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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON H.B. NO. 2101, A BILL FOR AN ACT
RELATING TO CUSTOMER SERVICE**

**HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT
FEBRUARY 5, 2010**

Chair Tokioka and Members of the Committee:

Thank you for the opportunity to present comments on H.B. No. 2101. The purpose of this bill is to require the Ombudsman to develop and implement a pilot program using informed customers to investigate customer service at state agencies.

As you know, the function of the Ombudsman is to investigate complaints from the public about administrative acts of executive branch agencies. We determine whether a complaint is substantiated or not substantiated by measuring the agency's action against the standards of the statutory law; the decisional law of the courts; administrative rules and regulations; practices and procedures of the agency involved; and the principles of administrative fairness.

If we determine that an agency has acted in a mistaken, unfair, arbitrary, or illegal manner, we may make recommendations for corrective action. However, the Ombudsman has no power to enforce these recommendations or to compel an agency to take any corrective action, and instead, must rely on reasoned persuasion. Therefore, the findings, conclusions, and recommendations we make must be fair and reasonable, grounded in fact, administratively sound, and in accordance with law. Only when these conditions are met can the Ombudsman's recommendations be effective and persuasive. The stature of the office thus depends on the objectivity and high professional standards of our work. Therefore, to prevent any negative impact on the credibility of the office, the proposed pilot program will need to be structured to objectively evaluate the quality and level of customer service delivered by the various state agencies.

The manner in which state employees deliver services to customers can be considered to fall within the definition of "administrative act" and therefore would be within the jurisdiction of the

Ombudsman. In fact, the complaints against state agencies that we investigate are, in one way or another, complaints about how state services are delivered by those agencies. The difference is that the investigations are conducted primarily in response to specific complaints from individuals rather than as part of a system-wide, audit-like program.

In order to effectively carry out the purposes of this bill without adversely impacting our investigations of matters apart from the pilot program, sufficient funding will need to be appropriated to the office to allow us to contract a private firm to carry out the pilot program, including selecting and training persons to act as the informed customers who will be observing the various agencies. At this time, I do not know the amount of funding that would be required for such a contract. If funding is not provided, I do not know how the office will be able to secure the informed customers needed to observe and experience agency operations. Also, if funding is not provided to allow the contracting of an outside consultant, then existing staff will be required to develop the pilot program's necessary forms, evaluation criteria, standards against which to measuring agency actions, etc., and train the informed customers, which will require the office to decline to investigate a significant number of complaints that would otherwise be investigated.

Regardless of whether the pilot program is executed by Ombudsman staff or a contracted consultant, certain factors may adversely impact the effective execution of the proposed pilot project. These factors include, but are not limited to:

1. The passage of this bill will alert the agencies that they will be the subject of an investigation of its delivery of services to the public, which may cause a change in the delivery of services only during the period of the investigation.
2. If the lack of adequate staffing is one of the reasons a targeted agency does not deliver services in the manner or at the level desired, then conducting the investigation itself could exacerbate the problem if the informed customers engage the limited staff resources that would otherwise be available for members of the public who are applicants or recipients of that agency's services.
3. The requirement for multiple visits to an agency is important as single snapshots of an agency's interactions with the informed customers, versus multiple observations over a period of time by different informed customers, can lead to flawed findings and recommendations that lack adequate bases. The use of telephone calls and website

visits will probably not be as effective as physical visits in testing an agency's response to youth, seniors, or persons with disabilities, since age and many disabilities are not discernible over the telephone or Internet, but the use of physical visits will increase the cost of the pilot program;

4. In order to test the delivery of services by certain agencies, the informed customers will have to submit applications for services or benefits that require a declaration, by their signature, attesting to the truthfulness of the information they have provided on the application for the services or benefits. Therefore, to evaluate the delivery of services, individuals who actually qualify for the services or benefits will need to be found to act as the informed customer. Otherwise, evaluation of those agencies would be limited to how they greet and interact with the informed customer at the initial point of contact; and
5. It may be difficult to find impartial informed customers to investigate the delivery of services by certain agencies. For example, it may be difficult to pose as a tenant of an HPHA facility since the HPHA staff know or can easily check who the tenants of an HPHA facility are. Using existing tenants, however, may introduce bias to the investigation and negatively impact the credibility of any findings or recommendations.

The implementation of the proposed pilot program will, because of its very nature, impact the ability of the agencies being observed to timely serve individuals who are legitimately seeking services from the agency because of the added workload the informed customers will add to those agencies, many of which are already struggling to provide the same or greater level of service with reduced budgets and staffing. I raise this point because based on our experience over the past year investigating complaints about inefficient or improper actions by agencies, the large majority of those complaints were lodged against agencies that were affected by staff reductions, coupled with increased demand for services. If the solution to the problem is to provide these agencies with more funding and staff, and if there are no funds available to provide the agencies due to the poor economy, then I am concerned that while this proposed pilot program intends to improve the delivery of services, what it may actually do, instead, is further erode the delivery of those services.

Thank you, again, for the opportunity to provide comments on H.B. No. 2101. If you have any questions regarding my comments, I would be happy to answer them.



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FAX TRANSMITTAL

DATE: February 4, 2010

TO: Honorable James Kunane Tokioka, Chair
House Committee on Legislative Management

FAX No: 586-6341

FROM: Carol Nitta (587-0751)

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Comments:

Testifier's name: Robin K. Matsunaga
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