE IT FURTHER RESOLVED that certified copies of this
37 Concurrent Resolution be transmitted to the President of the
38 Senate, Speaker of the House of Representatives, Chair of the
39 Senate Committee on Human Services, Chair of the Senate
40 Committee on Judiciary and Government Operations, Chair of the
41



1 House Committee on Human Services, Chair of the House Committee
2 on Judiciary, Chief Justice of the Hawaii Supreme Court, and the
3 Administrative Director of the Courts.
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OFFERED BY: *Suzanne Chun Oakland*

