

MAR 10 2010

SENATE 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
20

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

34 WHEREAS, the Uniform Information Practices Act (UIPA or
35 Open Records Law), chapter 92F, Hawaii Revised Statutes, defines



1 "agency" to include the judicial branch but not "the
2 non-administrative functions of the courts of this State"; and
3

4 WHEREAS, Senate Stand. Com. Rep. No. 2580 for H.B.
5 No. 2002, Regular Session of 1988, addressed the inclusion of
6 the Judiciary in the definition of "agency" by stating, "as
7 under current law, the Legislature and Judiciary are also
8 included", which Conf. Com. Rep. No. 112-88 further explained,
9 in relevant part:

10
11 "3. Definitions. The bill includes the crucial
12 definitions: the all-inclusive "government
13 records" definition, the "personal records"
14 definition taken from the current Chapter
15 92E, HRS, and a definition of "agency" which
16 includes both the Legislature and the
17 Judiciary. The definition of "agency"
18 excludes the "non-administrative records of
19 the Judiciary." The intent of this language
20 is to preserve the current practice of
21 granting broad access to the records and
22 court proceedings. The records of the
23 Judiciary which will be affected by this
24 bill are the administrative records."; and
25

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

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

36
37 "Research indicates that five states explicitly
38 extend applicability of their state sunshine law or
39 open meeting requirements to courts or judicial
40 entities: Connecticut, Maryland, Missouri, Montana,
41 and Nebraska. Although expressed somewhat
42 differently by each state, the open meeting
43 applicability is generally limited in four of these
44 states to the administrative functions or the



1 exercise of rulemaking authority of the court.
2 Montana appears to apply its open meeting law only
3 to the state supreme court, but apparently without
4 limitation to administrative or rulemaking
5 functions."; and
6

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

11 WHEREAS, S.B. No. 2029 and H.B. No. 1935, Regular Session
12 of 2010, propose the following amendments to the Sunshine Law:
13

- 14 (1) Amends the definition of "board" in section 92-2,
15 Hawaii Revised Statutes, to include the Judiciary and
16 any entity created by court order;
17
18 (2) Amends section 92-6, Hawaii Revised Statutes, to
19 clarify that the adjudicatory functions of the
20 judicial branch are exempt from chapter 92 meeting
21 requirements; and
22
23 (3) Ensures that Judicial branch boards are not subject to
24 Executive branch oversight; and
25

26 WHEREAS, the extent of the use of boards by the judicial
27 branch as described under section 92-2, Hawaii Revised Statutes,
28 is not clearly known; and
29

30 WHEREAS, the effect of the above proposed amendments may
31 require further understanding of the need for resources or other
32 considerations; now, therefore,
33

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

- 41 (1) What judicial branch boards, as defined in the above
42 described bills, exist, existed, or were established
43 since January 1, 2001;
44



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

27 BE IT FURTHER RESOLVED that the Judiciary is requested to
28 report its findings and recommendations to the Legislature no
29 later than twenty days prior to the convening of the Regular
30 Session of 2011; and
31

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



S.R. NO. 113

1 Judiciary, Chief Justice of the Hawaii Supreme Court, and the
2 Administrative Director of the Courts.

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OFFERED BY: *Freeman Okun Aalana*

