

STAND. COM. REP. NO.

2594

Honolulu, Hawaii

FEB 28 2014

RE: S.B. No. 2881
S.D. 1

Honorable Donna Mercado Kim
President of the Senate
Twenty-Seventh State Legislature
Regular Session of 2014
State of Hawaii

Madam:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2881 entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC RECORDS,"

begs leave to report as follows:

The purpose and intent of this measure is to repeal the sunset date of a provision that exempts government agencies from making government records available to or responding to duplicative requests made by the same person under certain conditions.

Your Committee received testimony in support of this measure from the Department of the Business, Economic Development, and Tourism; Department of Health; and Office of Information Practices. Your Committee received comments on this measure from one individual.

Your Committee finds that prior to July 2010, the Uniform Information Practices Act did not provide an exception to a government agency's obligation to respond to a public record request made pursuant to chapter 92F, Hawaii Revised Statutes, even if the government agency had already responded to the same request one or more times. The Office of Information Practices testified that duplicative requests made by a single person are a longstanding source of frustration for government agencies. For example, the Department of Health received a high volume of duplicative requests relating to President Obama's birth certificate. As a result, Act 100, Session Laws of Hawaii 2010

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(Act 100), provided government agencies an exemption from responding to duplicative record requests from the same person if the government agency already properly responded to the same or substantially similar record requests by the same person within the past year and the government agency's response remained unchanged. Act 100 is scheduled to sunset on July 1, 2014.

The Office of Information Practices testified that during the three-and-a-half years that Act 100 has been in effect, the Office is not aware of any significant negative effects on a record requester's ability to obtain access to government records. Furthermore, the Office is not aware of any appeals involving a complaint about a government agency's use of this exception. Thus, this measure repeals the sunset date of the exception to make this exception permanent.

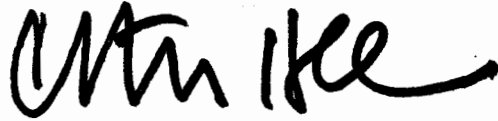
Your Committee notes the comments made by an individual regarding limiting the scope of the exception to non-Hawaii residents only and thus allowing Hawaii residents to send duplicative requests for government records. This individual testified that in *McBurney v. Young*, 133 U.S. 1709 (2012), the United States Supreme Court held that Virginia's citizens-only Freedom of Information Act provision did not violate the Privileges and Immunities Clause and the Dormant Commerce Clause. Your Committee believes that the idea of applying the duplicative request exception to non-Hawaii residents merits further discussion as this measure moves through the legislative process.

Accordingly, your Committee has amended this measure by inserting an effective date of June 30, 2050, to encourage further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2881, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2881, S.D. 1, and be placed on the calendar for Third Reading.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,



CLAYTON HEE, Chair



