

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: oiip@hawaii.gov

To: Senate Committee on Ways and Means

From: Carlotta Amerino, Director

Date: February 26, 2025, 10:03 a.m.
State Capitol, Conference Room 211

Re: Testimony on S.B. No. 741
Relating to the University of Hawaii

Thank you for the opportunity to submit testimony on this bill, which would create a new External Audit Committee within the University of Hawaii. The Office of Information Practices (OIP) takes no position on the substance of this bill, but offers **comments** regarding the proposed committee's partial exemption from part I of chapter 92, the Sunshine Law.

Proposed subsection 304A-__(c), HRS, at bill page 2 lines 4-12, exempts the new committee "from chapter 91 and chapter 92 to the extent that the audit committee is engaging in discussions that should remain confidential in accordance with nationally recognized best practices for external and independent audit committees, or in proceedings arising from an investigation by the external audit committee relating to potentially actionable civil or criminal conduct, regardless of whether the investigation is pending or outstanding." OIP is concerned that the first part of this exemption, for discussions "that should remain confidential in accordance with nationally recognized best practices," is subjective and requires clarification as to what situations and discussions would be covered by it. At a minimum, some reference is needed to what specific sources comprise the

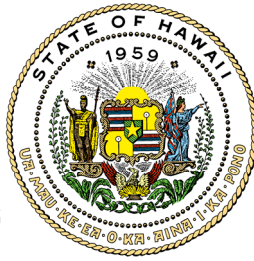
“nationally recognized best practices” that this bill would set as the standard for when the committee is exempted from the Sunshine Law.

This bill also does not specify whether this Sunshine Law exemption is intended to be an authorized purpose for which the committee can hold an executive session, or something else. As written, the bill could be read to mean that committee members could talk about committee business together outside a meeting in any numbers or in any situation, without going through the formality of holding a meeting and going into executive session, so long as they believed that “nationally recognized best practices” called for confidentiality for the topics discussed.

Finally, OIP notes as a technical matter that the Sunshine Law is only part I of chapter 92, HRS, and the remainder of chapter 92 includes topics such as a default quorum requirement for boards and the authorization to charge copy fees for government records, none of which are apparently relevant to the External Audit Committee’s wish for confidentiality.

OIP therefore respectfully recommends that this Committee amend this bill to (1) either specify the topics of discussion that the committee can keep confidential (OIP does not know what those topics are and thus cannot suggest language), or reference in the Committee report a specific set of standards that are an example of the nationally recognized best practices referred to in the bill; and (2) change bill page 2 lines 4 to 6 to read “The external audit committee may hold an executive session as provided in sections 92-4 and 92-5 to discuss matters . . .”

Thank you for considering OIP’s testimony.



SENATE COMMITTEE ON WAYS AND MEANS
The Honorable Donovan M. Dela Cruz, Chair
The Honorable Sharon Y. Moriwaki, Vice Chair

S.B. NO. 741, RELATING TO THE UNIVERSITY OF Hawai'i

Hearing: Wednesday, February 26, 2025, 10:03 a.m.

The Office of the Auditor has strong concerns about being a member of the External Audit Committee proposed in S.B. No. 741. The External Audit Committee will include a representative of the Office of the Auditor along with representatives from other groups and is required to provide oversight relating to enterprise risk management. Being a member of the External Audit Committee will, at a minimum, create the appearance that we are not independent of the University of Hawai'i and thus not capable of exercising objective and impartial judgment in future audits of the University of Hawai'i.

Our audits are conducted in accordance with Government Auditing Standards which require us to be independent of the departments and programs that we audit. To maintain that independence – which is one of the fundamental and guiding principles upon which we operate – we cannot be involved in program oversight or decision-making that is appropriately management's responsibility. Moreover, Government Auditing Standards establish rigorous requirements to ensure that our work is objective, unbiased, and sufficiently supported by appropriate and sufficient evidence.

We request that the Office of the Auditor be removed from the External Audit Committee established by the bill.

Senate Committee on Ways & Means
Honorable Donovan M. Dela Cruz, Chair
Honorable Sharon Y. Moriwaki, Vice Chair

**RE: Testimony in opposition to S.B. 741, Relating to the University of
Hawaii**

Hearing: February 26, 2025 at 10:03 a.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency. Thank you for the opportunity to respectfully submit testimony in **opposition** to S.B. 741.

We specifically oppose the Sunshine Law exemption provided at page 2, lines 4 – 12, as the language is convoluted and the exemption it creates is unclear. Any exemptions to chapter 92 of the Hawai'i Revised Statutes should be clearly articulated and narrowly defined.

Thank you again for the opportunity to testify in opposition to S.B. 741.