

Commission to Improve Standards of Conduct

Dear Chairman Tarnas and Members of the Judiciary and Hawaiian Affairs Committee,

Thank you for the opportunity to comment on bills recommended to the House of Representatives (House) by the Commission to Improve Standards of Conduct (Commission). The origin and justification of these bills is extensively discussed in the Commission's December 1, 2022 Final Report (Report) submitted to the House pursuant to HR 9.

The bills recommended by the Commission are a package that would increase transparency and accountability in state and county government and help restore public trust in government which has been severely eroded in the past few years by highly publicized instances of corruption and misconduct in state and county government.

With that in mind, I would like to comment on all the Commission bills in this testimony and submit it for each bill for your consideration.

First, I would like to commend the House for creating the Commission. It has been an honor to carry out the mandate of the House and serve with the distinguished and learned members the House appointed to the Commission. The members of the Commission worked very hard over a period of nine months, reaching out to public officials, community leaders, experts in various fields within the Commission's mandate and held extensive public hearings in drafting the bills recommended to the House. These public hearings are summarized in the Report at 13-18 and Appendix B of the Report which contains the Commission's minutes of these public meetings. The notice of the Commission's meetings with a link to a video recording of each meeting and testimony submitted and documents considered at each meeting can be found at the House webpage's a link to the Commission under House Special Committees.

The following is the list of bills recommended by the Commission with brief summaries and citations to the relevant parts of the Commission's Report where they are discussed.

HB 705 – Requires each house of the Legislature to post a report of the legislative allowance expenditures for each member of the respective house on the Legislature's website. The purpose of this bill is to "increase transparency and ease of access to information related to expenditure of taxpayer monies." Report at 28.

HB 706 – Requires all members of the Legislature to disclose certain relationships with lobbyists or lobbying organizations in their financial disclosures. The purpose of this bill is to "increase transparency and potentially uncover conflicts or self-dealing." Report at 28.

HB 707 – Makes it a class C felony to make false, fictitious or fraudulent claims against the state or a county, or any of their department or agencies, disqualifying a person from holding elective public office for a period of 10 years upon conviction of making a false, fictitious or fraudulent claim. This bill is modeled after the federal false claims statute. Report at 21. This bill comes

with two others – HB 710 (false statement) and HB 711 (fraud) which are also modeled after federal statutes. Federal, state and county law enforcement officials testified before the Commission that state and county law enforcement need statutes as their federal counterpart have to root out corruption in state and county government rather than always relying on federal enforcement to do this job.

HB 708 – Amends the information in the statement of expenditures reports that lobbyists and other individuals are required to file with the State Ethics Commission to include the identity, by bill number, resolution number or other similar identifier, of the legislative or administrative action that was commented on, supported by or opposed by the person filing the statement. Report at 28. As with other bills in the Commission’s package, this bill would increase transparency and expose any potential conflict of interest.

HB 709 – Requires a lobbyist training course to be designed and administered by the State Ethics Commission, makes the training course mandatory for all lobbyists who are required to register and renew their registration with the State Ethics Commission. The Commission found “that more education and training can be done to ensure that lobbyists have notice of the law, understand the application of the law, and comply with legal requirements.” Report at 29.

HB 710 – Is modeled after the federal false statement statute by establishing a class C felony offense for a person who dealing with state or county government to knowingly or willfully falsifies, conceals or covers up a material fact; makes materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document known to have materially false information; and disqualifies a person from holding public office for a period of 10 years upon conviction of making a false statement. Report at 20. As with HB 707 on false claims, federal, state and county law enforcement testified before the Commission this bill is necessary for state and county law enforcement to root out corruption and misconduct in state and county government rather than always relying on federal law enforcement to do this job.

HB 711 – Is the last of three bills recommended by the state and county law enforcement coalition and is modeled after the federal fraud criminal statute in making it a class B felony for a person to obtain financial benefit or other gain by means of false statements, misrepresentations, concealment of important information or deception, and prohibiting a person convicted of fraud from being a candidate for public office for a period of 10 years. Report at 20.

HB 712 – Would encourage public boards to maintain any electronic audio or visual recording of a board meeting as a public record on the board’s website regardless of whether written minutes of the meeting have been posted and to submit a copy of the recording to the State Archives. Report at 27. A similar bill in the last regular session of the Legislature was supported by the Commission, passed by the Legislature but vetoed by the Governor (SB 3172, SD 1, HD 2, CD 1). Report at 10. The Commission has attempted to address the concerns raised by the Governor in this bill.

HB 715 – Prohibits lobbyists from making prohibited gifts to legislators and state employees with administrative fines imposed for violations. Report at 33.

HB 716 – Requires the Office of Elections to prepare a voter information guide to educate voters on each candidate’s positions and their candidate statements and provide ballot question analyses and appropriates funds for the preparation and distribution of guides and analyses. The Commission found “Hawaii’s voter turnout is well below the national average for each election” and “registered voters may not have access to or be aware of information on the candidates or issues on the ballots.” Report at 34.

HB 717 – Prohibits under certain circumstances legislators and state employees from hiring or promoting relatives or household members and from making or participating in certain other employment-related decisions and from awarding a contract to or otherwise taking official action on a contract with a business if the legislator’s or employee’s relative or household member is an executive officer of or holds a substantial ownership interest in the business, and imposing administrative fines for violations. Report at 29.

HB 718 – Authorizes the Campaign Spending Commission to serve preliminary determinations of probable cause via first class mail instead of certified mail, establishes a presumption of receipt when mailed to the address contained in a candidate or committee organizational report. Report at 21.

HB 719 – Imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in electronic format; imposes a cap on charges for searching for, reviewing and segregating records; provides a waiver of fees when the public interest is served by record disclosure; and appropriates funds to carry out the provisions of this act. Report at 27. A similar bill was supported by the Commission and passed by the Legislature last regular session (SB 3252, SD2, HD2, CD1) and vetoed by the Governor. Report at 10. The Commission has attempted in this bill to address concerns raised by the Governor.

HB 720 – Increases the amount of partial public financing available for all offices up for election in varied amounts with a downward adjustment of the minimum amounts of qualifying contributions for county prosecuting offices. The Commission noted “that increased amounts of partial public funding of elections proposed in this bill are intended as a floor, or a minimum level. If fiscal resources are or become available, the Commission encourages the Legislature to be bold and devote additional fiscal resources to further the purpose of this bill and to seek additional permanent funding sources for future elections. Implementation of this proposal would assist in diminishing the impact and influence resulting from Citizens United.” Report at 32.

HB 721 – Eliminates the use of campaign funds to purchase up to two tickets for an event or fundraiser held by another candidate or committee. The Commission found “that this practice is commonplace amongst legislators and gives the appearances of impropriety since the

campaign funds of the purchaser/candidate are likely contributions made to the purchaser/candidate and not to the candidate holding the event or fundraiser.” Report at 33-34.

HB 722 – Expands the reach of the requirement to file a notice of intent to hold a fundraiser or fundraiser event by removing the current \$25 threshold. The Commission stated this bill would further public transparency and improve public confidence in campaigns. Report at 33.

HB 723 – Expands application of the Sunshine Law to legislatively appointed bodies, including task forces, working groups, special committees, and select committees. This bill would also require each chamber of the legislature to hold public hearings on its rules on a biennial basis. The Commission concluded given “the strict legislative timetable and deadlines mandated under Article III of the Hawaii State Constitution” it was not practical to apply the Sunshine Law to the Legislature. This bill would “better effectuate the spirit and intent of the Sunshine Law.” Report at 26.

HB 724 – Amends the prohibition against contributions to a candidate committee or noncandidate committee by state and county contractors by including state and county grantees and owners, officers and immediate family members of a state or county contractor or state or county grantee. Report at 33.

HB 725 – Establishes the Office of Public Advocate and codifies rights of the public with respect to the conduct and operation of the Legislature and its members. This bill would also specify procedures for the investigation and reporting of alleged violations of the public’s rights. “The Commission offers this proposal as an aspirational starting point for how the public and legislators can best engage with each other in a respectful and transparent manner during the legislative process. Collectively, the 13 rights of the public embody ideals of respect, fairness, openness, and dignity in the legislative process. The rights also require that official legislative business be conducted in a transparent and honest manner and that decisions be based on the merits of the legislation.” Report at 26-27.

HB 726 – Prohibits state and county elected officials from soliciting and accepting campaign contributions during any regular or special session of the Legislature, including any legislative recess days, holidays and weekends. This bill if enacted “would reduce the negative perception of legislators soliciting or accepting contributions from individual or organizations that have an interest in matters pending before the legislature during session.” Report at 32.

HB 727 – Limits the permitted uses of campaign funds to only those purposes that are directly related to the campaign of candidates. Report at 33.

HB 728 – Provides funds to county ethic boards “in an effort to ensure that these boards have adequate resources to continue their operations and pursue their respective missions.” Report at 30.

HB 729 – Requires the Campaign Spending Commission to publish on its website the names of candidate committees and noncandidate committees who fail to properly file an organizational report. The Commission found that this bill “would improve compliance and also bring awareness of noncompliance to the public.” Report at 28.

HB 730 – Limits the amount of cash contributions a candidate, candidate committee or noncandidate committee can accept in the aggregate in each election period to \$100 with a receipt required for each contribution. Report at 33.

HB 731 – Provides that a person waives the right to a contested case hearing if that person fails to request a contested case hearing within 20 days of the Commission’s preliminary determination. It would also allow the Campaign Spending Commission to file its final order with the Circuit Court of the First District for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in circuit court. Report at 21.

HB 732 – Authorizes the Campaign Spending Commission to presume that a violation of a campaign spending law has occurred if a respondent fails to explain or otherwise respond to a complaint alleging a campaign spending violation. Report at 21.

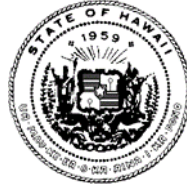
HB 733 – Increases the amount of fine for campaign spending law violations that may be assessed against a noncandidate committee making only independent expenditures and that has received at least one contribution of more than \$10,000 or spent more than \$10,000 in an election period. It authorizes the Campaign spending Commission to order that the payment of a fine assessed against a noncandidate committee, or any portion thereof, be paid from the personal funds of an officer of the noncandidate committee. Report at 34.

HB 796 – Proposes a constitutional amendment to prohibit a person from serving as a member of the Legislature for more than 16 years during that person’s lifetime. “The Commission discussed this proposal at great length and considered the testimony received and personal viewpoints of each commissioner. The Commission looked at similar provisions for guidance and debated the well-balanced pros and cons of this proposal, which was reflected in the slim 4-3 margin by which the Commission adopted the motion to adopt this proposal.” Report at 35. Despite a turnover in the House of Representative of over 50% and the Senate of more than 33% in the last decade, “people feel a proposal like this is necessary and that a limit on the duration of holding state elected office may reduce the potential for corruption and allow for the periodic infusion of fresh ideas and services to constituents.” Id.

A handwritten signature in black ink that reads "Daniel R. Foley". The signature is written in a cursive, flowing style with a large, stylized 'F' at the end.

Respectfully submitted, Judge Daniel Foley (ret.)

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 7, 2023

TO: The Honorable Representative David A. Tarnas, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Cathy Betts, Director

SUBJECT: **HB 719 – RELATING TO PUBLIC RECORDS.**

Hearing: Wednesday, February 08, 2023, 2:00 p.m.
Conference Room 325, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the measure, provides comments, and defers to the other impacted Departments. However, the Department respectfully opposes the deletion of "labor cost for search and actual time for reproducing" (page 7, lines 1 and 2) and requests an amendment to preserve the current language.

PURPOSE: The bill's purpose is to impose a cap on the costs charged for the reproduction of certain government records. Waives the duplication costs of government records provided to requestors in an electronic format. Imposes a cap on costs charged for searching for, reviewing, and segregating records. Provides for a waiver of fees when the public interest is served by a record's disclosure. Appropriates funds for two permanent positions within the office of information practices. Effective 7/1/2024.

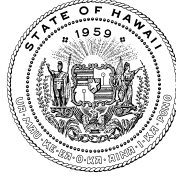
DHS supports the intent of this measure to maintain government accountability and transparency. DHS strives to respond to all government record requests per the time frame while balancing operational demands to ensure that individuals and families are also timely

served by the Department. Unfortunately, the Department and its programs do not have dedicated staff or resources to respond to records requests, and time spent on responses interrupts the completion of regular duties.

Regarding reproduction costs, DHS respectfully opposes the deletion of "labor cost for search and actual time for reproducing" (page 7, lines 1 and 2) and requests an amendment to preserve the current language. Complex record requests often require significant coordination of program resources and staff time. Importantly, we do not assume electronic records are easier to sort or duplicate than paper records. This proposed measure to impose limitations on costs and fee waivers may have unintended consequences, such as encouraging the filing of more complex record requests that impact the critical program work unrelated to the records requests.

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

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



KEITH A. REGAN
COMPTROLLER
KA LUNA HO'OMALU HANA LAULĀ

MEOH-LENG SILLIMAN
DEPUTY COMPTROLLER
KA HOPE LUNA HO'OMALU HANA LAULĀ

STATE OF HAWAII | KA MOKU'ĀINA O HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES | KA 'OIHANA LOIHELU A LAWELAWE LAULĀ
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
KEITH A. REGAN, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

H. B. 719

FEBRUARY 8, 2023, 2:00 PM
CONFERENCE ROOM 325 AND VIA VIDEOCONFERENCE, STATE CAPITOL

RELATING TO PUBLIC RECORDS.

Chair Tarnas, Vice Chair Takayama, and Members of the Committee, thank you for the opportunity to testify and provide comments on H.B. 719. The Department of Accounting and General Services (DAGS) offers the following comments:

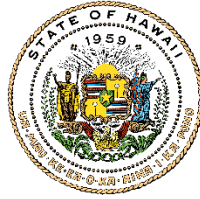
1. The statutory responsibility for preserving, arranging, describing, and inventorying public archives, as prescribed in Hawaii Revised Statutes (HRS) Chapter 94, rests with DAGS. We would request that this measure clarify that the intent is not to subvert Chapter 94 and that this proposed change to Chapter 92 is not applicable to documents maintained by the state archives.
2. The work performed by the state archives to preserve, arrange, describe, and inventory public archives is highly technical and specialized in nature. As such, the cost to perform research and produce documents through the

archives is greater than other departments. HRS §94-4 states that the fees “for copying, certification, and other services shall be prescribed by the comptroller in direct relation to the cost of the services.” We would request that a clarification be made to this proposed measure that specifically excludes the state archives from the fee structure as state in HRS §94-4.

We appreciate this opportunity to provide our comments on this measure and we humbly request your support in clarifying that this measure does not relate to the work of our state archives.

JOSH GREEN, M.D.
GOVERNOR | KE KIA'ĀINA

SYLVIA LUKE
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA



STATE OF HAWAII | KA MOKUAĀINA 'O HAWAII'
DEPARTMENT OF LAND AND NATURAL RESOURCES
KA 'OIHANA KUMUWAIWAI 'ĀINA

P.O. BOX 621
HONOLULU, HAWAII 96809

DAWN N.S. CHANG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE
MANAGEMENT

LAURA H.E. KAAKUA
FIRST DEPUTY

M. KALEO 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

Testimony of
DAWN N.S. CHANG
Chairperson

Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS

Wednesday, February 8, 2023
2:00 PM

State Capitol, Conference Room 325 and Via Videoconference

In consideration of
HOUSE BILL 719
RELATING TO PUBLIC RECORDS

House Bill 719 proposes to impose a cap on the amount an agency can charge for the reproduction of certain government records and on costs charged for searching, reviewing and segregating records to ensure government transparency. It also proposes to waive all fees for search, review and segregation of records when the public interest is served. **The Department of Land and Natural Resources (Department) opposes this measure for the reasons below.**

The Department notes that in order to increase transparency, many of its records across all divisions are easily available electronically. However, converting paper to electronic documents is expensive, and requires constant maintenance and upkeep. The Department suggests that when the state Office of Information Practices (OIP) sets fees, OIP be allowed to take these expenses into account and the changes to this section should be removed.

This bill proposes to amend Paragraph (13) of Section 92F-42, Hawaii Revised Statutes (HRS), by explicitly directing OIP to promulgate rules that (A) limit the charge for searching for records to \$5 per fifteen minutes or fraction thereof; (B) limits the charge for review and segregation to \$7.50 per fifteen minutes; and (C) provides a waiver of fees when the public interest is served. The Department is concerned that the waiver of fees in the public interest will encourage "fishing expeditions" for people who are looking for something they can catch that matches their goals. The Commission to improve standards of conduct has cited to concerns that departments use fees as a way to chill requests for information. In the Department's experience, this is not true. Most of the requests that the Department

receives are fulfilled at very little to no charge. We have no problem with requests that are focused and clear. However, we do have problems with fishing expedition requests, which can result in staff spending days pulling records and can interrupt pressing projects and timely customer service. These types of requests must be limited to ensure staff can do their work.

The Department would like to provide an example:

Last year, the Department's State Historic Preservation Division (Division) received a request for everything to do with 6E-42 reviews, the burial council, and any external communications for the entire county of Kaua'i. The Division estimated that it would cost in excess of \$50,000 in staff time, research, segregation, scanning, and production. More importantly, the Division does not have the staff to do that amount of work, so they asked for a more specific request, which they haven't received.

These broad requests are not uncommon and can usually be construed to be in the public interest. Whether or not this request is in the public interest is not the only matter to consider. The Department cannot divert its staff for such a broad request. Especially a division with a large backlog of work. Without tools to narrow the request, and cost is a very effective tool, departments will be swamped. Thus, we ask that this bill be held.

If this bill is not held, we expect hardship on all divisions of the Department, and special hardship on the Bureau of Conveyance (Bureau). Therefore, the Department respectfully asks that should this bill move forward, that it be amended to exempt the Bureau. The Bureau respectfully notes that the intent of the bill addresses accessing government records that are not readily accessible by the public as a rule. The mission of the Bureau is for the timely recording and accessibility to documents it records by all who may come into its office or access them online. The Bureau's documents are submitted by individuals and business, primarily for their land dealings or Uniform Commercial Code filings. Government documents that get recorded are of a similar nature. All of those records are readily accessible by anyone through already established, convenient procedures and fees. Converting paper to electronic documents is expensive and requires constant maintenance and upkeep. The Bureau converted almost all of its paper documents to electronic form and charges fees that take into account the cost of conversion and implementation as well as for the staff to keep the system running and maintained. It would not be often that the Bureau's public records will offer the additional government accountability and transparency or enable a more informed citizenry for participation in government decision making.

Mahalo for the opportunity to provide testimony in opposition to this measure.

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 Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 8, 2023, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 719
Relating to Public Records

Thank you for the opportunity to submit testimony on this bill, which would change the current minimum charge for copying government records to a maximum charge, require the Office of Information Practices (OIP) to adopt rules regarding government record copy fees, set a statutory cap to the search, review, and segregation fees that OIP is required to set by administrative rule for government record requests under chapter 92F, HRS, the Uniform Information Practices Act (UIPA), set statutory standards and requirements for the public interest waiver OIP is also required to set by rule, and appropriate funding for two new positions for OIP. This bill was apparently based on a proposal from the Commission to Improve Standards of Conduct established by House Resolution 9 (2022). Although that Commission included government agency members with expertise in ethics and campaign financing, OIP was not part of the Commission and was not consulted by the Commission about these proposed changes to the UIPA, which OIP administers, or the new requirement for OIP to promulgate rules under both the UIPA and section 92-21, HRS, which OIP does not administer. OIP offers comments explaining the significant effect these changes would potentially have, particularly the unintended effects that may result.

Please understand that **OIP's statutory role is to be an impartial, neutral entity and not an advocate for just one side or the other.** While it is easy to support the general concept of government transparency and openness, **the actual laws that OIP administers provide for reasonable exceptions and involve the balancing of competing interests among many different constituencies** that include the State, county, and independent agencies, board

member volunteers and employees subject to the Sunshine Law, non-profit advocacy groups, media representatives, private businesses, resident and non-resident record requesters, taxpayers, and the general public. Therefore, to place OIP's comments on the bill in perspective and understand the potential effects of this bill, OIP's testimony begins by providing the Legislature with objective data that all State and county agencies submit on UIPA Log Reports that OIP has been summarizing since 2015, information about the Draft Rules that OIP proposed in 2017 and are still pending, and a legal comparison of the differences between OIP's rules and the federal rules upon which the bill is partially based.

Data from Log Reports

In response to unsupported claims that UIPA record request fees are excessive, OIP would like to share the objective data, beginning with the State and county reports found on the [UIPA Record Request Log Records page](#) at oip.hawaii.gov. Since 2015, OIP has been collecting data from all State and county agencies on the UIPA Record Request Logs that each agency submits to OIP. OIP summarizes all Logs into two reports: one for all State agency results and the other for all county agency results. OIP's annual UIPA Record Request Log Reports can be found on the dropdown tab for the [OIP Reports page at oip.hawaii.gov](#).

Similar to past results, the FY 2022 reports for the [State](#) and [county](#) agencies show that **overall, the typical record request was granted in whole or in part and completed in 8 work days from the date of the request; that 87.8% (1,891) of requesters to State agencies and 85.1% (1,897) of requesters to county agencies paid nothing for their completed requests; and that most payments were made by for-profit entities.** Only 262 (12.2%) of State requesters paid any amount, with 93 paying less than \$5 and 112 paying \$5 to \$49.99. Only 57, or 3% of all State requesters, paid more than \$50; of the 57, at least 46 requesters were identified as representatives of law firms, media, commercial, or other for-profit or non-profit entities. For the County requesters, 333 requesters paid any amount, with 136 paying less than \$5 and 98 paying between \$5 to 49.99. Only 99, or 5% of all County requesters, paid more than \$50; of the 99, at least 68 requesters were identified as representatives of law firms, media, commercial, or other for-profit or non-profit entities. Of all 4,383 State or county requesters whose requests were completed in FY 2022, only 3 paid more than \$1,000, with the highest amount of \$2,690 paid by a commercial aviation company. Thus, **most fees and costs are being paid by for-profit entities, and not by individual requesters.**

The FY 2022 reports were also consistent with prior years' data showing that **the relatively few complex record requests take more than twice as long to fulfill as the typical request, yet the disproportionately higher fees and costs they incur are not being paid by such requesters.** Although complex record requests constitute 6% of State requests, they account for 18% of the gross fees and costs incurred by State agencies, of which only 6% was ultimately paid by complex record requesters. For the counties, complex record requests constitute 11% of UIPA record requests and 27% of total gross fees and costs, only 12% was actually paid by complex record requesters.

Whether all taxpayers should bear the State and county agencies' costs of record requests, or the actual requesters themselves, is a policy question for the Legislature to address. Please keep in mind, too, that the UIPA does not allow for distinctions between requesters who are residents or nonresidents of Hawaii.

OIP's 2017 Draft Rules

As required by the UIPA, OIP's rules set forth fees and costs that agencies may charge for record requests and provides for fee waivers. Section 92F-42(18), HRS, requires OIP to "adopt rules that set forth the fees and other charges that may be imposed for searching, reviewing, or segregating disclosable records, as well as to provide for a waiver of such fees when the public interest would be served[.]" Pursuant to this legislative mandate, OIP adopted chapter 2-71, Hawaii Administrative Rules (HAR) in 1999. For the past 24 years, OIP has not raised the fees set in its administrative rules at \$2.50 per 15 minutes to search for responsive records, and \$5 per 15 minutes to review and segregate records.

The [Impact Statement](#) for chapter 2-71, HAR, notes the purpose of the search, review, and segregation fees is to allow agencies to recoup some costs in responding to requests for records rather than having to provide these services entirely at taxpayers' expense. The fees for search, review, and segregation are not intended to obstruct public access to disclosable government records, so they do not exceed the actual costs in providing the services.

In 2017, OIP drafted new rules and solicited public comments on them. The Draft Rules, OIP's slides and PowerPoint presentations, clarifications, updates, and public survey, comments and results, are posted [Rules page](#) at oip.hawaii.gov.

Although OIP sought public input in developing the rules, OIP has not yet proceeded to a formal public hearing and rulemaking as the Draft Rules remain under review by the Attorney General's office.

Because OIP had not increased search, review, and segregation fees for nearly two decades and had never adopted rules setting fees for personal record requests, the Draft Rules proposed an increase in fees based on 2017 data for the salary ranges of clerical staff that would likely do the search function and of supervisory and executive managerial positions that would likely do the review and segregation of records. Thus, the Draft rules proposed an increase from \$2.50 to \$7.50 per 15-minute increment for search fees and from \$5.00 to \$15.00 per 15-minute increment for review and segregation fees. These increased fees, however, were intended to be offset by a substantial increase in the fee waiver from \$30 per request (or \$60 for public interest waivers) to \$400 per year to keep record requests free for most people. The \$400 proposed fee waiver was calculated based on Log data of the average number of hours that it takes State and county agencies to search for, review, and segregate record requests. **Even with an increase in the Draft Rules' fees, OIP estimated that the \$400 fee waiver for everyone would have allowed any requester to annually make approximately 5 typical requests, 13 personal record requests, or one complex record request to the same agency in a year, without having to pay fees.** Reasonable fees, however, are necessary to act as a safeguard against abuse by those who would engage in manifestly excessive interference with an agency's normal operations, such as by making repeated, voluminous, or frivolous requests.

OIP recognizes that average government salaries have increased in the past six years with inflation and collective bargaining costs. Depending on the results of this session and OIP's workload, OIP may further review and revise its Draft Rules before proceeding with the formal rulemaking process.

Note, too, that there are important other changes proposed in OIP's Draft Rules that are not under consideration in this bill, and they will still need to be addressed during the rulemaking process.

OIP's Fee Rules Differ Significantly from Federal FOIA Fees

The proposed amendments, and in particular the one changing the standard for a public interest fee waiver, are inconsistent with the UIPA's existing fee structure as the proposed statutory public interest waiver standard is modeled on a

small part of the substantially different and more complex fee structure under the federal Freedom of Information Act (FOIA). The UIPA has a relatively simple fee structure, with set fees for search, review, and segregation chargeable to all requesters after first applying an automatic waiver of fees for the first 1-3 hours of staff time (for all requesters) or the first 2-6 hours of staff time (for public interest requesters). By contrast, FOIA's fee scheme, set out in 5 U.S.C. § 552(a)(4)(A)(ii) and (iii) (attached to this testimony), has three separate fee tiers, each applicable to a different category of requester, with the possibility of an additional waiver of some or all of the otherwise chargeable fees for requests of particularly high public interest. The relevant FOIA fee provisions are attached to the end of this testimony.

FOIA's lowest fee tier is for educational or research institutions and "representative[s] of the news media," who are charged only for copying costs, not for search or review time. The second lowest fee tier is for anyone else making a request that is not for commercial use, such as individuals seeking their own records; requesters in that middle tier are charged for copying costs and search time but not for review time. The highest fee tier is for requests for commercial use; those requesters are charged for copying costs, search time, and review time. Thus, FOIA's standard fees vary, depending on who is making the request and for what purpose, and reflect Congress's assessment of the different levels of public interest served by the different types of request. Notably, FOIA's standard fees specify that representatives of the news media fall into the lowest-cost fee tier and define who qualifies as a representative of the news media – in other words, media requests already pay no fees, only copying costs, and they need not rely on the separate public interest waiver.

But if a request falling in any one of the three fee categories is of **particularly high** public interest, then the agency could waive part or all of the fees applicable to a request in that category. FOIA sets a standard for determining when a request is of particularly high public interest, which is what this bill's proposed new public interest waiver standard is based on. **Unlike the FOIA standard, though, this bill proposes that all fees and costs must be waived whenever the standard is met, rather than giving agencies the option of a partial waiver as FOIA does.**

Thus, this bill proposes to take a small part of FOIA's fee scheme, omitting its tiered fee system that sets the default treatment for members of the media, and adopts the FOIA waiver in lieu of the UIPA's current public interest fee waiver

standard. This bill would also go farther than its FOIA model because it would require waiver of all costs and fees rather than some or all costs and fees as FOIA does. It is important to note that **FOIA's public interest provision covers only requests of unusually elevated public interest and was never designed to apply to all media requests automatically**, since the news media are already in a low fee category by default. **Because this bill uses FOIA's public interest waiver, which applies only to a disclosure that "is not primarily in the commercial interest," outside of its intended context, the bill runs the risk of excluding for-profit media under the UIPA, which has an entirely different fee structure than FOIA.**

OIP's existing fee rules under the UIPA were deliberately designed to be less complex than FOIA's, and rather than having different categories of requesters all of whom pay different types of fees, the existing public interest fee waiver provides an expanded fee waiver for the relatively broad variety of requests that serve the public interest as set out in the existing fee rules. The UIPA's existing public interest fee waiver does not require a full waiver of all fees and costs, as this bill proposes, but then again neither does FOIA's actual public interest fee waiver (unlike this proposal). Further, agencies often do waive more fees and costs than required for media requests, such as by waiving all fees for search, review, and segregation time and charging only copy costs. **Thus, OIP views the proposed new public interest fee waiver standard as being not only unnecessary, but likely to exclude requesters from for-profit media organizations who are included under the UIPA's current public interest fee waiver standard, as further discussed below.**

Additionally, a drastic change from the UIPA's simple fee structure to a variant of the more complicated federal FOIA structure would **require either the Legislature or OIP to change other aspects of the UIPA rules, OIP to develop extensive new training materials, and the agencies to learn and apply the new rules. Moreover, there may new and lengthy delays in fulfilling UIPA record requests under the new rules**, as portended by the sometimes years-long delays by federal agencies in fulfilling FOIA requests. *See e.g., The FOIA Project, Agency FOIA Backlogs and Processing Times at <https://foiaproject.org/request-chart/#cbp,dhs-hq,dhs-ice,dhs-uscis,air-force,dod-army,navy>.*

Comments on Proposed Bill

1. Statutory Cap on Fees

The proposed statutory cap of \$5 per 15 minutes for search and \$7.50 per 15 minutes for review, and segregation fees agencies may charge for staff time spent in responding to a record request is higher than the rate currently allowed by OIP's rules. However, the current charges adopted in 1999 were intended to be close to the average salary rate for employees likely to be responsible for search, review, and segregation under the UIPA, and were based on a 1996 survey of state and county salaries. In other words, **the current fees are already 27 years out of date and do not reflect current salaries for the government employees doing the work.**

OIP's Draft Rules would address attempt to account for a quarter century of inflation by raising search fees to \$7.50 and review and segregation fees to \$15 per 15 minutes, **but the bill's proposed cap would not allow the rates to be raised enough to reflect the 2017 average current salaries. Over time, the statutorily capped rates would represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.** In effect, this would change the statutory authorization for search, review, and segregation fees from a way for agencies to mostly recoup the salary cost of employee time spent on larger requests to an increasingly nominal charge, with the agencies bearing the lion's share of the cost of even the largest and most complex record requests. The statutory fee cap also operates as an unfunded State mandate that must be paid out of the counties' coffers.

2. Public Interest Fee Waiver

This bill would also change the standard for a public interest waiver of fees under the UIPA. That standard is currently set by rule at \$60, double the automatic waiver for all requesters and representing 3-6 hours of staff time. Thus, for larger requests that meet the public interest standard agencies are still allowed to charge for search, review, and segregation time beyond what is covered by the waiver. **This bill would make the public interest waiver a complete waiver of all fees, no matter how large the request might be. The bill would also change the standards for what qualifies as a public interest request to be in one way narrower and in another way broader.**

The UIPA standards for a public interest waiver are currently that (1) the record pertains to the operation or activities of an agency (without considering its relative public importance), (2) it is not readily available in the public domain, and (3) the requester has the primary intention and actual ability to widely disseminate the information to the public. This bill would narrow the first of those, requiring the record to “contribute significantly to public understanding” of agency operations or activities, but would remove the remaining two: **the proposed waiver would apply to information already widely available to the public, and would apply to a requester with no intention or ability to publicly share the information. It would, moreover, add a requirement that the request NOT be “primarily in the commercial interest.” This requirement is one that OIP specifically considered, and rejected, in adopting its current rule regarding public interest waivers, so as to not exclude news media representatives.** As OIP’s Impact Statement on the then-draft rules stated, “news media representatives will almost always have commercial interests. Therefore, to exclude news media representatives from a fee waiver because of those commercial interests is counterproductive to supporting the public interest in a free flow of information held by the government. Consequently, the proposed rule does not require an agency to determine that the disclosure of information is not primarily in the commercial interest of the requester.”

OIP believes the change in standard for what qualifies as a public interest request would thus **exclude for-profit news media representatives, but not a non-profit media company or bloggers, and would not necessarily increase the general public’s access to information about the operation of government.** At the same time, it would apply to a much narrower category of information, requiring the requester to establish that the information would “contribute significantly to public understanding” of agency operations rather than simply being about agency operations. It seems likely that this new standard would apply to a different pool of requests than the current standard, but it is not clear whether it will end up representing an increase or a decrease in requests meeting that standard. Either way, **the Legislature must decide whether the complete waiver of all fees for those requests that qualify would actually increase transparency, or instead would have the opposite effect and ultimately detract too much from agencies’ core work for the public as it would result in a larger number of complex record requests because there would be no financial incentive for the requester to narrow such a request.**

Overall, the Legislature may want to consider the potential unintended consequences of the proposed fee caps and waivers this bill, which may be to:

- encourage the filing of more complex record requests;
- eliminate the current fee waiver for representatives of for-profit media companies;
- slow the processing of all record requests as well as of the agency's work unrelated to record requests;
- increase the agencies' need for more personnel, funding and time to recruit, train and hire additional personnel to fulfill record requests and to learn to apply the new rules;
- reduce government efficiency as well as government transparency due to delays in processing record requests and increased costs to legitimate media representatives, resulting in less news coverage;
- require ongoing legislative amendments to the UIPA to address unintended consequences and matters previously handled by administrative rules, including the possibility of providing for longer agency response deadlines; and
- the financial impact of unfunded State mandates upon the counties.

3. Copy Fees

As to the proposed amendment of section 92-21, HRS, authorizing agencies to charge copy fees for government records, this statute is not part of the UIPA but OIP is frequently asked about its application to UIPA requests. The statute currently sets a minimum copy charge of \$.05/page, but does not prohibit agencies from charging more. Since OIP's rules allow an agency to charge "other lawful fees" in addition to the search, review, and segregation fees set out by the rules, OIP has generally advised that the minimum copy charge is a lawful fee for the purpose of the rules, and if an agency has adopted administrative rules setting a higher per-page charge, that higher charge is also a lawful fee. **This proposal would cap copy charges at \$.25/page, and thus would primarily affect those agencies that have adopted administrative rules setting a higher per-page charge.**

The proposed new requirement in section 92-21 for OIP to adopt rules setting copy fees for specific types of records is more problematic. OIP has no jurisdiction over section 92-21, and OIP's powers and authority do not include the authority to set copy fees for other agencies. Thus, **this requirement**

would leave OIP responsible for adopting rules interpreting a section of law that it has no jurisdiction over.

4. Appropriation and New Positions for OIP

OIP appreciates the recognition in this bill that the additional work rulemaking and dispute resolution resulting from this bill will require two new positions and \$185,000 in annual funding for OIP. **OIP's personnel are already severely strained with their current workload**, which has seen a doubling of requests for its Attorney of the Day services over the past year, an extensive overhaul of its training materials, and interim legislative work, as OIP continues to work on its backlog of appeals that increased with the loss of half its experienced personnel during the past two years of the COVID pandemic. **OIP today is doing over twice as much work with half the people and funding that it had 29 years ago.** In FY 1994, when it administered the only UIPA, OIP had 15 positions and an allocation of \$827,537, which would be \$1,591,384 today if adjusted for inflation. In FY 2022, when it administered both the UIPA and Sunshine Law and saw a doubling of its informal inquiries from the prior year, OIP had only 8.5 positions and an allocation of \$752,721. **Whether or not this bill passes, OIP will need the additional staff and funding to fulfill its increasing workload, including other updates to its rules.**

5. Effective Date

OIP also appreciates that HB 719 recognizes that the appropriation and positions need to go into effect immediately, while providing a delayed effective date for OIP to make the necessary changes to the copying costs and fee structure. OIP questions, however, whether a one-year delay is sufficient time to hire new people, draft new rules, have rules reviewed by the Attorney General's office before going to public hearing, receive the Governor's approval of the final rules, and develop new training materials so that agencies can be educated as to the final rules. Moreover, the changes called for in this bill do not address all of the revisions proposed in OIP's 2017 Draft Rules, which include the question of how to discourage requests that cause manifestly excessive interference with an agency's functions. **A two- or three-year delay in the effective date for sections 2 and 3 of the bill would be more realistic.**

In summary, despite its laudable intention to increase government transparency and accountability, **this bill could have the opposite effect** as it

shifts more and more of the cost of providing public access to government records onto the State and county agencies that respond to record requests and it may have the unintended consequences of increasing complex requests, slowing response times, increasing government and media costs, decreasing media coverage, and requiring ongoing legislative changes. OIP hopes that this comprehensive testimony has set out the various potential effects these changes could have, so that the Legislature can be fully informed in making its decision on this bill.

Thank you for considering OIP's testimony.

ATTACHMENT: Relevant Portion of FOIA Rules

The full text of 5 U.S.C. section 552 is available at <https://www.law.cornell.edu/uscode/text/5/552> . Subsections 552(a)(4)(A)(ii) and (iii), which set out the standard FOIA fee scheme, are set out below (emphasis added):

5 U.S.C. § 552(a)(4) (A)

- (ii) Such agency regulations shall provide that—
 - (I) fees shall be limited to reasonable standard charges for document search, duplication, and review, **when records are requested for commercial use;**
 - (II) fees shall be limited to reasonable standard charges for document duplication **when records are not sought for commercial use and the request is made by an educational or noncommercial scientific institution, whose purpose is scholarly or scientific research; or a representative of the news media;** and
 - (III) **for any request not described in (I) or (II),** fees shall be limited to reasonable standard charges for document search and duplication.

In this clause, **the term “a representative of the news media” means** any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. In this clause, the term “news” means information that is about current events or that would be of current interest to the public. Examples of news-media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of “news”) who make their products available for purchase by or subscription by or free distribution

to the general public. These examples are not all-inclusive. Moreover, as methods of news delivery evolve (for example, the adoption of the electronic dissemination of newspapers through telecommunications services), such alternative media shall be considered to be news-media entities. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Government may also consider the past publication record of the requester in making such a determination.

(iii) Documents shall be furnished without any charge or at a charge reduced below the fees established under clause (ii) if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

JOSH GREEN, M.D.
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE SENATE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

ON

HOUSE BILL NO. 719

February 8, 2023

2 P.M.

Conference Room 325 and via Videoconference

RELATING TO PUBLIC RECORDS

Chair Tarnas, Vice Chair Takayama, and Members of the Committee,

H.B. 719 proposes to impose a cap on charged costs for reproduction of government records, waive the cost of duplication in an electronic format, impose a cap on charges for searching, reviewing and segregating records, and provide a waiver of fees when the public interest is served.

While the ERS supports the intent of the bill, the ERS has some concerns and offers the following comments: The capping or waiving of fees typically results in an expense recovery level that is set substantially below actual expense incurred in gathering, copying and disseminating the materials. From a historical perspective, the cap has a tendency to become outdated over time, thereby invisibly increasing the level of cost subsidy by the agency. The ERS notes that the research and gathering of information for the types of requests it receives more often requires the time and effort of its highly compensated professional staff, such as investment officers and program specialists, as well as its clerical and administrative staff. The bill's proposed cap would not allow the rates to be raised enough to reflect actual average current salaries, and overtime. The statutorily capped rates would represent a smaller and smaller share of the average salary cost of the employee time spent responding to UIPA requests.



Employees' Retirement System
of the State of Hawaii

City Financial Tower • 201 Merchant Street, Suite 1400 • Honolulu, Hawaii 96813-2980
Telephone (808) 586-1735 • Fax (808) 586-1677 • <http://ers.ehawaii.gov>

The ERS has experienced an increasing number of public requests for records, a number that is likely to increase even more if records become available at no cost to the requestor. Notably, the majority of requests to the ERS, often complex and related to investment activity, do not come from the public within our state but from outside individuals and enterprises who have commercial interests in gathering and distributing such information but express a public purpose for doing so.

The complete waiver of all fees for those requests that qualify would prove burdensome for the ERS and result in a larger number of complex record requests, as there would be no incentive for the requester to limit the number or narrow such requests. Such an increase in requests would require an inordinate amount of the ERS' staff time that would detract from the ERS' other work.

As to the proposed waiver of fees if information is "in the public interest," the bill does not provide a standard for determining when a request is "in the public interest." Nor does the bill specify who would make the determination.

H.B. 719 is similar to S.B. 3252 S.D. 2 H.D. 2 C.D. 1 (2022), which was vetoed by the Governor. The ERS shares and incorporates the concerns expressed in Office of Information Practices' (OIP) testimony, dated March 16, 2022, regarding S.B. 3252.

Some of the potential unintended consequences of the proposed fee caps and waivers are that they would:

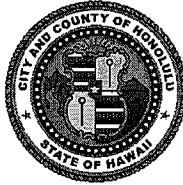
- shift more and more of the cost of providing public access to government records onto the ERS;
- encourage the filing of numerous and more complex record requests;
- slow the processing of all record requests, as well as slow the ERS' work unrelated to record requests;
- increase the ERS' need for funding to recruit, train and hire additional staff;
- reduce government efficiency as well as government transparency due to delays in processing record requests.

Thank you for this opportunity to provide testimony.

DEPARTMENT OF DESIGN AND CONSTRUCTION
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 11TH FLOOR
HONOLULU, HAWAII 96813
Phone: (808) 768-8480 • Fax: (808) 768-4567
Web site: www.honolulu.gov

RICK BLANGIARDI
MAYOR



HAKU MILLES, P.E.
DIRECTOR DESIGNATE
BRYAN GALLAGHER, P.E.
DEPUTY DIRECTOR

February 7, 2023

The Honorable David A. Tarnas, Chair
The Honorable Gregg Takayama, Vice-Chair
and Members of the Committee on Judiciary and Hawaiian Affairs
The House
State Capitol, Conference Room 325
415 South Beretania Street
Honolulu, Hawaii 96813

Dear Chair Tarnas, Vice-Chair Takayama, and Members:

SUBJECT: House Bill No. 719
Relating to Public Records

The Department of Design and Construction (DDC) respectfully **opposes** Senate Bill No. 719. The purpose of the bill is to:

- (1) Impose a cap on charges for the reproduction of certain government records;
- (2) Waive the cost of duplication of government records provided to requestors in an electronic format;
- (3) Impose a cap on costs charged for searching for, reviewing, and segregating digital records; and
- (4) Provide for a waiver of fees when the public interest is served by a record's disclosure.

DDC is not opposed to responding to record requests, but the capping and waiving of charges for these requests. The existing fees for processing government record requests are much less than the costs incurred. Additionally, the staff resources expended to search, review, segregate, and redact when needed, the requested records detract from DDC's primary responsibility of efficiently executing capital improvement projects for the City and County of Honolulu within budgeted timelines. DDC does not have additional personnel to respond to Freedom of Information Act requests, so the requests are researched and prepared by existing personnel in addition to their regular duties.

The Honorable David A. Tarnas, Chair
and Members of the Committee on Judiciary and Hawaiian Affairs
February 7, 2023
Page 2

This bill would be expected to increase the frequency and scope of requests and the resources required to respond to those requests. In addition, DDC is concerned that the bill would:

- Encourage the filing of more complex record requests;
- Eliminate the current fee waiver for media representatives;
- Slow the processing of all record requests as well as of the agency's work unrelated to record requests;
- Increase the agencies' need for more funding to recruit, train and hire additional personnel;
- Reduce government efficiency as well as government transparency due to delays in processing record requests and increased costs to legitimate media representatives, resulting in less news coverage; and
- Require ongoing legislative amendments to the Uniform Information Practices Act (UIPA) to address unintended consequences and matters previously handled by administrative rules, including the possibility of providing for longer agency response deadlines.

Based on the above considerations, DDC respectfully **opposes** House Bill No. 719.

Thank you for the opportunity to express our opposition to this bill.

Sincerely,



Haku Milles, P.E., LEEP AP
Director Designate

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair

RE: Testimony Supporting H.B. 719, Relating to Public Records
Hearing: February 8, 2023 at 2:00 p.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 government transparency. Thank you for the opportunity to submit testimony **strongly supporting** H.B. 719.

State and county agencies maintain government records **for the people of Hawai`i**. Excessive fees for record requests are an obstacle to any general policy of open government. The high cost of records discourages the public from asking questions about government operations. And it reinforces the public perception and the reality of social inequity between the elite and wealthy who know what is happening in Hawai`i because they have free access to information or can pay for it and those members of the public who do not have and cannot afford such access.

The Legislature *unanimously* adopted a similar bill in 2022. After Governor Ige's veto, the Commission to Improve Standards of Conduct further refined the proposal with extensive input from government agencies and the public. The Commission's proposal as introduced in H.B. 719 addresses any legitimate agency concerns and upholds the fundamental principle that the public deserves to know what its government is doing.

This proposal is one of three critically necessary public records changes identified by 30 entities in a coalition letter by media outlets and community organizations to Governor Green. The Governor has embraced the proposal. *E.g., Patti Epler, Let the Sunshine In: The Winds of Change May Be Starting to Blow in an Otherwise 'Dark Time', Honolulu Civil Beat (Jan. 31, 2023).*

This bill has an appropriately limited scope. It only applies when someone requests access to the people's records *for the purpose of educating the general public about operations and activities of our government*. In those limited circumstances, cost should not be an obstacle. An individual's public record request educates one person, but a public interest request typically educates thousands of people in Hawai`i. News media and public interest organizations spend hundreds of hours investigating, synthesizing, and

publishing information about government operations. When the agency charges too much, the general public is left in the dark.

For example, reporters and watchdog activists have written articles *sourced from public records* on the State's pension burdens, the deficiencies in DHHL's or DLNR's revocable permit systems, the discipline or exoneration of law enforcement officers for the death or assault of a citizen, the delays at DCCA in disciplining physicians, and even the cost of public records. Public discussion of these concerns about government operations – informed by access to government records – has led to reform in every instance.

Excessive secrecy contributes to the public's distrust of government. When a requester has the ability to use government records to educate the general public about how our government operates, that leaves less room for agency corruption and incompetence. So when an agency claims that it will share **the people's records** with a public interest requester only if paid thousands of dollars for access, the public may legitimately ask: What is the agency hiding?

Thank you again for the opportunity to testify in support of H.B. 719.

HB-719

Submitted on: 2/6/2023 2:13:05 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cathy Goeggel	Animal Rights Hawai'i	Support	Written Testimony Only

Comments:

ARH strongly supports HB719 in the interest of transparency in government. For years, our all volunteer NGO has been thwarted by enormous fees and long wait times. This is particularly true regarding our interactions with the state Dept. of Agriculture and the UHM CTAHR.

Mahalo,

Cathy Goeggel



HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Wednesday, February 8, 2023, 2 pm, State Capitol Room 325 & Videoconference
HB 719

Relating to Public Records

TESTIMONY

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

Chair Tarnas, Vice Chair Takayama, and Committee Members:

The League of Women Voters of Hawaii strongly supports HB 719 and does not believe any amendments are necessary.

Thank you for the opportunity to submit testimony.



Feb. 8, 2023

David A. Tarnas
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 719

We like this bill, which caps fees on reproduction of government documents and search fees for educating the public, and removes fees for records in electronic format.

Copying costs and search fees can be a big ticket item for the news media and public interest organizations that educate the public about its government. Many times the costs and deter or greatly delay reporters and groups from pursuing the documents, and the public is the victim because it doesn't get the articles.

The loss of revenue is small when compared to the interest these records can generate – and have made – in revealing issues to the public.

We highly endorse this measure.

Thank you,

Stirling Morita
President
Hawaii Chapter SPJ



Feb. 8, 2023

2 p.m.

VIA VIDEOCONFERENCE

Conference Room 325

To: House Committee on Judiciary & Hawaiian Affairs

Rep. David A. Tarnas, Chair

Rep. Gregg Takayama, Vice Chair

From: Grassroot Institute of Hawaii

Joe Kent, Executive Vice President

RE: HB719— RELATING TO PUBLIC RECORDS

Comments Only

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to commend the Legislature for considering this bill, [HB719](#), which touches on a significant problem encountered in open-records requests: the use of high search and reproduction costs as a method to discourage the pursuit of Uniform Information Practices Act requests.

Specifically, the bill would impose a cap on fees for reproduction of public records as well as on the searching, reviewing and segregating of such records.

In addition, the bill provides for a waiver of costs for duplication of records in electronic format; and provides for a waiver of fees when the public interest is served.

As an educational research organization and public watchdog group, the Grassroot Institute of Hawaii often uses open-records requests to shine the light of transparency on the inner workings of government. Our UIPA requests run the gamut, from requests for records of budget and financial documents to requests for details of the plans for the Honolulu rail project.

In the course of our work, we have seen that some government agencies are more forthcoming than others, and that there are varying interpretations of the public interest fee waiver. Thus,

some agencies will waive all costs associated with the search — as the statute clearly intended — while others will use the waiver as a “discount” of sorts, reducing but not waiving the search and reproduction fees.

On occasion, an agency will quote such a high fee requirement that accessing the requested records becomes an impossibility for the average person — or even a researcher or journalist.

For example, in 2021, the Grassroot Institute requested three years of administrative forfeiture records from the state Office of the Attorney General. As this was part of an effort to research and report on asset forfeiture in Hawaii, we requested a waiver in the public interest. The AG’s Office quoted a total cost of \$2,190. This included a \$60 “fee waiver” because the request was in the public interest; only \$10 was related to reproducing records.

On another occasion, we requested communications between the governor’s office and certain agencies regarding the COVID-19 emergency — a nearly identical request to one filed by The Associated Press. The office quoted a total cost of \$342,876 for the request, which included a \$60 “fee waiver” because the request was in the public interest.

One might suggest that this request was too broad, in which case, it would have been more in keeping with the intent of the open-records law for the agency to discuss with us a way to narrow the request, as other agencies often do, rather than producing a cost quote intended to avoid any disclosure at all.

All of which is to say, HB719 should be praised for seeking to eliminate reproduction charges for digital records and capping the fees for reproduction of physical copies.

However, we would like to suggest the inclusion of a public interest waiver for fees related to the reproduction of physical records. Many agencies have switched entirely to electronic record keeping, but the public interest extends to historical records and should not be constrained. Nor should agencies be provided with loopholes that would enable them to use the cost of physical copies, or transferring physical records to electronic format, as a way to discourage requests.

In addition, this bill provides for a public interest waiver of fees related to search, review, and segregation of records. This is a laudable addition to the law and will go a long way toward addressing the use of fees as an obstruction to open-records requests. It is often through sky-high search and review costs that agencies are able to discourage requesters, and this waiver is the most important element of the current bill.

We do have one concern: the increase in the search, review and segregation costs, which are currently [set](#) by the state Office of Information Practices at \$2.50 per 15-minute increment of searching time and \$5 per 15-minute increment of review and segregation time.

We urge you to cap those costs at the current rate rather than increasing them to \$5 and \$7.50, respectively. Alternatively, we suggest that the Legislature remain silent on the search and review costs, leaving them to OIP to determine via rule, rather than setting the cost via legislative action.

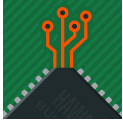
We understand the desire to discourage nuisance requests or abuse of the open-records law, but agencies should not be able to avoid disclosure of public records through the use of high fees. There are other avenues available to help address an overbroad request or “fishing expeditions,” such as a dialogue about reducing the scope of a request, delayed fulfillment of the request, and guidance from the state Office of Information Practices, among others.

In summary, HB719 has the potential to improve transparency and open government in our state by strengthening the public interest element of the law.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent
Executive Vice President
Grassroot Institute of Hawaii



Testimony of
Ryan Kawailani Ozawa
Publisher, Hawaii Bulletin
Founder, Hawaii Hui LLC / Kilinahe Foundation

Before the
COMMITTEE on JUDICIARY & HAWAIIAN AFFAIRS
Hawaii State Capitol in Conference Room 325
Thursday, February 8, 2023

HB719 — Relating to Public Records

Honorable Rep. David A. Tarnas, Chair; Rep. Gregg Takayama, Vice Chair; and members of the Committee on Judiciary & Hawaiian Affairs (JHA):

I am submitting this testimony to express my **SUPPORT WITH COMMENTS** of **HB719** relating to Public Records.

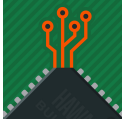
Government transparency is not cheap. But it is priceless.

I don't need to tell you how tenuous trust in government is today, nor how tumultuous the media industry has come—let alone the unfolding disaster that is social media.

It is more important than ever that citizens be able to “go to the source” and have reliable and affordable access to current and complete government records. Too often, reproduction costs allowed for by outdated, hardcopy-centric law have been used as a poison pill to discourage public record requests. This measure allows a reasonable amount of document production for those few agencies or requestors that rely on paper.

And while it's conceivable that producing electronic records can require some specialized software and skills, most of the time we are looking at a cut-and-paste scenario. I am confident most government agencies will not be unduly burdened by providing one of the government's core constituent services.

To ensure that these requests are handled promptly and efficiently and not adversely affected by duplicate requests, I would also recommend that lawmakers consider requiring that all public



records requests and the records prepared in response be **published to a public online repository**. Hawaii does, after all, have an open data law, and ostensibly maintains an open data portal. Why not post public record requests and responses for all interested parties, rather than have multiple agencies and individuals request the same record set?

Even without this refinement, HB719 is an important improvement to Hawaii's model public records laws and deserves your support.

Thank you for your consideration.

HB-719

Submitted on: 2/7/2023 6:11:26 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
ROBERT DUERR	Albatross News	Support	Written Testimony Only

Comments:

HB719 is strongly supported. Journalists are going extinct. Newspapers are shrinking and then folding. Government is increasingly limiting access to public records. Pass this bill. Support the public's right to know.

Mahalo. Robert Duerr Senior Active member Outdoor Writers of America. Hilo. Albatross News

HB-719

Submitted on: 2/6/2023 2:09:04 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Bill.

HB-719

Submitted on: 2/6/2023 2:47:28 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

I am in full support. For too long the public has been unable to access public record without paying an exorbitant fee. This will level the playing field as is warranted. I agree with most of the recommendations of the Commisison to Improve Standard of Conduct, especially as they will improve trust in government.

HB-719

Submitted on: 2/6/2023 4:20:57 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dalene McCormick	Individual	Support	Written Testimony Only

Comments:

Currently some governmental office imposes excessive fees to prevent the freedom of information. This bill will bring us one step closer to the intent of the Freedom of Information Act.

HB-719

Submitted on: 2/6/2023 6:43:32 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

Please support HB719.

HB-719

Submitted on: 2/6/2023 11:15:44 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Susan Jaworowski	Individual	Support	Written Testimony Only

Comments:

I fully support this bill, particularly the fairness of the section that says if an agency has to supply already existing electronic records, there should be no charge. Please note that there is one change that should be made or unintended consequences could distort the purpose of this bill. Right now the charge for scanning documents is "limited to the salary of the operator of the reproduction machinery as well as the cost of the machinery." This should be amended to read "the cost of **using** the machinery." I think we can all agree that no one should be charged the full cost of the entire scanner every time a digitizable record is requested. There is a limit on the cost of the labor, so similarly, there should be some kind of restriction on the cost of using the machinery.

HB-719

Submitted on: 2/7/2023 10:30:47 AM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Scott Shedko	Individual	Support	Written Testimony Only

Comments:

Public records should be affordable to any citizen of the state.

HB-719

Submitted on: 2/7/2023 11:23:11 AM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Christine Trecker	Individual	Support	Written Testimony Only

Comments:

Transparency of government records and reasonable access to them are an integral part of good government. I'm a Civil Beat reader who appreciates their in-depth, fact-based articles on the workings of our local government. There should be no barriers, including financial, to Civil Beat or other entities accessing public government records. That is why we need to pass H.B. 719. As a concerned citizen, I strongly urge you to do so. Thank You.

HB-719

Submitted on: 2/7/2023 1:02:29 PM

Testimony for JHA on 2/8/2023 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Lila Mower	Individual	Support	Written Testimony Only

Comments:

I support this measure.