

Honolulu, Hawaii

FEB 13 2017

RE: S.B. No. 245
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 245 entitled:

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

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require government agencies to exercise reasonable care in the maintenance of all government records under their control that are required to be made available for public inspection;
- (2) Create a rebuttable presumption that a unit of government in the State or its political subdivision exercised reasonable care in its maintenance of its government records by adhering to a duly adopted records retention and destruction policy; and
- (3) Establish damages for breaching a duty of exercising reasonable care in the maintenance of government records.

Your Committee received testimony in support of this measure from the Office of Information Practices, Hawaii Association for Justice, 'Āina Haina Community Association, and one individual. Your Committee received testimony in opposition to this measure from the Office of the Mayor, County of Maui; Department of the Corporation Counsel, City and County of Honolulu; and Department



of the Corporation Counsel, County of Maui. Your Committee received comments on this measure from the Department of Business, Economic Development, and Tourism.

Your Committee finds that in *Molfino v. Yuen*, 134 Hawaii 181 (2014), the Supreme Court upheld a circuit court ruling that, absent a statutory requirement, a government agency does not have a duty of reasonable care with respect to maintaining government records for the purpose of public inspection. This measure responds to the holding of *Molfino* by establishing a statutory requirement that government agencies exercise reasonable care in the maintenance of all government records under their control that are available for public inspection.

Your Committee notes the concerns expressed in testimony regarding the adequacy of the \$2,000 cap that the court may award for damages for breaching the duty of reasonable care and believes this issue merits further discussion. Your Committee also notes that this measure would benefit from discussion as to the most appropriate chapter placement of the requirement within the Hawaii Revised Statutes.

Your Committee has amended this measure by:

- (1) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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. 245, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 245, S.D. 1, and be referred to your Committee on Ways and Means.




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


GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Ninth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.: SB245	Committee Referral: JDL, WAM	Date: 2/6/17		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike	✓			
KIM, Donna Mercado				✓
THIELEN, Laura H.	✓			
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes