



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Judiciary and Government Operations

Senator Brian T. Taniguchi, Chair
Senator Dwight Y. Takamine, Vice Chair
Thursday, February 12, 2009, 9:30 a.m.
State Capitol, Conference Room 016

by
Thomas R. Keller
Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1103, Relating to Effective Legislation.

Purpose: To establish the Commission On Effective Legislation

Judiciary's Position:

The Judiciary offers the following comments on this measure.

This bill establishes the Commission on Effective Legislation, whose purposes are to review all existing state laws and to recommend the repeal or amendment of laws that are obsolete, redundant, conflicting, or ineffective. The commission's membership includes the Judiciary.

The Judiciary submits that its participation on the commission presents the potential for a conflict of interest. If a legal challenge is raised to the legislation that results from the commission's recommendations, the courts would be placed in the position of having to rule on the legality of legislation, which the Judiciary, as part of the commission, approved or recommended. We, therefore, request that, if this measure is passed, it be amended to delete the Judiciary as a member of the commission.

Thank you for the opportunity to testify on Senate Bill. No. 1103.

Ken H. Takayama
Director

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LEGISLATIVE REFERENCE BUREAU
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Written Testimony

SB1103

RELATING TO EFFECTIVE LEGISLATION

Testimony by the Legislative Reference Bureau
Ken H. Takayama, Director

Presented to the Senate Committee on Judiciary and Government Operations

Thursday, February 12, 2009, 9:30 a.m.
Conference Room 016

Chair Brian T. Taniguchi and Members of the Committee:

I am Ken Takayama, Director of the Legislative Reference Bureau. Thank you very much for the opportunity to testify on H.B. No. 1103. The Bureau takes **no position** either for or against this measure, but offers the following **comments**.

1. This bill directs the Ombudsman to chair a commission on effective legislation. The bill also requires the Director of the Legislative Reference Bureau to serve as the vice-chair.
2. The bill appears to require the commission to be convened biennially to review "all existing laws to determine whether a law is obsolete, redundant, conflicting, or ineffective".
3. This is an immense undertaking--conceivably big enough to tie up most if not all of the personnel of the Office of the Ombudsman and the Legislative Reference Bureau on a full-time basis. But speaking for the Bureau--if the Legislature wants us to do this, we will do so to the best of our ability with the resources that we have.
4. As presently drafted, however, we are concerned that the scope of the measure is so broad, that there may be attempts by interest groups to try to use the commission as some type of "super legislature"--a forum in which to advocate for the repeal or amendment of virtually any law of their choosing.

5. We believe, however, that a few amendments to this measure can make the review process distinctly more manageable, and more closely targeted toward the apparent intent of this measure. These amendments are as follows:
 - a. Clarify that the laws being reviewed are the Hawaii Revised Statutes, and not the common law. Under section 1-1 of the Hawaii Revised Statutes, subject to a variety of exceptions, "the common law of England, as ascertained by English and American decisions, is...the common law of the State of Hawaii...". This could result in endless debate as to what the common law on a given subject actually is.
 - b. Make the commission a permanent body that meets from time to time on an ongoing basis. This will provide greater continuity and flexibility to the deliberations of the commission as compared to starting all over again every other year. It will also enable the staffs of the respective agencies to shift away from commission work to meet other demands when they get heavy--such as providing support to the Legislature when it is in session.
 - c. Direct the commission to focus its review on matters raised by legislators, state and county agencies, and members of the public. This will make the commission's priority one of responding to issues and concerns being raised by affected agencies and individuals.
 - d. Remove "ineffectiveness" as a criteria for review. Virtually any law can be characterized as "ineffective" because it does not accomplish enough. To illustrate, though it might be an extreme example, the argument can be made that the Penal Code is "ineffective" because crimes still occur. Issues of this nature are more appropriately considered and debated by elected officials than appointed commissioners.

Thank you for this opportunity to testify. I am open to any questions you may have.



Robin K. Matsunaga
Ombudsman

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TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON S.B. NO. 1103, A BILL FOR AN ACT
RELATING TO EFFECTIVE LEGISLATION

SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT OPERATIONS
FEBRUARY 12, 2009

Chair Taniguchi and Members of the Committee:

Thank you for the opportunity to present comments on S.B. No. 1103. The purpose of this bill is to establish a commission on effective legislation (commission) that is administratively placed under the ombudsman. The bill requires the commission to review all existing laws to determine if they are obsolete, redundant, conflicting, or ineffective and in need of repeal or amendment. The bill prescribes the composition of the commission and requires the ombudsman to report the commission's findings and recommendations to the legislature.

I concur that laws that are found to be obsolete, redundant, conflicting, or ineffective should be brought to the attention of the legislature so that it may consider whether to amend or repeal those laws. However, I am concerned that the bill does not include representatives of each county as members of the commission. I believe that participation by one or more representatives of each county is necessary since many laws not only affect the counties but are implemented or enforced by county agencies.

I am also concerned that the requirement of the commission to review all existing laws and to report its findings and recommendations to the legislature prior to the convening of the 2011 regular session may be a task that will be difficult if not impossible to accomplish without additional fiscal resources being provided to the ombudsman or commission.

I believe the process intended by the bill requires the commission as a body to review every existing law and not just accept the recommendation of any individual member of the commission as to whether a law that affects that member's agency is obsolete, redundant, conflicting, or ineffective. Therefore, although the bill states that the commission shall meet not less than biennially, I anticipate that multiple meetings will be required in order for the

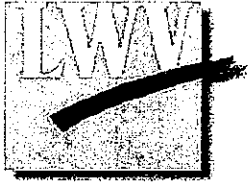
Testimony of Robin K. Matsunaga, Ombudsman
S.B. No. 1103
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commission to reach agreement on the findings and recommendations it would make to the legislature. In addition, because this will be the first comprehensive review of the laws by the commission, the commission will first need to meet to develop and formalize the process it will use to meet its mandate.

The bill also requires the commission to solicit public comment in its review of the laws. Since the laws affect residents and visitors on all islands, it would appear that the commission should convene at least one public meeting in each county.

Since the commission is established under the ombudsman, I presume that any administrative support required by the commission, including but not limited to staff support, equipment, and funding for intrastate travel, will need to be provided for by the ombudsman. However, my budget for fiscal year 2009-2010 does not include funding to support this additional responsibility.

Thank you, again, for the opportunity to present comments on S.B. No.1103. If you have any questions, I would be happy to answer them.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

SB 1103 RELATING TO EFFECTIVE LEGISLATION

Committee on Judiciary and Government Operations
Thursday, February 12, 2009 9:30 a.m.
Conference Room 016

Testifier: Jean Aoki, LWV Legislative Liaison

Chair Taniguchi, Vice Chair Takamine, members of the JGO Committee,

The League of Women Voters of Hawaii is in strong support of SB 1103 which would establish a commission to identify existing laws that are obsolete, redundant, conflicting or ineffective.

The Hawaii Revised Statutes is voluminous and somewhat confusing enough already, and if there are unnecessary laws on the books, certainly a commission to really go through them carefully to identify those laws that need deleting or those that need amendments is an excellent idea. We believe that the make-up of the commission and the recognition that it would be an ongoing process of review without time limits, and yet with provisions for biennial reporting to the legislature, will encourage and make possible the systematic review of our laws. The legislature can take appropriate action to keep our Hawaii Revised Statutes current, free of conflicting laws, etc. as the biennial reports recommends.

The selection of the commission members is varied and includes both the executive and judicial branches of our government, and the University of Hawaii. There is provision for replacing some department heads after two years to bring in the heads of some of the other departments which enhances the ability of the commission to look at the laws from different perspectives which the varied membership at the outset already allows. To give the legislature a more direct opportunity in the formation of the commission, we would suggest that the Speaker of the House and the Senate President be allowed to appoint two department heads in lieu of giving recommendations to the Governor on her pick of the departments heads for the commission.

We like the provision for public participation in determining whether a law is obsolete, redundant, or conflicting. We urge the adoption of SB 1103.

Thank you for the opportunity to testify on this bill.

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, February 11, 2009 7:19 AM
To: JGO Testimony
Cc: phahn86@gmail.com
Subject: Testimony for SB1103 on 2/12/2009 9:30:00 AM

Testimony for JGO 2/12/2009 9:30:00 AM SB1103

Conference room: 016
Testifier position: support
Testifier will be present: No
Submitted by: Pearl Hahn
Organization: Individual
Address: 100 Glen Eagle Drive NJ
Phone: 908 6425832
E-mail: phahn86@gmail.com
Submitted on: 2/11/2009

Comments:

The Grassroot Institute respectfully supports this bill and its intentions. Instead of streamlining government, redundant and ineffective laws complicate matters for lawmakers, law enforcers, and citizens. We recommend that in the future, whether a law is well-intentioned or not alone cannot determine the basis of whether its passage is necessary.

Whether prompted by safety concerns, demands from interest groups, or scientific studies, a law often comes to fruition without analysis of its effect on individual freedom or its constitutionality. In an ever-growing morass of laws and regulations, it becomes difficult to enforce all laws consistently, creating an atmosphere vulnerable to abuse of power and corruption. In addition, some of today's laws may have become obsolete, while others may be failing to serve their intended purpose. This bill would create an auditing process by which the relevance and effectiveness of existing laws can be measured.

Legislators, who are reinforcing fiscal responsibility this session, may use this opportunity to repeal ineffective laws and laws that burden small businesses and heavily tax citizens.