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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol
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Written Comments

HCR121

REQUESTING A FEASIBILITY STUDY ON THE ATTACHMENT OF THE OFFICE OF INFORMATION PRACTICES ON A PERMANENT BASIS TO THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

Comments by the Legislative Reference Bureau
Charlotte A. Carter-Yamauchi, Acting Director

Presented to the House Committee on Finance

Wednesday, April 2, 2014, 3:30 p.m.
Conference Room 308

Chair Luke and Members of the Committee:

Good afternoon Chair Luke and members of the Committee, thank you for providing the opportunity to submit written comments on H.C.R. No. 121, Requesting a Feasibility Study on the Attachment of the Office of Information Practices on a Permanent Basis to the Department of Accounting and General Services.

The purpose of this measure is to, among other things, that the Legislative Reference Bureau:

- (1) Study the feasibility of permanently administratively attaching the Office of Information Practices to the Department of Accounting and General Services; and
- (2) Consider if it is feasible to establish positions within the Office of Information Practices that would be subject to the Civil Service Law, as codified in chapter 76, Hawaii Revised Statutes; and
- (3) Submit a report of its findings and recommendations, including any proposed legislation, to the Legislature no later than twenty days prior to the convening of the Regular Session of 2015;

While the Legislative Reference Bureau takes no position on this measure, we submit the following comments for your consideration regarding the measure.

- (1) **1988** - The Office of Information Practices was originally established within the Department of the Attorney General pursuant to Act 262, Session Laws of Hawaii 1988 (Act 262).

Act 262 specifically exempted Office of Information Practices employees from chapters 76 (civil service) and 77 (compensation law - repealed), Hawaii Revised Statutes.

- (2) **1989** - Act 192, Session Laws of Hawaii 1989, changed the status of the Office of Information Practices from being situated *within* the Department of the Attorney General to being administratively *attached* to the Department.
- (4) **1998** - Act 137, Session Laws of Hawaii 1998, changed the status of the Office of Information Practices from being administratively attached to the Department of the Attorney General to being temporarily attached to the Office of the Lieutenant Governor for administrative purposes.

As originally introduced, S.B. No. 2983 (eventually enacted as Act 137), proposed transferring the Office of Information Practices from being administratively attached to the Department of the Attorney General to being administratively attached to the legislative branch of government. As background, the Office of Hawaiian Affairs, Common Cause Hawaii, Hawaii Clean Elections, League of Women Voters, Society of Professional Journalists, Open Government Coalition of Hawaii, and three individuals testified in support of the measure. The Attorney General provided testimony expressing concerns and offering suggested amendments.

The Senate Draft 1 version of the bill administratively attached the Office to the Legislature. As background, the Office of Hawaiian Affairs, Common Cause Hawaii, League of Women Voters, and an individual testified in support of the measure. The Attorney General provided informational testimony (this testimony was actually submitted to the Senate Ways and Means Committee on the Senate Draft 1 version).

The Senate Draft 2 version of the bill administratively attached the Office to the Judiciary. As background, the Office of Information Practices, Office of Hawaiian Affairs, Common Cause Hawaii, League of Women Voters, Hawaii Clean Elections, and an individual testified in support of the measure. The Society of Professional Journalists and the Honolulu Community-Media Council

supported the intent of the Senate Draft 2 version. The Attorney General and the Judiciary testified in opposition (this testimony was actually submitted to the House Judiciary Committee on the Senate Draft 2 version).

In the House of Representatives, according to House Standing Committee Report No. 895-98, the House Judiciary Committee was concerned that the placement of the Office in the Judiciary ". . . may create a potential conflict of interest, or appearance thereof, and raise questions regarding the separation of powers." Consequently, the House Judiciary Committee amended the measure to administratively attach the Office to the Lieutenant Governor.

The House version of the measure was enacted into law and the Office of Information Practices has remained administratively attached to the Office of the Lieutenant Governor since then.

While the legislative history of the measure indicates that at no time was the concept of administratively attaching the Office of Information Practices to the Department of Accounting and General Services contemplated by the Legislature, it does indicate the inherent problems over conflict of interest/separation of powers concerns regardless of where the Office of Information Practices resides. According to the committee report of the Senate Commerce, Consumer Protection, and Information Technology Committee, the Attorney General was concerned over the then-existing potential situation in which the Attorney General may be required to both enforce the open meetings law and defend a state agency.¹ Just with a cursory review of the legislative history of the law that established the Office of Information Practices, it seems that administratively attaching the Office of Information Practices to the Department of Accounting and General Services could similarly create a conflict of interest if the Office of Information Practices was ever requested to opine on a Department of Accounting and General Services information policy.

With regard to the issue of determining the feasibility of establishing positions within the Office of Information Practices that would be subject to chapter 76, Hawaii Revised Statutes (civil service), no criteria are given to determine "feasibility." If the Legislature finds it appropriate to authorize civil service status to certain public employees, it already possesses the power to do so. However, if the Committee would still like the Bureau to conduct this study, we request that criteria be included against which "feasibility" could be measured, so that the Bureau can more readily provide information that will be useful to the Legislature in rendering any policy decision on the issue.

¹ The Office of Information Practices was administratively attached to the Department of the Attorney General at the time.

Honorable Sylvia Luke
House Committee on Finance
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If the measure is amended to include criteria to determine what the Legislature deems as "feasible" to convert exempt positions of the Office of Information Practices to civil service positions, the Bureau believes that the services requested under this measure are manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for this opportunity to provide written comments.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: April 2, 2014, at 3:30 p.m.
State Capitol, Conference Room 308

Re: Testimony on H.C.R. 121
Requesting a Feasibility Study on the Attachment of the Office of
Information Practices on a Permanent Basis to the Department of
Accounting and General Services.

Thank you for the opportunity to submit testimony on H.C.R. 121. The state Office of Information Practices (“OIP”) supports the proposal, which would request a study by the Legislative Reference Bureau on the feasibility of attaching OIP on a permanent basis to the Department of Accounting and General Services (DAGS).

OIP was established in 1988 to administer the Uniform Information Practices Act (UIPA) and was originally placed, for administrative purposes, within the Department of the Attorney General (AG). In 1998, OIP was given the additional responsibility of administering the Sunshine Law, which had been enforced, until then, by the AG while the AG also potentially advised and defended boards that allegedly violated the law. To resolve this potential conflict of interest and as there was no one agency to investigate or respond to inquiries regarding violations, the Sunshine Law duties were transferred to OIP, which was then moved

to the Lt. Governor's office (LG) as a "temporary" office for a special purpose. Twenty-six years later, OIP is still in the LG's office on a "temporary" basis.

While OIP has enjoyed working with the Lt. Governor's office, only temporary and special purpose agencies can be placed in the Governor's or Lt. Governor's offices, and Article V, Section 6 of the state Constitution requires state Executive Branch agencies to be placed within a principal department. Rather than return to the AG where OIP's opinions may conflict with the AG's representation of state agencies, OIP supports HCR 121's proposal that OIP be placed for administrative purposes within DAGS, where other open government agencies, namely the Campaign Spending Commission and Elections Office, have been administratively attached and are able to retain their independence.

As long as the State's policy is to form and conduct its business as openly as possible, there will be a need for OIP to ensure government transparency and accountability. OIP plays an important and continuing role as a neutral third-party in resolving – through a free and informal process – disputes between the general public and government agencies and boards regarding access to government records and to public meetings. OIP also helps to prevent violations and to ensure compliance through training, general advice, and opinions regarding the UIPA and Sunshine Law, which affect nearly all state and county entities. All training, opinions, and What's New updates and communications are readily available on OIP's website and can be conveniently accessed 24/7 not only by government agencies, but also by the general public. Besides writing formal and informal legal opinions, OIP's staff attorneys provide same-day general advice to government agencies and the general public through OIP's Attorney of the Day service. State and county legal advisors rely upon OIP's uniform and expert advice to help them to keep their agencies and boards in compliance, and they also utilize OIP's online

resources as well as OIP's special continuing legal education programs to keep them abreast of significant new developments regarding updates on the UIPA and Sunshine Laws.

OIP started off in 1988 as a permanent agency within the Executive Branch and would like to return to permanent agency status. Consequently, OIP supports HCR 121, which would ask the Legislative Reference Bureau to study the feasibility of attaching OIP, for administrative purposes, on a permanent basis to DAGS.

Thank you for the opportunity to testify.

NEIL ABERCROMBIE
GOVERNOR



Dean H. Seki
Comptroller

Maria E. Zielinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
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WRITTEN TESTIMONY
OF
DEAN H. SEKI, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
April 2, 2014
H.C.R. 121

REQUESTING A FEASIBILITY STUDY ON THE ATTACHMENT OF THE OFFICE OF
INFORMATION PRACTICES ON A PERMANENT BASIS TO THE DEPARTMENT
OF ACCOUNTING AND GENERAL SERVICES

Chair Luke and members of the Committee, thank you for the opportunity to submit
written testimony on H.C.R. 121.

The Department of Accounting and General Services (DAGS) supports H.C.R. 121,
which requests the Legislative Reference Bureau to study the feasibility of establishing the
Office of Information Practices on a permanent basis, administratively attached to DAGS.

Thank you for the opportunity to submit written testimony on this matter.