



TO: Senator David Ige, Chair
Senator Michelle Kidani, Vice Chair
Senate Committee on Ways and Means

FR: Dave Kennedy, Senior Vice President
Honolulu Star-Advertiser

RE: TESTIMONY IN OPPOSITION TO HB 2404 HD1 SD1 – Relating to Public Information – Amendment Requested
Thursday, March 29, 2012 – 9:00 AM
Hawaii State Capitol, Room 211

Aloha Chair Ige, Vice Chair Kidani, and members of the committee:

The Honolulu Star-Advertiser respectfully opposes HB 2404 HD1 SD1, which, if enacted, would limit the requirement that state and county legal ads be published in newspapers of general circulation, creating the option that they be published on the official website of the state or affected county.

HB 2404 HD1 SD1 erodes access to vital public information.

1. Accessibility is most important reason for public notices to remain mandatory in print.
 - 74% of Americans read the newspaper – in Hawaii our readership is even higher with 8 in 10 Hawaii adults reading the newspaper each week;
 - 25% of Hawaii adults do not access the internet in an average week;
 - 76% of non-internet users are newspaper readers;
 - By not advertising in newspapers, government is alienating residents who either are seniors, have a high school education or less, and the poor; and
 - 46% of the poorest households do not own a computer and racial minorities have much lower instances of internet access.

Removing state and county legal ads from newspapers would force residents to hunt for proposed government action on often difficult-to-navigate government websites. For residents, especially in rural and remote areas, not everyone has easy access to a computer. It's hard to imagine people going to the trouble of regularly visiting a public library in order to check out the day's legal notices.

2. Publishing to a government website doesn't meet the traditional definition of a legal notice that appears in an independent third-party publication. There is an inherent danger which rests in citizens not knowing about government actions such as:
 - Government hearings and meetings;
 - Opportunities to bid on government contracts;
 - Proposed property developments zoning and land-use changes; and
 - Road construction and road closures.

These are all matters that affect people's livelihoods and well-being.

Further, it is helpful to examine why newspaper publication of notices is such a longstanding and universal requirement. This requirement ensures that once printed, state and county legal ads can be archived and are secure from modification and tampering and are widely and easily accessible. If any of these elements were absent, a legal notice could not be authenticated and would be subject to challenge.

If state and county legal ads were no longer published in newspapers of general circulation, but instead only appeared online – let alone on a *government-run* website – they would have none of these hallmarks of reliability, verifiability, permanency and accessibility. Legal notices – like all serious business – must be transparent, independently verifiable and above suspicion. The government cannot and should not be relied upon to check itself.

Newspapers have extremely broad circulation and penetration. Our readership and print circulation are both rising at a very healthy rate. Contrary to widespread belief, newspapers are not going the way of the dinosaurs – and certainly not in Hawaii.

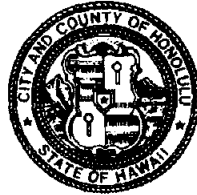
In closing, it is true that newspapers earn revenue from state and county legal ads. However, this is a very small proportion of our overall revenue. In fact, our current state and county legal rates are less than they were a decade ago and far less than the rates paid by most.

The bottom-line issue is about public access and the public's right to know. That's something we in the news business take very seriously.

This is why we respectfully oppose HB 2404 HD1 SD1, and request that strike out Section 2 of this bill.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov



PETER B. CARLISLE
MAYOR

DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

March 29, 2012

The Honorable David Y. Ige, Chair
and Members of the Committee on Ways and Means
State Senate
State Capitol
Honolulu, Hawaii 96813

Dear Chair Ige and Committee Members:

Subject: House Bill No. 2404, HD1, SD1
Relating to Public Information

The Department of Planning and Permitting **supports** House Bill No. 2404, HD1, SD1 with **two recommended amendments**. This bill authorizes government agencies to disseminate publications of notice electronically or in a daily or weekly publication of statewide circulation, or in a daily or weekly publication in the affected county; eliminates the requirement to file a hard copy notice of public meetings with the office of the lieutenant governor or county clerk; requires the notice to be posted on the electronic calendar maintained on the State of Hawaii's internet website or appropriate county's internet website, on the website of the board or the website of the department within which the board is established if the board does not have a website; requires all government agencies, boards, commissions, and committees to post electronic copies of their agendas and minutes online; and for a state board, any written materials distributed to the board at the meeting, to the extent that such materials would be required to be disclosed, and to transmit electronic copies or hard copies of meeting notices to persons who request notification.

Passage of this bill would reduce costs associated with the publication of notices and the printing and mailing of documents, shorten the time required to post notices by eliminating the need to submit them to newspapers several days in advance, and improve public access to the notices, agendas, and minutes of government agencies, boards, commissions, and committees.

However, read literally, the current language in the bill would seem to require that, before public notices could be posted on the Web, the entire State or county website would have to be made accessible to the disabled, not just those parts of the website that give access to the public notice.

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Under Federal law, State and county websites are supposed to comply with accessibility standards for disabled. Unfortunately, this is not yet the case for a variety of reasons. To bring the websites into compliance with accessibility guidelines will be costly and time consuming. It is likely to be many years before either the State website or county websites are completely accessible to the disabled and elderly.

For example, the pdf format used widely to provide access to hundreds of documents on the State and county websites is not accessible to the screen readers used by the blind and hard-of-seeing. Their screen readers need documents in the text-only or HTML format.

To clarify that notices can be published electronically if just the portions of the Web that provide access to the notices are accessible to the disabled and the elderly and do not have to wait until the entire State or county Website is accessible, please **amend** the language in HB 2404, HD1, SD1, Section 2.1 as follows:

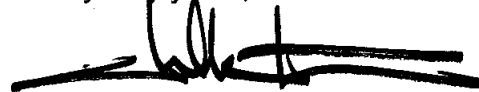
The public notices and the pages on the websites which provide links to the notices shall be accessible to the disabled, the elderly, and other individuals who require state assistance to access the notices and websites.

In addition, please **amend** the bill to allow the minutes of the boards to be removed from the Web two years after they are first posted.

After two years, most minutes are only of interest to those doing historical research. Agendas and minutes are permanent records that the boards must retain or archive for perpetuity. Such historical research needs can be easily met by providing access to the board files or archives and do not require the use of valuable Web space.

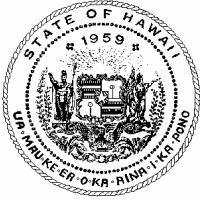
Please pass House Bill No. 2404, HD1, SD1 with the requested amendments. Thank you for the opportunity to testify.

Very truly yours,



David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf
hb2404hd1sd1-PublicInfo-bs.doc



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 ·PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 29, 2012
9:00 a.m.
Conference Room 211

To: The Honorable David Ige, Chair
and Members of the Senate Committee on Ways and Means

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 2404, H.D.1, S.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai‘i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

H.B. No. 2404, H.D.1, S.D.1, authorizes state and county government agencies to publish notices electronically or in a daily or weekly publication of statewide circulation, or of countywide circulation for county agencies. The S.D.1 requires electronic online publication of notices on websites shall be accessible to the disabled, the elderly, and other individuals who require state assistance to access notices and websites.

The HCRC does not oppose the intent of the bill, which is to allow publication of notices in electronically or online, eliminating the current requirement of posting of hard-copy notices with the Lieutenant Governor’s office.

The HCRC has been included in discussion of suggestions that this bill should be amended to assign the HCRC enforcement jurisdiction over complaints that notices are

published in an inaccessible form in violation of the proposed H.R.S. § 1-28.5 requirement of posting of electronic or online notices in an accessible form, and offers this comment and suggestion. Rather than provide for enforcement of the new § 1-28.5 requirement, it would be better to affirmatively provide for compliance. While the Disability and Communication Access Board is not an enforcement agency, it has the expertise to advise and assist the Lieutenant Governor's office and the Office of Information Practices in developing a protocol and standards for posting electronic or online notices in an accessible form, and the Office of Information Management and Technology can incorporate solutions to ensure that only compliant postings are accepted. It is preferable to provide the affected agencies with the guidance and assistance they need to comply with the law, rather than leave them to their own devices and provide for enforcement when they fail to comply.

DISCUSSION

Initially, it should be noted that pursuant to H.R.S. § 368-1.5, the HCRC already has jurisdiction over complaints that an otherwise qualified individual with a disability has “*solely* by reason of his or her disability, be[en] excluded from the participation in, ... denied the benefits of, or ... subjected to discrimination by state agencies.” The HCRC has jurisdiction over discrimination complaints under section 368-1.5, and a person who feels they are being denied participation/benefits in a state program or otherwise discriminated against solely because of his or her disability can initiate a complaint with the HCRC, which will make a threshold determination of prima facie jurisdiction on a case by case basis.

However, an amendment to assign enforcement of H.R.S. § 1-28.5 to the HCRC would expressly permit the filing of a complaint with the HCRC for failure to publish a notice in an accessible form for persons with disabilities, as required by that section.

Conceptually, H.R.S. chapter 1 codifies common law and specific rules of statutory construction. § 1-28.5 provides express statutory parameters of what constitutes “publication” when it is required under other specific statutes. These provisions of Chapter 1 are significant in interpreting what constitutes effective publication/posting under specific statutes like chapter 92, but are not meant to create a separate set of enforceable rights.

In turn, the posting requirements of H.R.S. chapter 92 present statutory compliance issues rather than civil rights enforcement issues. The requirements of § 92-7 regarding posting of notices go to effectiveness of the posting. If a posting is insufficient, in form or process that do not meet the requirements of § 92-7, a posting has not been effected and the meeting cannot be held (or if held, any actions taken would be void or invalid). If the statute is amended to require the electronic posting in an accessible format and a board posts the notice in a non-compliant form, it will not have met the statutory posting requirement - just the same as if it had not met the six day posting requirement - and the meeting cannot be held. (under § 92-7(c), the meeting would have to be cancelled.) The issue is whether there has been a failure to post notice as required by the statute. § 92-11 provides for a private cause of action to void any final action taken in violation of the requirements of § 92-7.

The HCRC does not have jurisdiction to enforce the statutory construction provisions of H.R.S. § 1-28.5 or the notice requirements of § 92-7. If a person feels that they have been discriminated against in violation of § 368-1.5, they can file a complaint with the HCRC, but the HCRC investigation will not address whether the posting of a notice was sufficient under chapter 92, nor will HCRC be able to enforce the consequences for violation of § 92-7, cancellation of the meeting or voiding any actions taken at the meeting in question – the HCRC does not have authority to enforce the open meetings law.

It does not make sense to place the failure to post an effective notice in compliance with the requirements of H.R.S. § 92-7 under HCRC enforcement jurisdiction, requiring filing of complaints, investigation, conciliation, and litigation over statutorily insufficient or ineffective posting. In addition, the HCRC has expressed concern over assignment of jurisdiction over new and novel protections while the HCRC has suffered substantial cuts of more than 25% in permanent investigation and attorney staffing, to the detriment of timely and effective investigation, conciliation, and litigation in the cases that fall under our current jurisdiction.

Thank you for your consideration.