

SB 2735

SD-2

**RELATING TO
INDEPENDENCE OF
THE OFFICE OF
INFORMATION
PRACTICES**

A BILL FOR AN ACT

RELATING TO THE INDEPENDENCE OF THE OFFICE OF INFORMATION
PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The legislature finds that part I of chapter
2 92, Hawaii Revised Statutes, the Sunshine Law, and chapter 92F,
3 Hawaii Revised Statutes, the Uniform Information Practices Act
4 (Modified), are intended to encourage public scrutiny and
5 participation in government processes. The office of
6 information practices, which administers both laws, serves as a
7 neutral third party providing advice and resolving disputes
8 involving the laws. In that capacity, the office of information
9 practices provides advice and counsel to the general public and
10 to all state and county agencies, including the attorney
11 general, county corporation counsels, the judiciary, the
12 legislature, all executive branch agencies, and independent
13 entities such as the University of Hawaii and the office of
14 Hawaiian affairs. The office's powers and duties are vested in
15 its director. However, unlike legislative agency heads and good
16 government agencies such as the ombudsman, auditor, ethics



1 commission's executive director, and director of the legislative
2 reference bureau, all of whom have term length and salary set by
3 statute, the office of information practices' director's term,
4 removal, and salary are at the governor's sole discretion.

5 The purpose of this Act is to statutorily set the office of
6 information practices' director's term, removal, and salary
7 based on the existing statutory provisions relating to
8 legislative and executive agency heads to avoid the potential
9 for undue political interference with the office of information
10 practices' government function, to promote the office's
11 independence and neutrality, to provide administrative
12 stability, and to help retain the experience and knowledge of
13 the office's staff.

14 SECTION 2. Section 92F-41, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) The governor shall nominate and, by and with the
17 advice and consent of the senate, appoint a director of the
18 office of information practices to be its chief executive
19 officer, who shall serve for a period of six years and shall
20 continue in office until a successor is nominated and appointed,
21 and who shall be exempt from chapter 76. The governor may



1 remove or suspend the director from office for cause after due
2 notice and public hearing. Effective July 1, 2018, the salary
3 of the director shall be the same as the salary of the director
4 of health, as recommended by the commission on salaries, without
5 diminution during the term of the director of the office of
6 information practices unless by general law applying to all
7 salaried officers of the State."

8 SECTION 3. There is appropriated out of the general
9 revenues of the State of Hawaii the sum of \$ or so
10 much thereof as may be necessary for fiscal year 2018-2019 to
11 implement the purposes of this Act.

12 The sum appropriated shall be expended by the office of
13 information practices for the purposes of this Act.

14 SECTION 4. New statutory material is underscored.

15 SECTION 5. This Act shall take effect on July 1, 2018.



Report Title:

Office of Information Practices; Appropriation

Description:

Statutorily establishes the Director of the Office of Information Practices' term for 6 years and thereafter until a successor is appointed, and sets the Director's salary to an amount equivalent to the salary of the Director of Health. Makes an appropriation to the Office of Information Practices.
(SD2)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.



SB 2735

SD-2

TESTIMONY



HAWAII STATE ETHICS COMMISSION

State of Hawaii · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawaii 96813
50th ANNIVERSARY 1968-2018

Committee: Committee on Labor & Public Employment
Bill Number: S.B. 2735 SD2, Relating to the Independence of the Office of
Information Practices
Hearing Date/Time: March 15, 2018, 9:00 a.m.
Re: Testimony of the Hawaii State Ethics Commission **SUPPORTING
THE INTENT** of S.B. 2735 SD2

Dear Chair Johanson and Committee Members:

The Hawaii State Ethics Commission (“Commission”) supports the intent of S.B. 2735 SD2 as it relates to additional resources for the Office of Information Practices (“OIP”).

The Commission frequently consults with OIP on matters relating to the Sunshine Law and the Uniform Information Practices Act, and consistently receives timely, high-quality guidance on matters affecting the Commission’s operations. To that end, the Commission supports legislation that would provide OIP with additional resources to fulfill its important mission.

Thank you for your continuing support of the Commission’s work and for considering the Commission’s testimony on S.B. 2735 SD2.

Very truly yours,

Daniel Gluck
Executive Director and General Counsel



Robin K. Matsunaga
Ombudsman

Melissa Chee
First Assistant

**OFFICE OF THE OMBUDSMAN
STATE OF HAWAII**

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Honolulu, Hawaii 96813
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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON S.B. NO. 2735, S.D. 2, A BILL FOR AN ACT
RELATING TO THE INDEPENDENCE OF THE OFFICE OF INFORMATION PRACTICES**

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

MARCH 15, 2018

Chair Johanson and Members of the Committee:

Thank you for the opportunity to present testimony in support of S.B. No. 2735, S.D. 2. In particular, the Office of the Ombudsman supports the proposed amendments that would revise the process to appoint and remove the Director of the Office of Information Practice (OIP) and provide the OIP Director a fixed term. The Office of the Ombudsman has no position or recommendation regarding the appropriate salary of the OIP Director.

The Office of the Ombudsman believes that requiring the consent of the Senate in the appointment process of the OIP Director will minimize any perception that the OIP Director serves at the political whim of the Governor. The Office of the Ombudsman also believes that providing the OIP Director a fixed term that exceeds the term of the Governor, such as the proposed six-year term, and providing that removal of the Director must be for cause, will strengthen the independence and impartiality of the OIP Director by minimizing the opportunity for political interference or reprisal by the Governor, while still allowing an ineffective Director to be replaced.

Based on investigations we have conducted, the Office of the Ombudsman believes that the OIP does not act as an advocate for a requestor who seeks the assistance of the OIP or as a defender of an agency whose action or decision the OIP is reviewing. However, the Office of the Ombudsman also realizes that the perception of the public and the agencies of the independence and impartiality of the OIP can impact the effectiveness of the OIP, and believes that this bill will help to minimize this perception. Therefore, we request your support of this bill.

Thank you for your consideration of this testimony.



House Committee on Labor and Public Employment
Chair Aaron Johanson, Vice Chair Daniel Holt

03/15/2018 9:00 AM Room 309
SB2735 SD2 – Relating to the Independence of the Office of Information Practices

TESTIMONY / SUPPORT with Amendments
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Johanson, Vice Chair Holt, and members of the committee:

Common Cause Hawaii supports SB2735 SD2 with amendments which would statutorily set the Office of Information Practices' (OIP) director's term, removal, and salary.

As a "good government" agency, we agree that OIP must remain an independent and neutral third party as it interprets, provides advice, and resolves issues regarding our UIPA and Sunshine laws. Thus to avoid political interference, we agree that aligning the OIP director's term, removal, and salary with other agencies that have oversight of governmental operations (i.e. Ethics Commission, Auditor) is an important step to maintaining the public's confidence and trust in OIP.

However, we do not agree that the OIP director's removal "for cause after due notice and public hearing" is appropriate, as there are no current standards to determine that "cause" exists. This ambiguous term could lead to drawn out contested cases that are costly to the state. Thus we suggest amending the bill to allow the removal of the OIP director by the Governor with the advice and consent of the Senate. This would insulate the OIP director from a Governor's caprices, and still allow the public to weigh in during the hearing process.

Thank you for the opportunity to offer testimony **supporting SB2735 SD2 with amendments**.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

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House Committee on Labor & Public Employment
Honorable Aaron Ling Johanson, Chair
Honorable Daniel Holt, Vice Chair

**RE: Testimony Opposing S.B. 2735 SD 2, Relating to
the Independence of the Office of Information Practices**

Hearing: March 15, 2018 at 9:00 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **opposing S.B. 2735 SD 1 as currently drafted** because it fails to balance the OIP director's independence with the need for public oversight of the agency.

An OIP director's tenure should not be subject to the Governor's whim. But removal "for cause after due notice and public hearing" is the wrong standard. If Hawaii's elected representatives agree that the OIP director is not performing his or her role as intended, the director should be removed. The State should not waste resources on a prolonged investigation and contested case proceeding.

OIP provides a public service. Thus, the OIP director should not be so far removed from public oversight as to have a virtually guaranteed six-year tenure even if the public perceives the director as underperforming.

The OIP director should be removable by the Governor with the advice and consent of the Senate. This public process balances the independence of the OIP director with the need for public trust that the office is performing as intended.

Thank you again for the opportunity to testify.



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HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Thursday March 15, 2018, 9 AM, Conference Room 309
SB 2735, SD 2 RELATING TO THE INDEPENDENCE OF THE OFFICE OF INFORMATION PRACTICES
TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Johanson and Committee Members:

The League of Women Voters supports the intent but requests amendment of SB 2735, SD 2. SB 2735, SD 2 would require Senate consent for appointments, establish a 6-year term, set compensation, and restrict removal or suspension of the Director of the Office of Information Practices;

The League requests amendment of SB 2735, SD 2 to require a Senate hearing and consent for the appointment, removal, or replacement of the Director of the Office of Information Practices (OIP) - - without specifying grounds for removal or replacement. This would protect an appointee who embarrassed the Governor from retaliatory removal, but still allow the Governor to remove an appointee whose performance was unsatisfactory to the Senate. The League has no expertise or position concerning compensation or term limits.

Thank you for the opportunity to submit testimony.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Labor & Public Employment

From: Cheryl Kakazu Park, Director

Date: March 15, 2018, 9:00 a.m.
State Capitol, Conference Room 309

Re: Testimony on S.B. No. 2735, S.D. 2
Relating to the Independence of the Office of Information Practices

Thank you for considering this bill, which the Office of Information Practices (“OIP”) strongly supports.

OIP is the single statewide agency that administers two important government accountability and transparency laws providing the public with access to information: the Uniform Information Practices Act (UIPA) regarding open records and the Sunshine Law regarding open meetings. As a neutral agency, OIP provides uniform advice, training, and dispute resolution **to the general public and to all state and county agencies, including the state attorney general, county corporation counsels, the Judiciary, the Legislature, all Executive Branch agencies, and independent entities** such as the University of Hawaii and the Office of Hawaiian Affairs. At times, OIP’s decisions may conflict with the positions taken by the attorneys for government agencies, including the Governor’s office, which is why it was separated from the Attorney General’s office in 1998 and is now placed, for administrative purposes only, within the Department of Accounting and General Services (DAGS).

While OIP is an independent agency, its Director is currently appointed solely at the Governor's discretion under section 92F-41(b), HRS. Once appointed, the Director may employ any other personnel that are necessary, including attorneys and staff. HRS § 92F-41(d).

Although he has never sought to influence OIP's decisions, Governor Ige recognizes the potential for OIP's independence to be compromised by undue external pressure that could be exerted upon the Director and consequently, upon the staff. **To protect OIP's independence and neutrality and to promote the public's trust in government, the Governor is willing to give up a significant portion of his currently unfettered power to appoint, discharge, and compensate the OIP Director. This bill was initiated by the Administration,** in order to remove the potential perception of undue influence over this important statewide agency that protects the public's right to government transparency and accountability. Besides removing the potential for undue influence over OIP's decisions, **the bill would also promote stability for OIP and help to retain its institutional memory and staff,** whose concerns about job security will be allayed.

Please keep in mind that **OIP has broader jurisdiction than comparable good government agencies,** as referenced above and outlined in the attached Good Government Agencies Comparison Chart. Moreover, **OIP's substantive work must be performed by licensed attorneys, so its Director should also be a licensed attorney to oversee OIP's legal work,** which is not a requirement for most good government or department heads.

The bill proposes to authorize the Governor to continue to nominate the OIP Director, but **makes the appointment subject to the advice and consent of the Senate. The bill also grants the OIP Director the same**

protections of a fixed term, good cause for removal, and statutorily set compensation afforded to other heads of good government agencies, so that OIP can make decisions that may be politically unpopular, without fear that jobs will be placed in jeopardy. The bill would **set the Director's term to at six years, which is the same as the statutorily set terms of the State Ombudsman and the Legislative Reference Bureau's (LRB) Director, and two years less than the State Auditor's 8-year term under the State Constitution. The bill also proposes the same statutorily set compensation for the OIP Director as that for these good government officials and the State Ethics Commission's Executive Director**, which are all pegged to the same level as the Director of the Department of Health (DOH), as established by the Commission on Salaries.

The Governor could remove the OIP Director, but only for cause after due notice and public hearing, which is **similar to the removal provisions for the Auditor, Ombudsman, and LRB Director who require "cause" or "neglect of duty, misconduct or disability,"** and after 2/3 vote of the Legislature (which is also the appointing authority) in joint session for removal. Other testifiers have agreed that the OIP director should not be removed from office at the mere whim of the Governor, but not "after due notice and public hearing" (bill page 3, lines 1-2) that may require a prolonged investigation and contested case proceeding. OIP does not object to replacing this provision with the following: "and with the advice and consent of the senate."

In conclusion, **this bill is not about any individual, but is about protecting the independence and integrity of an important open government agency that ensures the public's right to accountability and transparency in government.** Because this bill will significantly help to remove the potential for undue external control over OIP and will treat the OIP Director

House Committee on Labor & Public Employment
March 15, 2018
Page 4 of 4

similarly to other open government agency heads, **OIP respectfully urges the passage of Senate Bill 2735, S.D. 2.** Thank you for considering OIP's testimony.

CHART 2

STATE GOOD GOVERNMENT AGENCIES COMPARISON CHART (REVISED as of 2/21/2018) (All serve the general public)

Office/HRS/Constit.	Jurisdiction	Term	How Appointed	How Removed	Salary	FY 2018-19		
						Gen. Funds Appropriation	Personnel Services	Authorized FTE Positions
OIP Director HRS 92F-3, -41, -42; HRS 92-1.5, -2, -10	State, counties (including Mayors, Councils, and departments), independent agencies (UH, OHA), and including Executive branch (Gov, Lt. Gov. and agencies), Legislature, and Judiciary (except courts' nonadministrative functions), for UIPA (open records) ; also all Sunshine Law boards of state, county, and independent entities	At will	Governor's discretion	Governor's discretion	Governor's discretion			
OIP Budget						\$576,855	\$567,388	8.5 (includes 6 attorneys)
Auditor Constit. Art. VII, Sec. 10; HRS 23-1, -2, -3, -8	State and its political subdivisions, except Legislature	8 yrs	Legis. by maj. vote of each house in jt. session	2/3 vote in jt session, for cause May be removed by 2/3 vote in jt session "at any time for cause"	Same as DOH Director Cannot be diminished during term			
Auditor Budget						\$3,007,127	\$2,630,927	37 (26 actual)

CHART 2

<p>Ombudsman HRS 96-1, -2, -3</p>	<p>Administrative acts of agencies, except Legislature, Judiciary, federal govt. , multistate govt'l entity, Gov. and personal staff, Lt. Gov. and personal staff, mayors, councils</p>	<p>6 yrs</p>	<p>Legis. by maj vote of each house in jt session</p>	<p>2/3 vote in jt session Legis. may remove "but only for neglect of duty, misconduct, or disability"</p>	<p>Same as DOH Director Cannot be diminished during term</p>
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Ombudsman Budget						\$1,330,834	\$1,256,599	14.0
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<p>LRB Director HRS 23G-1, -2</p>	<p>Serves Legislature</p>	<p>6 yrs</p>	<p>Legis. by maj. vote of each house in jt. session</p>	<p>2/3 vote in jt session Legis. may remove "but only for neglect of duty, misconduct, or disability"</p>	<p>Same as DOH Director Cannot be diminished during term</p>
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LRB Budget						\$3,459,738 excl. dues	\$2,917,394 incl. session staff & OT	38.0
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<p>State Ethics Exec Dir. HRS 84-2, -3, - 35</p>	<p>State only: all nominated, appointed, or elected officer, employee, and candidate to elected office, but excluding justices and judges</p>	<p>At will</p>	<p>State Ethics Commission's discretion</p>	<p>May be removed "at pleasure" as Commission "deems necessary for the performance of its functions"</p>	<p>Same as DOH Director</p>
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State Ethics Budget						\$1,112,093	\$944,402	11.0
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CHART 2

State Campaign Spending Commission Executive Director	Candidates	At will	Campaign Spending Commission's discretion	Campaign Spending Commission's discretion	Campaign Spending Commission's discretion; 2017: \$129,912			
HRS 11-314(12)								
State CSC Budget						\$505,585	\$443,962	5.0
Chief Election Officer HRS 11-1, -1.6,	Elections	At will	Elections Commission's discretion	Elections Commission's discretion	Not to exceed 87% of DHRD Director's salary; 2018: \$128,276			
Elections Budget						\$3,071,898, not inclu. fed. funds	\$2,234,383	27.44, inclu. 9.44 temp.



March 15, 2018

Rep. Aaron Ling Johanson
House Committee on Labor & Public Employment
State Capitol
Honolulu, HI 96813

Re: Senate Bill 2735, SD2

Chairman Johanson and Committee Members:

We are opposed to this measure.

It would make it extremely difficult to remove a do-nothing or incompetent director of the Office of Information Practices by setting up an impossible-to-accomplish hearing process.

This bill is troublesome, and we ask that you file this bill.

Thank you,

Stirling Morita
President, Hawaii Chapter of the Society of Professional Journalists

SB 2735

SD-2

LATE

TESTIMONY