

Honolulu, Hawaii

FEB 19 2009

RE: S.B. No. 1103
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Judiciary and Government Operations, to which was referred S.B. No. 1103 entitled:

"A BILL FOR AN ACT RELATING TO EFFECTIVE LEGISLATION,"

begs leave to report as follows:

The purpose of this measure is to establish a system to conduct a systematic review of existing Hawaii laws to determine which of these laws should be repealed or amended.

Specifically, this measure creates a commission on effective legislation under the Ombudsman, to be chaired by the Ombudsman. The measure stipulates the Director of the Legislative Reference Bureau as the vice-chairperson and designates not less than five department heads representing the state executive departments, the Chief Justice, and the President of the University of Hawaii as members; provided that the Governor is required to appoint the department heads, upon the recommendation of the Senate President and the Speaker of the House of Representatives, and may add or substitute department heads not more frequently than every two years.

In addition, this measure:

- (1) Requires the commission to:
 - (A) Review all existing laws;
 - (B) Solicit public comment to facilitate its review;



- (2) Requires the Ombudsman to:
 - (A) Provide notification and convene a commission meeting not less than every two years prior to the convening of the Regular Session of the first year of each legislative biennium;
 - (B) Submit a biennial report to the Legislature no later than twenty days prior to the convening of the Regular Session of the first year of each legislative biennium; and
 - (C) Include in its report on any determination by an executive department that an existing law is ineffective.

Testimony in support of this measure was submitted by two organizations. Three state agencies submitted comments.

Your Committee finds that the concept of this measure is meritorious, although, as written, may be difficult to implement operationally. It is clear that:

- (1) Hawaii's legislation should be effective;
- (2) This effectiveness can and should be maintained and promoted by the elimination of obsolete, redundant, conflicting, or ambiguous provisions; and
- (3) Some sort of mechanism should be established by which Hawaii legislation may be periodically reviewed.

Your Committee is concerned however, that the measure's directive to employ "effectiveness" as a criterion for review will create an incorrect perception that the commission is intended to function as a kind of mini Legislature--which is not the case. For the commission to determine that the State's Penal Code is "ineffective" and thus subject to repeal or a specific amendment because crime continues to occur would grossly exceed the commission's intended purview, yet such action could fall within the commission's stated function, as expressed in this measure. Considerations and determinations of this kind are inextricably intertwined with larger public policy issues. Whether any specific law is deemed "effective" or not requires policy



determinations that should not be delegated to a body other than the Legislature.

Your Committee finds that an appropriate role for this commission would be to focus its review of Hawaii's laws to determine whether they are obsolete, redundant, conflicting, or ambiguous and thus in need of amendment or repeal. This function should be an ongoing effort to ensure that Hawaii's laws remain rational, clear, coherent, and sensible. Your Committee also finds it important to clarify that the scope of the commission's responsibility should be one of reviewing the Hawaii Revised Statutes. While this may seem obvious, your Committee believes that this matter should be clarified at the outset because a simple reference to the "law" of the State could also include all of the common law. Your Committee finds that an ongoing effort to review the Hawaii Revised Statutes will be a more than substantial undertaking for this commission.

Further, to ensure that the most efficient use is made of the staffs of the Office of the Ombudsman and the Legislative Reference Bureau, your Committee finds that the commission should be directed to take an approach that is more narrowly tailored to achieve the Legislature's objectives. Your Committee finds that the efforts of the commission can be used more efficiently and productively by responding to matters that are brought to its attention for review by legislators, state and county agencies, and the general public. Rather than placing an emphasis on an effort to review all fourteen volumes of the Hawaii Revised Statutes within a specific period, your Committee believes that priority should be given to matters raised by agencies and individuals who work with the statutes and encounter the problems of obsolescence, duplication, ambiguity, and "disconnects" on a regular basis. By following this approach, your Committee finds that it may be possible to redirect many of the "housekeeping" measures that are introduced to the Legislature each year to consideration by the commission and consolidation into its reports.

Finally, your Committee finds that the commission needs to have representation from the counties.

After careful consideration, and in light of the foregoing, your Committee has amended this measure by:



- (1) Requiring the Senate President and the Speaker of the House of Representatives, rather than the Governor, to each appoint three members of the commission who shall be state department heads;
- (2) Allowing the Senate President and the Speaker of the House of Representatives to jointly appoint additional department heads or substitute department heads of different executive departments not more frequently than every two years;
- (3) Removing the Chief Justice as a member of the commission. In testimony submitted to your Committee, the Judiciary expressed concerns about being placed into conflicts of interest if the Judiciary has participated in the commission's deliberations on modifying statutes that become the subject of litigation before the state courts;
- (4) Adding four representatives of the counties, one each to be appointed by the mayor of each of the respective counties;
- (5) Clarifying that the commission meets and operates on an ongoing basis, rather than convening once every two years;
- (6) Clarifying that the purpose of the commission is to promote and maintain the effectiveness of legislation codified within the Hawaii Revised Statutes and to ensure the statutes remain rational, clear, coherent, and sensible by reviewing existing statutes on an ongoing basis to determine whether a statute is obsolete, redundant, conflicting, ambiguous, and thereby in need of repeal or amendment;
- (7) Providing that the commission shall adopt a focused approach by reviewing problems concerning existing laws within the Hawaii Revised Statutes that are brought to its attention by legislators, state and county agencies, and members of the public;
- (8) Requiring the commission to make a determination in each case and incorporate its findings and recommendations in



reports to the Legislature not less than once every other year;

- (9) Making the effective date July 1, 2070, to facilitate further discussion; and
- (10) Making technical nonsubstantive amendments for the purposes of clarity and consistency.

Copies of written testimony are available for review on the Legislature's website.

As affirmed by the record of votes of the members of your Committee on Judiciary and Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 1103, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 1103, S.D. 1, and be referred to the Committee on Ways and Means.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Government Operations,



BRIAN T. TANIGUCHI, Chair



The Senate
Twenty-Fifth Legislature
State of Hawaii

Record of Votes
Committee on Judiciary and Government Operations
JGO

Bill / Resolution No.:*	Committee Referral:	Date:
SB 1103	JGO, WAM	2/12/09

The committee is reconsidering its previous decision on this measure.
If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312
 Pass, with amendments 2311
 Hold 2310
 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
TANIGUCHI, Brian T. (C)	✓			
TAKAMINE, Dwight Y. (VC)	✓			
BUNDA, Robert		✓		
GABBARD, Mike	✓			
NISHIHARA, Clarence K.	✓			
SLOM, Sam		✓		
TOTAL	4	2	0	0

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature:


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*Only one measure per Record of Votes