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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,
ON S.B. NO. 141, A BILL FOR AN ACT
RELATING TO DISCLOSURE OF ATTORNEY-CLIENT AND ATTORNEY WORK-PRODUCT
PRIVILEGED COMMUNICATIONS TO THE OMBUDSMAN**

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

JANUARY 29, 2019

Chair Thielen and Members of the Committee:

Thank you for the opportunity to present testimony in strong support of S.B. No. 141. The purpose of this bill is to allow the Office of the Ombudsman to access information that is protected under attorney-client or attorney work-product privilege without piercing the privilege as it applies to other parties. The bill further prohibits the Ombudsman from disclosing the privileged information to any other party.

As you are aware, the Ombudsman investigates the administrative actions of State executive branch and county agencies. In recent years, we have received increasing numbers of complex complaints that impact, or have the potential to impact, large numbers of individuals. In order to properly evaluate the agency's actions in these cases, there has often been a need to determine if the agency received legal advice and if so, to review the advice that was provided to the agency.

Chapter 96, Hawaii Revised Statutes, provides the Ombudsman the authority to obtain information and other evidence relating to a matter under investigation, and also requires the Ombudsman to maintain secrecy in respect to all matters obtained by the Ombudsman in an investigation. However, agencies have declined to provide my office information they possess that is protected under attorney-client privilege, based on their concern that the disclosure to my office of that information would waive their right to the privilege in possible litigation in the future. This bill will allow my office to obtain information that is necessary to conduct a thorough and complete investigation of these complex cases, without piercing the attorney-client shield that allows the agency's privileged communications to be protected from other parties. Therefore, I am requesting your favorable consideration of this bill.

Thank you, again, for allowing me to present this testimony in support of S.B. No. 141.