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CATHY L. TAKASE
ACTING DIRECTOR

To: House Committee on Judiciary

From: Cathy L. Takase, Acting Director

Hearing: February 11, 2011, 2:00 p.m.
State Capitol, Room 325

Re: Testimony on H.B. 1608
Relating to the Office of Information Practices

Thank you for the opportunity to submit testimony on H.B. No. 1608, which would create a Board of Information Practices within OIP. Although the creation of such a board is a policy decision for the Legislature, OIP would like to offer the following concerns and comment.

First, the proposed function of the board is somewhat confusing and in practice appears very limited. The board is to "comment on proposals and reports, made or advocated by the director, including administrative rules, budgets, and legislation" as well as to "perform other functions as provided by administrative rules or other laws." Because the duty and authority to provide legal guidance remains with the director of OIP, it appears that the board's role is primarily to comment on the listed topics of administrative rules, budgets and legislation. This would provide very little for the board to do. OIP does not have extensive rules, has a very small and simple budget, and proposes few legislative bills of its own. Further, comments made on bills introduced by others is

generally limited in scope to legal guidance concerning the impact of the proposed legislation on the state public records law or open meetings law. OIP does not offer general policy guidance.

OIP notes also that broadening the authority of the board to include participation in the issuance of legal opinions or rulings on appeals made under the UIPA would be contrary to the intent of the UIPA to make such processes less formal and costly. The creation of a board review process would likely give rise to the need for chapter 91 type procedures, when the UIPA intends and explicitly states that a review by OIP not be a contested case under chapter 91.

Second, the cost of the proposed board could not be supported under OIP's current budget. OIP's current operational budget for FY11 is \$20,724, which covers OIP's set operating costs that have been reduced to a bare minimum. OIP estimates that the travel related costs of even three neighbor island members would easily exceed over half of that budget. In addition, OIP is operating with significantly reduced attorney staffing and has a backlog of opinion requests. Diverting any attorney resources towards supporting the proposed board, thus, would further hamper OIP's efforts in meeting its core function of providing timely legal guidance. Accordingly, OIP believes that sufficient monies would need to be appropriated to fund the added costs and staff resources that the proposed board would require.

Finally, OIP is confused by the bill's rationale that OIP "does not currently have a formal means of receiving advice on the office's actions in administering Hawaii's sunshine law." OIP has always been open to, and receives daily in the course of performing its statutory duties, comment from the public and government agencies and officials concerning disputes, problems, issues, and concerns related to both the Sunshine Law and the UIPA. These comments come to OIP in the form of formal complaints, requests or board and agency

positions filed, through the context of OIP's trainings provided under both the UIPA and the Sunshine Law, and through OIP's Attorney of the Day program, which allows anyone to call OIP and to speak with an OIP attorney regarding any issue under those laws. OIP has used, and continues to use, this feedback to create proposals to amend the laws it administers to clarify areas in the laws that have created confusion in application, or to amend provisions that work counter to the legislative mandate of open government or that hinder government efficiency without advancing openness. For example, OIP sought amendment of the Sunshine Law, such as the expansion of the limited meetings provision to allow for meetings in locations where public attendance is impractical (such as private agricultural land) in addition to dangerous locations, in response to board raised concerns. Thus, OIP already receives a very broad spectrum of comments from the board members and agency personnel, who put the laws into practice on a daily basis, and from members of the public actively using those laws.

In summary, OIP does not believe that the proposed board would fill a need that is not currently met. Moreover, if the proposed bill does not provide for adequate funding, the cost of the proposed board would severely impact OIP's ability to perform and focus on its basic and most important function of providing legal guidance.

Thank you for the opportunity to testify.

JUDtestimony

From: LWV [lwvhawaii@gmail.com]
Sent: Thursday, February 10, 2011 4:03 PM
To: JUDtestimony
Subject: Testimony on HB 1608
Attachments: HB1608 OIP Board.doc

From Jean Aoki, LWV Legislative Committee
Hearing before the **Committee on Judiciary**
Date: **Friday, February 11, 2011**
Time: **2:00 p.m.**
Place: **Conference Room 325**

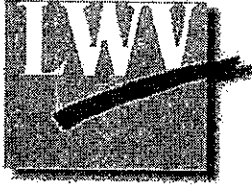
Third try. This time its correct.

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A Non-Partisan Organization to Encourage Informed Citizen Participation in Government



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON H.B. 1608 RELATING TO THE OFFICE INFORMATION PRACTICES

Committee on Judiciary

Date of Hearing: Friday, February 11, 2011

Time: 2:00 p.m.

Place: Conference Room 325

Testifier: Jean Aoki, LWV Legislative Committee

Chair Keith-Agaran, Vice Chair Rhoads, member of the Committee on Judiciary,

The League of Women Voters of Hawaii cannot support HB 1608.

For years, we have had an interest in creating a provision in the Constitution for a Commission on Information Practices, especially to add permanence to the valuable Office of Information Practices. However, the intent of the author of this bill is not clear. Why are all of the appointing authorities of the commissioners, people who are regulated by the OIP? And why so many commissioners?

The Campaign Spending Commission and the Ethics Commission are both composed of members of the public who apply to be on those boards and who are screened by the Judicial Council who then send up a limited number of names for each vacancy for the Governor to select and appoint to the Commissions. The Ethics Commission is a mandate of the constitution and while it leaves the details of how the commissioners are to be selected to the Legislature, it does declare that "commissioners shall be selected in a manner which assures their independence and impartiality." And while there is no such provision in the constitution regarding the selection of commissioners for the Campaign Spending Commission, the Legislature, in its wisdom, did follow the same procedures to insure its independence.

The Office of Information Practices needs the independence afforded the other two watch-dog groups if it is to administer and implement both the sunshine and open records laws. The public needs the assurance that whatever decisions and opinions expressed by the OIP are, they are in the best interest of the public and in the spirit of open government.

We respectfully ask that you amend HB 1608 to insure the commission's independence. Thank you.

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