

MAR 16 2011

SENATE CONCURRENT RESOLUTION

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

1 WHEREAS, according to the purpose underlying the Sunshine
2 Law, chapter 92, Hawaii Revised Statutes, it is the policy of
3 this State that discussions, deliberations, decisions, and
4 actions of governmental agencies in formulating and implementing
5 public policy should be conducted as openly as possible; and
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7 WHEREAS, the Sunshine Law specifically excludes the
8 Judicial branch and quasi-judicial boards that exercise
9 adjudicatory functions; and
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11 WHEREAS, the Judicial branch has adjudicative and
12 non-adjudicative (administrative) functions; and
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14 WHEREAS, the Legislative Reference Bureau has studied other
15 states' application of the Sunshine Law (or equivalents) and has
16 reported that:
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18 "Research indicates that five states explicitly extend
19 applicability of their state sunshine law or open
20 meeting requirements to courts or Judicial
21 entities.... Although expressed somewhat differently
22 by each state, the open meeting applicability is
23 generally limited in four of these states to the
24 administrative functions or the exercise of rulemaking
25 authority of the court."; and
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27 WHEREAS, in the 2009, 2010, and 2011 Regular Sessions,
28 bills were filed that proposed to exclude only the adjudicatory
29 functions of the Judicial branch from the Sunshine Law; and
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31 WHEREAS, Senate Bill No. 130, Regular Session of 2011,
32 proposed the following amendments to the Sunshine Law:
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- 1 (1) Amend the definition of "board" in section 92-2,
2 Hawaii Revised Statutes, to include the Judiciary;
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- 4 (2) Amend section 92-6, Hawaii Revised Statutes, to
5 clarify that the adjudicatory functions of the
6 Judicial branch are exempt from chapter 92 meeting
7 requirements; and
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- 9 (3) Ensure that Judicial branch boards are not subject to
10 Executive branch oversight; and
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12 WHEREAS, the extent of the use of boards by the Judicial
13 branch as described under section 92-2, Hawaii Revised Statutes,
14 is not clearly known; and
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16 WHEREAS, the effect of the above proposed amendments may
17 require further understanding of the need for resources or other
18 considerations; now, therefore,
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20 BE IT RESOLVED by the Senate of the Twenty-sixth
21 Legislature of the State of Hawaii, Regular Session of 2011, the
22 House of Representatives concurring, that the Judiciary is
23 requested to provide the Legislature with a report detailing the
24 findings, recommendations, and resource requirements of
25 implementing the Sunshine Law amendments proposed by Senate Bill
26 No. 130 (2011), including specific information regarding:
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- 28 (1) What Judicial branch boards currently exist or existed
29 as of or were established since January 1, 2001;
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- 31 (2) How many meetings were held by each of the boards
32 listed in paragraph (1);
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- 34 (3) For each board listed in paragraph (1), information
35 on:
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 - 37 (A) The level of public participation by
38 non-judiciary, non-lawyer laypersons in meetings
39 of the board, including membership on the board;
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 - 41 (B) Whether the board gives the public notice and an
42 agenda for meetings; and
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(C) Whether and how the board affords the public an opportunity to submit data or oral testimony to the board at its meetings;

(4) If the public is not given notice or allowed to participate in the board meetings, for each board, list and explain who typically participated in the meetings and the reasons for excluding the public; and

(5) For each board listed in paragraph (1), the reports created by the board; and

BE IT FURTHER RESOLVED that the Judiciary is requested to report its findings and recommendations to the Legislature no later than twenty days prior to the convening of the Regular Session of 2012; and

BE IT FURTHER RESOLVED that certified copies of this Concurrent Resolution be transmitted to the President of the Senate, Speaker of the House of Representatives, Chair of the Senate Committee on Judiciary and Labor, Chair of the House Committee on Judiciary, Chief Justice of the Hawaii Supreme Court, and the Administrative Director of the Courts.

OFFERED BY: Shianne Chun Oalilani

Mark
[Signature]

