

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: Senate Committees on Government Operations and on
Energy, Economic Development, and Tourism

From: Cheryl Kakazu Park, Director

Date: February 7, 2022, 3:30 p.m.
State Capitol, Conference Room 224 and Via Videoconference

Re: Testimony on S.B. No. 2203
Relating to Sustainable Electronics Management

Thank you for the opportunity to submit testimony on this bill, which would require state agencies to transfer their old electronic devices to the Department of Accounting and General Services to refurbish as possible and distribute to eligible recipients. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers comments.

First, OIP notes that the definition of “nonpublic information” on bill page 4 refers to any information that is not required to be “disclosed under section 92F-12.” That section of the Uniform Information Practices Act, chapter 92F (UIPA), is not an exclusive list of all the information that is considered public under the UIPA. Rather, the UIPA’s general rule is that government records are presumed public but may be withheld if they fall under an exception to disclosure, and section 92F-12, HRS, creates an exception to that general rule by mandating that the listed information is automatically public and not potentially subject to the UIPA’s exceptions like most government record. The information listed in section 92F-12 is generally information that has historically been public record or that the

Legislature specifically wanted to ensure would be treated as public under the UIPA. It does not include firmware for an electronic device. Thus, by referring to section 92F-12 this definition would define as “nonpublic information” not only the firmware for an excess electronic device but also a great deal of what would actually be public information under the UIPA.

That problem can be fixed by amending the definition to instead exclude government records “that must be publicly disclosed under chapter 92F,” but there remains a further problem: what is the legal significance of public versus nonpublic information in this measure? Proposed section A-3(b), on page 5 of the bill, requires an agency transferring a device to first “remove data . . . including but not limited to personal information and nonpublic information,” in a way “that does not remove, disable, or destroy critical functions, or otherwise render the . . . device unusable.” This can include removing the device’s hard drive. In other words, the intent seems to be to for the transferring agency to remove everything but the firmware from the device, not just the nonpublic information, but it is not clear whether the bill creates any sort of consequence for an agency that fails to remove all “personal information and nonpublic information” as required.

Because of the questions raised by the definition of nonpublic information and its use in the bill, OIP recommends this Committee consider amending the bill by deleting the definition of “nonpublic information” on page 4, lines 9-13, and replacing the data removal language at page 5, lines 15-17, with a requirement that the agency “shall remove data resulting from the agency's use of the device, including but not limited to personally identifiable information and information that may be withheld from public disclosure under chapter 92F and other laws.” This would clarify the intent for the agency to clear out its own data,

Senate Committees on Government Operations and on
Energy, Economic Development, and Tourism
February 7, 2022
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without potentially requiring it to remove firmware or other data that came with the device or through device updates.

Thank you for considering OIP's testimony.

DAVID Y. IGE
GOVERNOR



CRAIG K. HIRAI
DIRECTOR

GLORIA CHANG
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

WRITTEN ONLY
TESTIMONY BY CRAIG K. HIRAI
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE SENATE COMMITTEES ON ENERGY, ECONOMIC DEVELOPMENT, AND
TOURISM AND GOVERNMENT OPERATIONS
ON
SENATE BILL NO. 2203

February 7, 2022
3:30 p.m.
Room 224 and Videoconference

RELATING TO SUSTAINABLE ELECTRONICS MANAGEMENT

The Department of Budget and Finance (B&F) offers comments on Senate Bill (S.B.) No. 2203.

S.B. No. 2203 requires State departments and agencies to transfer certain electronic devices to the Department of Accounting and General Services (DAGS), which may refurbish and distribute these devices to eligible entities in the State or eligible private person as determined by rule. The measure also establishes the Sustainable State Electronics Special Fund (SSESF), to be administered by DAGS, which shall be deposited: 1) all revenues from the operations of this statute; and 2) all administrative penalties or fees collected by DAGS under proposed Section A-7, HRS, for administrative rules, enforcement, and fees. The moneys in this special fund shall be used for the administration of this chapter.

Regarding the establishment of the SSESF, as a matter of general policy, B&F does not support the creation of special funds which do not meet the requirements of Section 37-52.3, HRS. Special funds should: 1) serve a need as demonstrated by the

purpose, scope of work and an explanation why the program cannot be implemented successfully under the general fund appropriation process; 2) reflect a clear nexus between the benefits sought and charges made upon the users or beneficiaries or a clear link between the program and the sources of revenue; 3) provide an appropriate means of financing for the program or activity; and 4) demonstrate the capacity to be financially self-sustaining. In regards to S.B. No. 2203, it is difficult to determine whether the special fund is self-sustaining.

Thank you for your consideration of our comments.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/07/2022

Time: 03:30 PM

Location: CR 224 & Videoconference

Committee: Senate Government

Operations

Senate Energy, Economic Development,
and Tourism

Department: Education

Person Testifying: Keith T. Hayashi, Interim Superintendent of Education

Title of Bill: SB 2203 RELATING TO SUSTAINABLE ELECTRONICS
MANAGEMENT.

Purpose of Bill: Requires state departments and agencies to transfer certain electronic devices to the Department of Accounting and General Services, which may refurbish and distribute these devices to eligible entities in the State or eligible private persons, as determined by rule.

Department's Position:

The Hawaii State Department of Education (Department) respectfully offers comments on SB 2203 to reduce electronic waste by requiring the transfer of certain electronic devices to the Department of Accounting and General Services to refurbish and distribute to eligible entities.

The bill mentions that refurbished devices may be redistributed to users such as schools and low-income families. With the potential for these refurbished devices to be provided to minors, the Department would like to recommend that verbiage be added to ensure that covered entities remove any content that may be inappropriate to minors so devices provided to families or schools would be safe for children. Suggested additional verbiage to page 5, lines 14-18, could include:

(b) A covered entity, prior to the transfer of an excess electronic device under this section, shall remove data from the device, including but not limited to personal information, ~~and~~ nonpublic information, and any content that may be deemed

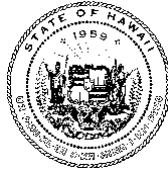
inappropriate for people under the age of 18, according to the rules adopted by the department under this chapter.

In addition, the proposed responsibilities for covered entities may present challenges with regards to transferring possession of devices and ensuring removal of data. Depending on the volume of devices identified for transfer, the physical transfer of the devices to a designated location may present challenges to Department offices and schools that do not have appropriate means to transport the inventory. This may result in the need for funding to purchase services to move and transport devices to a designated location. With regards to the removal of data from devices, not all Department schools and offices have staff with the knowledge and expertise to ensure devices are clear of confidential data, personally identifiable information, and inappropriate content. This may result in the need for funding to procure professional services to conduct and ensure appropriate data removal from each device prior to being transferred.

The Department would also like to note the need to be aware of the usable lifespan of devices. Although a device may be operable, as new software, operating systems, and security updates become available, its capacity and compatibility with older devices may be diminished to the point that these items may not be able to be loaded to the device or may take up too much computing resources resulting in slower application response or online experiences.

Thank you for the opportunity to provide testimony on this measure.

DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE

SENATE COMMITTEES
ON
ENERGY, ECONOMIC DEVELOPMENT AND TOURISM/
GOVERNMENT OPERATIONS

MONDAY, FEBRUARY 7, 2022, 3:30 P.M.
VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 2203

RELATING TO SUSTAINABLE ELECTRONICS MANAGEMENT

Chairs Wakai and Moriwaki, Vice Chairs Misalucha and Dela Cruz, and Members of the Committees, thank you for the opportunity to testify on S.B. 2203.

The Department of Accounting and General Services (DAGS) appreciates the intent of this measure to promote electronic stewardship and reduce electronic waste. However, due to the following concerns and comments, DAGS is in strong opposition to this measure.

1. A cost to benefit analysis should be completed to measure the benefits to the State against the cost to collect, assess, manage, repair and distribute refurbished/repaired electronics.
2. The demand for refurbished and/or repaired electronics among state agencies may not justify the cost of implementation of this program.
3. This measure has no appropriation. The collection and storage of outdated equipment would require the use of SPO's warehouse facility, acquisition of transport vehicles

along with hiring of additional staff to staff to pick up, manage, repair and distribute equipment. DAGS defers to SPO on programmatic personnel funding requirements.

4. An alternative is to outsource this operation to a third party which would require State subsidization to have old equipment repaired. The third party would need to be vetted and authorized to delete all proprietary State data, software and network access from discarded equipment. Reselling could also be outsourced and the State should be compensated a percentage of the resell value.

Thank you for the opportunity to testify on this matter.



STATE OF HAWAII
STATE PROCUREMENT OFFICE

P.O. Box 119
Honolulu, Hawaii 96810-0119
Tel: (808) 586-0554
email: state.procurement.office@hawaii.gov
<http://spo.hawaii.gov>

TESTIMONY
OF
BONNIE KAHAKUI, ACTING ADMINISTRATOR
STATE PROCUREMENT OFFICE

TO THE SENATE COMMITTEES
ON
GOVERNMENT OPERATIONS
AND
ENERGY, ECONOMIC DEVELOPMENT, AND TOURISM

Monday, February 7, 2022, 3:30 pm

SENATE BILL 2303
RELATING TO SUSTAINABLE ELECTRONICS MANAGEMENT

Chair Moriwaki, Chair Wakai, Vice Chair Dela Cruz, Vice Chair Misalucha, and members of the committees, thank you for the opportunity to submit testimony on Senate Bill 2203. The State Procurement Office (SPO) appreciates the good intentions of keeping consumer electronic devices out of the waste stream and helping those who are not able to afford personal electronic devices.

However, the SPO is in strong opposition to this bill for the following reasons:

- The State of Hawaii will be exposed to risks pertaining to repair warranty liability when electronics are sold and or transferred "as is" or "refurbished" to private individuals;
- Current software and operating systems run the risk of not being compatible with older hardware and refurbished electronics;
- There is no cost-benefit analysis (costs to collect, assess, repair, and sell/transfer) against the expected revenues from the operations, plus penalties, to ensure that the Sustainable State Electronics Special Fund will be financially sustainable;
- The bill does not explicitly state that refurbished equipment will be sold to a qualified member of the public, so this revenue source is not clear;
- The bill does not provide for initial funding for the establishment of a Sustainable Electronic Management Program until the Special Fund becomes a viable source;
- The program must comply with Federal regulations related to environmental protection;

- Certification in Responsible Recycling (R2), the leading standard for electronics repair and recycling, which provides a common set of processes, safety measures, and documentation requirement for businesses that repair and recycle used electronics, may be cost-prohibitive (<https://www.epa.gov/smm-electronics/certified-electronics-recyclers>);
- The multiple transfers (incoming, transfer to covered refurbisher, then outgoing transfer to qualified public) of equipment require accountability and transparency; and
- While there are penalties for violations, there is no enforcement component or means to enforce the statute.

Based on the understanding that the Sustainable Electronic Management Program will be part of the SPO's Surplus Property Office (Surplus), the SPO would require initial funding for the following components to be added to the program's infrastructure:

- Personnel [program manager (1), program supervisor (1), truck drivers (2), certified assessment/repair technicians (3), office staff (2), and inventory staff (2)]. The certified assessment/repair technicians would handle assessment, repair and refurbishment of electronic equipment. A digital process and record-keeping software to manage accountability, traceability, incoming "temporary" transfer, assessment, and outgoing "final" transfer.
- Enclosed vehicles/trucks and funding to run, maintain, and insure the vehicles;
- Equipment, repair tools, and replacement parts;
- Secured, climate-controlled warehouse equipped with theft-deterrent/security system.

The SPO estimates the start-up cost of personnel (one-year salaries), equipment, and software for the Sustainable Electronic Management Program will cost approximately \$1,000,000. This does not include additional warehouse space if necessary.

The bill does not address:

- Monetary compensation, if any a third-party refurbisher would receive,
- Procurement implications to contract with a third-party refurbisher,
- Definition of a person "in need."

The bill's language must align with §103D-1103 through §103D-1103, HRS.

Based on the aforementioned reasons and considerations, and to minimize risk and liability for the State of Hawaii, the SPO strongly opposes the language requiring that the department to establish a Sustainable State Electronics Management Program.