

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary  
Honorable Brian T. Taniguchi, Chair  
Honorable Karl Rhoads, Vice Chair

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

Hearing: February 1, 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 as currently drafted** because it fails to balance the OIP director's independence with the need for public oversight of the agency.

As the designated agency to interpret Hawaii's public records and open meetings laws, OIP better serves the public if it is neutral. It undermines public confidence in these transparency laws if OIP is perceived as tailoring its decisions to satisfy the Governor for purposes of job security. An OIP director's tenure thus 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. A delay in removing an ineffectual or biased OIP director does a disservice to the public that relies on OIP to ensure that government operations are "conducted as openly as possible." HRS §§ 92-1, 92F-2.

Moreover, there are no metrics for a Governor to assess whether "cause" exists for removal. The OIP director's duties are not objectively measured.<sup>1</sup> Absent proof of a crime or disability, a Governor may have difficulty proving "cause" in a contested case

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<sup>1</sup> For example, in light of present concerns about lengthy delays at OIP, several bills are currently pending to translate the legislative intent for OIP as an "expeditious" forum for resolution of public access complaints into an objective six-month deadline. See S.B. 2578, S.B. 3092, and H.B. 2652; see also Civil Beat Law Center, *Breaking Down Hawaii's Broken System for Resolving Public Access Disputes* at 4-6 (Feb. 2017) (explaining that OIP currently is taking longer to issue, and issuing fewer, decisions than prior years despite a downward trend in newly filed complaints).

proceeding. But such difficulty of proof does not advance the State policy of public access and government accountability. 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.** Such a process ensures that the OIP director will not be removed from office at the mere whim of the Governor. And, through the normal legislative process, both the director and the public will have an opportunity to be heard regarding the proposed removal. 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.



Robin K. Matsunaga  
Ombudsman

Melissa Chee  
First Assistant

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

SENATE COMMITTEE ON JUDICIARY

FEBRUARY 1, 2018

Chair Taniguchi and Members of the Committee:

Thank you for the opportunity to present testimony in support of S.B. No. 2735. 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.

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 1, 2018, 9:00 a.m.  
State Capitol, Conference Room 016

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

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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 third party, 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 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 political 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 political influence over this important statewide agency that protects the public's right to government transparency and accountability.**

The bill proposes to do so by authorizing the Governor to continue to nominate the OIP Director, but **making 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 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.

Like these three good government officials and the State Ethics Commission's Executive Director, the proposed compensation for the OIP Director would be at the same level as that established by the Commission on Salaries and cannot be arbitrarily reduced unless by general law applicable to all salaried officers of the State.

Besides removing the potential for undue political 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.

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 political control over OIP and treat the OIP Director similarly to other open government agency heads, OIP respectfully urges the passage of Senate Bill 2735. Thank you for considering OIP's testimony.

**SB-2735**

Submitted on: 1/27/2018 7:53:14 AM

Testimony for JDC on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
David Raatz		Support	No

Comments:

Dear Chair Taniguchi, Vice-Chair Rhoads, and Committee Members:

Please support this good-government measure.

I have frequently dealt with the Office of Information Practices. The leadership and staff are diligent and professional in applying open-government laws. But OIP is not afforded the status befitting such a vital mission, which limits the agency's effectiveness. This bill would provide the independence needed to ensure consistency, objectivity, and efficiency in OIP's work.

Thank you for considering this testimony in support of SB2735.

Sincerely,

David Raatz

Wailuku

**SB-2735**

Submitted on: 1/26/2018 10:51:21 PM

Testimony for JDC on 2/1/2018 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
lynne matusow		Support	No

Comments:

Please accept this in strong support. However, it is unclear if after the six year term the incumbent can be nominated to serve another term. The bill should be amended to allow for reappointment at the end the six year term, and subsequent reappointment(s) to the discretion of the then governor.

Lynne Matusow





**LATE**

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SENATE COMMITTEE ON JUDICIARY

Thursday, February 1, 2018, 9 AM, Conference Room 016  
SB 2735, RELATING TO THE INDEPENDENCE OF THE OFFICE OF INFORMATION PRACTICES  
**TESTIMONY**

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

Chair Taniguchi and Committee Members:

**The League of Women Voters supports the intent but requests amendment of SB 2735.** SB 2735 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 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.