



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2015**

ON THE FOLLOWING MEASURE:
H.B. 394, RELATING TO LEGISLATION.

LATE

BEFORE THE:
HOUSE COMMITTEE ON LEGISLATIVE MANAGEMENT

DATE: Wednesday, February 11, 2015 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 423

TESTIFIER(S): Russell A. Suzuki, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Nishimoto and Members of the Committee:

The Department of the Attorney General testifies to point out that a provision of this bill may be unconstitutional.

The bill provides that “[n]o introduced bill shall be placed on the calendar for first reading in either the house of representatives or the senate unless the bill has been subject to a review . . . to assess the bill’s legal sufficiency and [a] copy of the bill’s legal assessment [is] attached to each bill prior to first reading.”

Article III, section 12, of the State Constitution provides in part: “Each house shall choose its own officers, determine the rules of its proceedings and keep a journal.” Emphasis added. A court could conclude that a statute prescribing whether or when a bill can be placed on the calendar of the House or Senate for first reading constitutes a procedural rule, and as such encroaches on the exclusive power of each house of the Legislature to “determine the rules of its proceedings.”

Either house of the Legislature may adopt a rule that made a legal assessment a prerequisite for placing a bill on its calendar for first reading. However, given the provision in article III, section 12, of the State Constitution, we do not believe either or both houses of the Legislature is empowered to impose that requirement by statute on the other, or on future houses of the Legislature, without a constitutional amendment excepting that procedure from the constitutional limitation that “[e]ach house shall . . . determine the rules of its proceedings.”

Thank you for the opportunity to testify.

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Written Comments

HB394
RELATING TO LEGISLATION

LATE

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

Presented to the House Committee on Legislative Management

Wednesday, February 11, 2015, 2:00 p.m.
Conference Room 423

Chair Nishimoto and Members of the Committee:

Good afternoon Chair Nishimoto and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Acting Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit comments on H.B. No. 394, Relating to Legislation.

The purpose of this measure is to prohibit the calendaring of any introduced bill for First Reading unless it has first been reviewed by the Legislative Reference Bureau to assess its legal sufficiency. This review shall include a determination of whether the bill meets state constitutional requirements and does not conflict with the United States Constitution or the state constitution.

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

Over the past five Regular Session, the total bills introduced per Regular Session is as follows:

2010 - 2,112
2011 - 3,224
2012 - 2,291
2013 - 2,872
2014 - 2,312

Yearly average = 2,562

During those same Regular Sessions, the Bureau drafted the following number of bills for introduction* in each Regular Session:

2010 - 2,052
2011 - 2,307
2012 - 1,716
2013 - 1,830
2014 - 1,456

Yearly average = 1,872

For the past five Regular Sessions, the Bureau has drafted an average of 1,872 bills per Regular Session. Being that the vast majority of requests for initial bill drafting occur between late November and early January until the Bill Introduction Cutoff Deadline, other types of requests for service from Legislators receive less priority during this time period. Historically, the bulk of bills are introduced within an approximately one-week period between Opening Day and the Bill Introduction Cutoff Deadline. During this same time period, the Bureau is still quite busy receiving, processing, and drafting requests for legislation.

As you know, once introduced, bills are received by the respective Clerk's offices and are then calendared for First Reading. The referral of a bill to a subject matter committee only occurs after the bill passes First Reading. If the Bureau is tasked with the additional responsibility of providing a legal sufficiency check during this "crunch period" without the provision of additional personnel resources, the result could mean a slowing down of the entire legislative process (e.g., taking longer for bills to pass First Reading and being referred to committee, which in turn limits a committee's ability to schedule public hearings to consider legislation). Furthermore, it is unclear how legislative measures such as short form bills would be treated under such a review, being that no substantive provisions exist upon introduction.

Finally, we note that a bill deemed sufficient on First Reading could subsequently be amended during the legislative process to add provisions that may raise constitutional concerns. Likewise, a potentially unconstitutional bill could be amended during the legislative process to address any constitutional concerns. Accordingly, it would seem more prudent to focus the Legislature's legal review resources on the final product of a legislative measure (e.g., the version of the bill to be voted on for Final Reading), rather than at the beginning of the legislative process. We further note that this is currently the practice in the House, which has historically required a legal check on all bills up for Third Reading before they can be filed with the House Clerk.

Thank you again for this opportunity to provide comments.

*While these bills were drafted for introduction, once the bill draft is delivered to the member, the Bureau has no knowledge whether it is, in fact, introduced.