

**HB-274**

Submitted on: 1/24/2019 6:41:02 PM

Testimony for LAB on 1/29/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Karin Nomura	Individual	Support	No

Comments:

I support this bill whole heartedly and hope that besides making it easier for people to have access to information, will also make it easier to find. As someone who had an "incident" occur, when I looked up information regarding the 'contractor' that another party had hired but who damaged my property, found they were unlicensed. What it didn't show me were the number of violations - found this under a different location. The type(s) of violations, dates they occurred, number of total violations for that year, etc. are now missing and all I see currently is that it's almost every year (wish it also had the crew that were working listed but it didn't, not even the 'partner' of the 'contractor' that was there throughout the work) hope this is changed and goes back to listing the types of violations - preferably with the license information. As I feel it's important for consumers to have the information available, so they can make a judgement call.

I believe any service oriented departments, offices, etc. where a consumer needs to make a judgement call and services are rendered.



# HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

January 25, 2019  
Rm. 309, 9:00 a.m.

To: The Honorable Aaron Ling Johanson, Chair  
The Honorable Stacelynn K.M. Eli, Vice Chair  
Members of the House Committee on Labor & Public Employment

From: Linda Hamilton Krieger, Chair  
and Commissioners of the Hawai‘i Civil Rights Commission

Re: H.B. No. 274

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

H.B. No. 274 requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed. It requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

The HCRC supports the intent of this measure, but informs the Committee that as an agency we do not have the funding or resources to comply with the requirements it imposes. We support public access, and our contested case proceedings and files are open to the public. However, our agency does not have the resources to scan and upload pleadings in a timely manner, in all cases, and send them via electronic mail. HCRC hearings are similar to Circuit Court hearings and can involve a large number of filings and exhibits. We would need funding and staff to comply with this bill.

Our agency does not have a method to provide an e-mail notification of filings, other than sending them individually. This would be a burdensome process.

Parties in a HCRC hearing may also request that confidential documents be sealed or viewed in camera. It is unclear if this bill provides for that possibility, or the possibility of redacting documents to protect the privacy of minors, or of a person's private information or medical records.

It is noteworthy that the Hawai'i State Circuit Courts do not have online access to all documents filed, because it is burdensome. The Federal courts do provide online access to pleadings for a fee.

The HCRC supports the intent of the bill, but would have difficulty complying with H.B. No. 274 if passed, and would request additional funding and aid from the Office of Enterprise Technology Services to ensure that all posted documents were accessible when posted.

DAVID Y. IGE  
GOVERNOR



HAKIM OUANSAFI  
EXECUTIVE DIRECTOR

BARBARA E. ARASHIRO  
EXECUTIVE ASSISTANT

**STATE OF HAWAII**  
HAWAII PUBLIC HOUSING AUTHORITY  
1002 NORTH SCHOOL STREET  
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HONOLULU, HAWAII 96817

Statement of  
**Hakim Ouansafi**  
Hawaii Public Housing Authority  
Before the

**HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

**Tuesday, January 29, 2019**  
**9:00 AM - Room 309, Hawaii State Capitol**

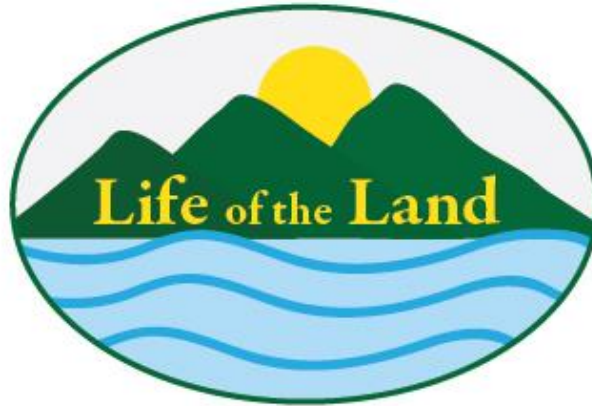
In consideration of  
**HB 274**  
**RELATING TO ADMINISTRATIVE PROCEDURE**

Honorable Chair Johanson and Members of the House Committee on Labor & Public Employment, thank you for the opportunity to provide testimony concerning House Bill (HB) 274, relating to administrative procedure.

The Hawaii Public Housing Authority (HPHA) offers the following **comments** for HB 274, which requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed. Requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

The HPHA administratively conducts approximately 250 public housing eviction hearings every year that involve the nonpayment of rent, criminal activities, drug use, or misconduct. The unintended consequence of this piece of legislation is that the privacy of public housing families going through the eviction hearing process will be exposed for the world to see as the HPHA will be mandated to post online all filings related to their eviction hearing such as "Finding of Facts", "Conclusion of Law", "Decision and Order", "Writs", and "Appeals". If the Committee decides to move this measure forward, the HPHA would like to humbly ask the Committee to provide an exemption for the HPHA.

The HPHA appreciates the opportunity to provide the House Committee on Labor & Public Employment with the HPHA's testimony regarding HB 274. We thank you very much for your dedicated support.



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COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair  
Rep. Stacelynn K.M. Eli, Vice Chair

DATE: Tuesday, January 29, 2019

TIME: 9:00 a.m.

PLACE: Conference Room 309

HB 274 Contested Case Proceedings

SUPPORT

Aloha Chair Johanson, Vice Chair Eli, and Members of the Committee

Life of the Land is Hawai`i's own energy, environmental and community action group advocating for the people and `aina for 47 years. Our mission is to preserve and protect the life of the land through sound energy and land use policies and to promote open government through research, education, advocacy and, when necessary, litigation.

Life of the Land has two active climate change appeals before the Hawai`i Supreme Court. The court heard oral arguments on the first one in October 2018. We also have a climate change complaint before the Public Utilities Commission.

All state agencies that hold administrative hearings and contested case proceedings are bound by Hawai`i Revised Statutes Chapter 91, Administrative Procedure, and in particular, HRS § 91-9 Contested cases; notice; hearing; records.

How the different agencies handle contested case hearings vary greatly. The Public Utilities Commission has a separate web-site where they have virtually all the documents from some 7,500 dockets opened since 1998 (excluding a few files on climate change and other externalities). Recently the ability to word search across dockets was added.

Many other state agencies post files of active procedures.

By contrast, The Department of Health`s Clean Air Branch agreed to a contested case proceeding regarding Puna Geothermal Ventures 5-year air permit. Madame Pele caused the docket to be suspended. In the two-and-a-half years that the docket was active, some but not all parties were identified, no listing of issues was established, no timeline was developed, and the hearing officer stated that the docket had no specific files located in no central location. When he needed a file, he asked DOH for it.

The Hawai`i Supreme Court relies only on electronic filing and electronic notifications. Simply. Easy. Paperless.

Agencies need to decrease cutting down trees to produce documents which are all in electronic format to begin with. Transparency and accountability are key.

Mahalo

Henry Curtis

Executive Director

# COMMUNITY ALLIANCE ON PRISONS

P.O. Box 37158, Honolulu, HI 96837-0158

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## COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

Rep. Aaron Ling Johanson, Chair

Rep. Stacelynn K.M. Eli, Vice Chair

Tuesday, January 29, 2019

9:00 am

Room 309

## STRONG SUPPORT for HB 274 – TRANSPARENCY in ADMINISTRATIVE PROCEDURES

Aloha Chair Johanson , Vice Chair Eli and Members of the Committee!

My name is Kat Brady and I am the Coordinator of Community Alliance on Prisons, a community initiative promoting smart justice policies in Hawai`i for more than two decades. This testimony is respectfully offered on behalf of the families of **ASHLEY GREY, DAISY KASITATI, JOEY O`MALLEY, JESSICA FORTSON AND ALL THE PEOPLE WHO HAVE DIED UNDER THE "CARE AND CUSTODY" OF THE STATE** as well as the approximately 5,400 Hawai`i individuals living behind bars or under the "care and custody" of the Department of Public Safety on any given day. We are always mindful that more than 1,600 of Hawai`i's imprisoned people are serving their sentences abroad thousands of miles away from their loved ones, their homes and, for the disproportionate number of incarcerated Kanaka Maoli, far, far from their ancestral lands.

HB 274 requires agencies to maintain a website with a list of open contested cases and requires access to all documents filed. Requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding.

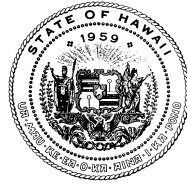
Community Alliance on Prisons is in strong support of this measure. A vibrant democracy demands public engagement. It has become increasingly difficult to get information from agencies. And many times when the information is received, it is just a document dump with no context making it difficult to follow what is happening.

Please pass this important bill to show that public participation is a vital part of democracy! Mahalo for this opportunity to testify!

## SUNSHINE IS THE BEST DISINFECTANT!







**STATE OF HAWAII**  
**DEPARTMENT OF HEALTH**  
P. O. Box 3378  
Honolulu, HI 96801-3378  
doh.testimony@doh.hawaii.gov

**Testimony in OPPOSITION to HB274**  
**RELATING TO ADMINISTRATIVE PROCEDURE.**

REP. AARON LING JOHANSON, CHAIR  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Hearing Date: January 29, 2019

Room Number: 329

1 **Fiscal Implications:** Undetermined costs to implement the required electronic system.

2 **Department Testimony:** The Department of Health respectfully opposes HB274 and urges the  
3 measure be held due to privacy concerns and other unforeseen impacts.

4 The intent of the measure is to establish a uniform web-based means of access to documentation  
5 related to contested cases. The Department of Health adjudicates a variety of contested cases  
6 such as determinations of eligibility for programs for developmental disabilities, mental health,  
7 substance abuse, and medical cannabis; professional licensing and certification; physical  
8 disabilities accommodation; and environmental health and safety programs like restaurant  
9 inspections, clean air permits, and water pollution enforcement.

10 As a result, mandatory posting of all relevant documentation may compromise an individual's  
11 right to privacy. In some cases, redaction of sensitive information may be overly burdensome  
12 and diminish the value of the posting.

13 Lastly, amendments to chapter 91 proposed by HB274 affect all executive branch agencies, not  
14 just the Department of Health, and it is premature to impose a uniform standard or procedure  
15 without an examination of unintended consequences. In lieu of this measure, the department is  
16 open to discussing business process improvements with HB274's sponsors

17 **Offered Amendments:** N/A.



**STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES**

P.O. Box 339  
Honolulu, Hawaii 96809-0339

January 28, 2019

TO: The Honorable Representative Aaron Ling Johanson, Chair  
House Committee on Labor & Public Employment

FROM: Pankaj Bhanot, Director

SUBJECT: **HB274 – RELATING TO ADMINISTRATIVE PROCEDURE**

Hearing: January 29, 2019, 9:00 a.m.  
Conference Room 309, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the legislature's intent to create a website list of contested cases and access to all documents filed on the agencies websites to the public and to create a web-based filing notifications. However, DHS requests to be exempt from the web-based list of contested cases and access to documents filed as DHS hearings and documents are confidential and are not open or available to the public.

Regarding the e-mail subscription, due to the confidential nature of DHS administrative appeal matters, we ask that interested parties be limited to applicant/claimants or recipient/claimants or providers and or their authorized representatives.

To implement the e-mail subscription, and or any web-based listing, DHS will require additional IT resources, both in staff and appropriations, to develop, upgrade, build and secure the system and information.

**PURPOSE:** The purpose of this bill is to require agencies to maintain a website with a list of open contested cases and require public access to all documents filed. The bill also requires that each agency establish a subscription-based e-mail notification system that notifies interested parties of all filings made in a contested case proceeding.

The Administrative Appeals Office (AAO) of DHS conducts administrative hearings for the Benefit Employment and Support Services (BESSD) division, Social Services Division (SSD), Med-QUEST Division (MQD), and the Division of Vocational Rehabilitation (DVR). The hearing issues involve claimant's confidential information and unless both DHS and the claimant agree, the hearings are closed to the public. Hearing issues involve food stamps (SNAP), Medicaid, and financial assistance application denials, reduction, suspension, or termination of benefits, fraudulent receipt of benefits, recovery of benefit overpayments, or vocational rehabilitation issues. For Child Welfare Services (CWS) hearings, the issues involve minor children and claimants are individuals identified as perpetrator of physical and/or sexual abuse of children. Like Family Court, issues regarding minor children are confidential. For Adult Protective Services (APS), issues involve individuals identified as perpetrator of physical abuse and/or financial exploitation of seniors or physically or mentally disabled adults.

If the DHS administrative hearing decisions are appealed to Circuit Court pursuant to section 91-14, Hawaii Revised Statutes (HRS), the AAO hearing records are filed as "confidential" at Circuit Court pursuant to section 346-10, HRS, to protect the confidential information.

Additionally, the legislature has recognized the significant privacy interest of individuals regarding the potential subject matter of DHS administrative hearings. Section 92F-14 (b) provides "[t]he following are examples of information in which the individual has a significant privacy interest:

- (1) Information relating to medical, psychiatric, or psychological history, diagnosis, condition, treatment, or evaluation, other than directory information while an individual is present at such facility;
- (2) Information identifiable as part of an investigation into a possible violation of criminal law, except to the extent that disclosure is necessary to prosecute the violation or to continue the investigation;
- (3) Information relating to eligibility for social services or welfare benefits or to the determination of benefit levels; ...
- (6) Information describing an individual's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness; ...

- (8) Information comprising a personal recommendation or evaluation; ...
- (9) Social security numbers; and
- (10) Information that if disclosed would create a substantial and demonstrable risk of physical harm to an individual.

Further, different program administrative rules limit access to administrative hearings and information to the parties. Hawaii Administrative Rules (HAR) §17-602.1-13(b) for BESSD states, in relevant part:

...Unless both DHS-BESSD and the claimant agree to the presence of other individuals, the hearing officer and other person conducting the hearing shall limit attendance to the following individuals necessary for the conduct of the hearing:

- (1) The claimant, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;
- (2) Representatives of the branch or unit office;
- (3) Representatives of DHS-BESSD; and
- (4) Hearing officer and members of the hearing office staff.

Hawaii Administrative Rules §17-602.1-38 for SNAP states, in relevant part:

Persons who may attend the hearing.

(a) The following persons shall attend the hearing:

- (1) The hearing officer;
- (2) The household and its representative;
- (3) A person charged with recording the proceedings;
- (4) The branch representatives; and
- (5) Attorneys assigned to the department.

(b) Persons whose presence have been requested, or to whom consent has been given by the household, may also attend the hearing.

Hawaii Administrative Rules §17-1703.1-12(c) for MQD states, in relevant part:

(c) Unless both the department and the individual agree to the presence of other persons in the hearing room, the hearing officer and other person conducting the hearing shall limit attendance to the following individuals necessary for the conduct of the hearing:

- (1) The individual, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;

- (2) Representatives of the section or unit offices;
- (3) Representatives of Med-QEUST Division; and
- (4) Hearing officer and staff.

Hawaii Administrative Rules §17-1402-11(b) for APS states, in relevant part:

...Unless both department and the claimant agree to the presence of other individuals, the hearing officer and other person conducting the hearing shall limit attendance to the following individuals necessary for the conduct of the hearing: interpreter

- (1) The claimant, the authorized representative, or both, interpreter, if any, legal counsel, and witnesses;
- (2) Representatives of the adult and community care services branch;
- (3) representative of the social services division; and
- (4) Hearing officer and members of the hearing office staff.

In addition, AAO is mandated by federal regulations (7 C.F.R. 272.8, 45 CFR 205.51, et al.) to keep AAO documents confidential and secured. AAO documents received from the divisions contain information from the Income & Eligibility Verification System (IEVS). AAO must adhere to strict federal guidelines to keep documents confidential. Therefore, in addition to the DHS rules, the IEVS prohibits AAO from making documents public.

Finally, if required DHS requests a one-year Pilot Project to determine the number of DHS clients who may be subscribing to e-mail notification and calculate additional resources required to design, implement and maintain the service that remains timely and secure.

Thank you for this opportunity to provide comments on this bill.

**HB-274**

Submitted on: 1/28/2019 8:56:12 AM

Testimony for LAB on 1/29/2019 9:00:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	Oahu County Committee on Legislative Priorities, Democratic Party of Hawai'i	Support	No

Comments:

DAVID Y. IGE  
GOVERNOR OF  
HAWAII

**LATE**

SUZANNE D. CASE  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA  
FIRST DEPUTY

KALEO L. MANUEL  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE D. CASE  
Chairperson**

**Before the House Committee on  
LABOR AND PUBLIC EMPLOYMENT**

**Tuesday, January 29, 2019  
9:00 AM  
State Capitol, Conference Room 309**

**In consideration of  
HOUSE BILL 274  
RELATING TO ADMINISTRATIVE PROCEDURE**

House Bill 274 proposes to require agencies to maintain a website with a list of open contested cases and requires access to all documents filed. It also requires that each agency establish a subscription-based email notification system that notifies interested parties of all filings made in a contested case proceeding. **The Department of Land and Natural Resources (Department) appreciates the intent of this measure and offers comments.**

First, the Department understands the bill's intent is to ensure that all parties before a regulatory agency enjoy equal access to information, but believes that the proposed procedures are not necessary as far as the Department is concerned. The Department's administrative procedure rules currently require the Department and all parties in a contested case to timely serve the hearing officer, the counsel to the tribunal, and all other parties their filings with a certificate of service. In addition, the hearing officer in a Department contested case often requires or allows service by E-Mail delivery, depending on the parties' technical capability. This practice allows the hearing officer to determine the best way to handle the record and ensure fair and timely access by all parties, including those who appear in the proceedings pro se and could be disadvantaged in an all-digitized case process. The Department is not aware of any past cases in which a party was not able to timely receive or gain access to information or documentation in a contested case proceeding.

Second, the Department's administrative rules regarding practice and procedure allow us to quickly identify the parties to a contested case hearing. This is different from the experience of some other state departments as described in the preamble of the bill. For those parties who may be interested in participating in a pending contested case proceeding of the Department as an additional party or intervenor, they can always find the case information of the relevant Land Board action on the

Department's website. It should also be noted that the Department's rules preclude a third party who is not a cited violator from participating in an enforcement case.

Third, the Department believes that, if the two tasks in this bill were to be implemented, it would create a substantial need for additional funding and staff positions as the aggregate volume of the Department's contested case filings can be sizable. In fact, the Department processes contested cases that vary in size. Some cases are in lengthy proceedings with multiple parties and voluminous filings, mostly involving land uses and development. Others are short and simple proceedings with few filings, mostly enforcement cases that are contested by the cited violators, but the number of these cases is large. The Department believes that requiring online posting of all filings in those large cases may take substantial staff time and unnecessarily further prolong the already lengthy process. On the other hand, in those small enforcement cases, the Department sees little value in posting all the filings online as required by this bill.

The Department further believes that, if online access to a listing of the contested cases and/or filings in all contested cases should be provided to indefinite parties or the general public, it should be developed and hosted centrally at the state level instead of by the individual agencies. It may adopt the model of the State of Hawaii eProcurement system (HIePro). This will provide optimal uniform accessibility experience for the users and much savings from system development and maintenance.

Thank you for the opportunity to comment on this measure.



DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR



**LATE**

SCOTT T. MURAKAMI  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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Phone: (808) 586-8844 / Fax: (808) 586-9099

Email: [dlir.director@hawaii.gov](mailto:dlir.director@hawaii.gov)

January 29, 2019

To: The Honorable Aaron Ling Johanson, Chair,  
The Honorable Stacelynn K.M. Eli, Vice Chair, and  
Members of the House Committee on Labor & Public Employment

Date: Tuesday, January 29, 2019  
Time: 9:00 a.m.  
Place: Conference Room 309, State Capitol

From: Scott T. Murakami, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 274 RELATING ADMINISTRATIVE PROCEDURE**

The DLIR appreciates the intent of this measure and supports transparency, open government, and public access to government records; however, the Department has grave concerns regarding the measure. These concerns include privacy, resource constraints, and unintended consequences. Several of the Department's programs, including the Hawaii Labor Relations Board (HLRB), the Employment Security Appeals Referees' Office (ESARO), the Hawaii Civil Rights Commission (HCRC) the Disability Compensation Division (DCD), and the Labor and Industrial Relations Board (LIRAB), have cases that contain personal and highly confidential information and records.

For example, LIRAB's case files contain medical reports and treatment notes relating to an injured employee's physical and psychiatric/psychological conditions, personnel and employment history and records, and financial, insurance, and government benefit information. In addition, the records in LIRAB's case files often reference personal information such as social security numbers, drivers' license numbers or Hawai'i identification card numbers, birthdates, and addresses in which individuals have a significant privacy interest.

The records and case files notwithstanding, the Office of Information Practices determined that, with respect to private sector employees, there is also a significant privacy interest in the fact that a person has even filed workers' compensation claim. Op. Ltr. No. 10-05 (Dec.3, 2010).

Online disclosure to the public or any interested party of all documents filed in LIRAB's open cases could constitute an unwarranted invasion of personal privacy protected by statute and the State Constitution. See HRS §92-2, §92F-14 and §92F-13 of the Uniform Information Practices Act; Section 6 and 7 of Article I (privacy clauses) of the Constitution of the State of Hawaii.

Requests for information under Hawaii's Employment Security Law are governed by Haw. Rev. Stat. §383-95 and Hawaii Administrative Rules §§12-5-211, -215, and -219. These provisions require the Department to keep confidential information obtained in the administration of unemployment law and determinations as to the benefit rights of any individual. The information is disclosed to a party only "to the extent necessary for the proper presentation of the claimant's claim in any proceeding under this chapter." Haw. Rev. Stat. § 383-95(a).

OIP Memorandum Opinion 10-6 (Feb. 24, 2010) also recognized and upheld the confidentiality of unemployment appeals hearings, which are not open to the public. See also Haw. Rev. Stat. §§ 92F-13(4) and 92F-22(5). This proposed amendment fails to recognize the statutorily-mandated confidentiality for proceedings involving an individual's unemployment status.

Lastly, the Department does not have the funding or staffing to implement the requirements of this proposal. The DLIR's contested cases proceedings contain voluminous amounts of documents and the Department does not have the resources to scan and upload those documents and send them via electronic mail.

DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LIEUTENANT GOVERNOR

SCOTT T. MURAKAMI  
DIRECTOR, DLIR

LEONARD HOSHIJO  
DEPUTY DIRECTOR, DLIR



**LATE**

MARCUS R. OSHIRO  
BOARD CHAIR

SESNITA A.D. MOEPONO  
BOARD MEMBER

J N. MUSTO, Ph.D  
BOARD MEMBER

STATE OF HAWAII  
HAWAII LABOR RELATIONS BOARD  
830 PUNCHBOWL STREET, ROOM 434  
HONOLULU, HAWAII 96813

Phone (808) 586-8610 / FAX (808) 586-8613  
Email: [dlir.laborboard@hawaii.gov](mailto:dlir.laborboard@hawaii.gov)

Chair Johanson, Vice Chair Eli, and Members of the Committee:

The Hawai'i Labor Relations Board (HLRB or Board) recognizes the intent of HB 274 and supports public access and transparency in government. **However, the HLRB has serious reservations regarding the measure, and respectfully requests the Committee's consideration of the Board's comments.** Specifically, HB 274 raises concerns about the privacy of personal and highly confidential information contained in the HLRB case records.

The language of HB 274 would require public access to all pleadings, correspondence, and other documents filed by the parties appearing before the Board. In some cases, this may include personal information such as financial records and work personnel files.

To address privacy concerns, the HLRB notifies and requires that the parties submitting such documents electronically or manually redact or encrypt all personal information, including "social security numbers, home addresses, dates of birth, bank account numbers, medical and health records, and any other information in which a person has a significant privacy interest[;] and further, that to the extent that any personal information is relevant to the Board's consideration of the case that the submitting party submit the confidential information by means of a Confidential Information Form that substantially conforms to Form 2 of the Hawai'i Court Records Rules, as amended." The HLRB additionally informs the parties that failure to redact or encrypt such personal information is grounds for sanctions. However, this system relies on the compliance of the parties and is thus not foolproof; documents that are not in conformance with these requirements are at times submitted.

Further, the HLRB case files may include documents which have been placed under seal to protect the privacy rights of individuals involved in the case. When these documents are transferred to circuit court for the appeals process, they are not available for public viewing because of the privacy concerns. However, at this time, the HLRB has no protocol in place to ensure that documents filed under seal would not be disclosed with public access to the HLRB's case files.

In addition, pursuant to Hawai'i Revised Statutes (HRS) § 396-3 and 396-11(h), the HLRB is the appeals board for HRS Chapter 396, Hawai'i's Occupational Safety and Health law. Under that authority, the HLRB conducts de novo hearings on any notice of contest, except where the rules require a prior formal hearing at the department level (HRS § 396-11(h)). The Office of Information Practices (OIP) in OIP Op. Ltr. No. 95-17 (July 26, 1995) has determined that, in the absence of a unique emergency situation, the records or determination in any HIOSH administrative proceedings may be withheld from public inspection and copying.

Furthermore, in order to implement the public access envisioned by this bill, the HLRB would require an additional staff member and sufficient funds to obtain software and training to ensure that all privacy rights are protected. At this time, the HLRB is unable to estimate the amount of additional funds that would be required for implementation of HB 274.

Finally, the HLRB notes that members of the public may in accordance with HRS Chapter 92F, the Uniform Information Practices Act, submit requests for HLRB records.

Thank you for your time and consideration of the HLRB's comments and concerns regarding HB 274.



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
THIRTIETH LEGISLATURE, 2019**

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**LATE**

**ON THE FOLLOWING MEASURE:**

H.B. NO. 0274, RELATING TO ADMINISTRATIVE PROCEDURE.

**BEFORE THE:**

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

**DATE:** Tuesday, January 29, 2019                      **TIME:** 9:00 a.m.

**LOCATION:** State Capitol, Room 309

**TESTIFIER(S):** Clare E. Connors, Attorney General, or  
Valri Lei Kunimoto, Deputy Attorney General

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Chair Johanson and Members of the Committee:

H.B. No. 274 requires each agency to maintain a website with a list of open contested cases and allow public access to all of the documents filed. The bill also requires each agency to establish a subscription-based e-mail notification system that notifies interested parties of all filings made in a contested case proceeding. The purpose of the bill is to increase transparency of contested case proceedings and enable public access to documents filed in the cases. We offer the following comments on the measure.

While we agree with the intent of the bill to increase transparency in government, this bill creates public access to all agency filings without regard to whether the contested cases are public or confidential. It must be noted that there are agencies that conduct hearings that are confidential pursuant to state or federal laws and must be closed to the public. These agencies should be exempt from the public access requirement. As presently drafted, the bill would require access to documents in contested cases dealing with confidential issues, i.e., disability compensation benefits, unemployment benefits, special education services, child support payments, and benefits provided by the Department of Human Services.

In order to maintain the confidentiality of those proceedings we suggest adding wording to subsection (h) to read:

(h) Each agency shall maintain a website that contains a list of the agency's open cases that are not confidential by law. Each website shall provide access to [all of] the documents that are not confidential by law filed in [each] such cases. All documents shall be uploaded in a timely manner to the website.

(Proposed language is underscored; deletion is bracketed.) This would clarify that the provision only applies to agencies which conduct hearings open to the public and the documents are not confidential by law.

In addition, we have operational concerns because the bill does not appropriate funds for additional informational technology products or services necessary to assist the agencies to create or modify their existing websites and to implement the subscription services. Finally, the effective date for implementation of the bill should be delayed to allow the agencies sufficient time to procure or modify their existing filing procedures and systems.

Thank you for the opportunity to testify on this matter.