

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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To: Senate Committee on Government Operations

From: Carlotta Amerino, Director

Date: January 28, 2025, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 406
Relating to Copying Fees

Thank you for the opportunity to submit testimony on this bill, which would change the current **minimum** five cent per page copy charge for government records of five cents to a **maximum** five cent per page copy charge. The Office of Information Practices (OIP) offers **comments**.

Copy fees are set by section 92-21, HRS, which is not part of the Uniform Information Practices Act (UIPA), chapter 92F, HRS, or the Sunshine Law, part I of chapter 92, HRS, and thus is technically outside OIP's jurisdiction. Nonetheless, OIP is often asked about copy fees in connection with UIPA requests since OIP's own rules at chapter 2-71, Hawaii Administrative Rules, for processing record requests under the UIPA allow agencies to charge not only fees for their time spent in searching for, reviewing, and segregating records in response to a request, but also "other lawful fees" for their costs to prepare and transmit the records, such as postage and copy charges.

Because the copy charge currently authorized in section 92-21, HRS, is a minimum amount per page instead of a maximum amount, OIP routinely advises agencies that if they intend to charge more than the five cents authorized by statute

they should do so pursuant to a previously adopted rule authorizing the higher amount. While such a practice ensures that agencies have a clear legal basis for their copy charges, it can still result in inconsistent copy charges across agencies and leave questions about how high a per-page charge can be before it impinges on public access. The amendment proposed in this bill would clarify the maximum amount an agency can charge per page and thus provide greater uniformity in the copy fees charged for public records. This proposed amendment would also invalidate a number of agency rules that currently set copy costs of more than 5 cents per page.

Thank you for considering OIP's testimony.

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

GAIL STROHL
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 GOVERNMENT OPERATIONS
PROVIDING COMMENTS ON
SENATE BILL NO. 406**

January 28, 2025

3:00 P.M.

Conference Room 225 and VIA Videoconference

RELATING TO COPYING FEES.

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee,

While the ERS Board of Trustees has not had the opportunity to review this legislation, ERS staff believes the Board would have concerns and respectfully offers the following comments.

S.B. 406, proposes to impose a cap on charged costs for reproduction of government records not to exceed five cents per page. This reproduction cost is stated to account for the labor involved with the search and reproduction time, the cost of the materials, the cost of the rental and servicing of equipment, and logistical costs such as electricity.

The capping of fees at what are arguably artificially low levels results in an expense recovery rate that is set substantially below actual expenses incurred in reproducing the requested 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. This is especially true in these times of increased costs for consumer goods and professional services.



Employees' Retirement System
of the State of Hawaii

The ERS has experienced an increasing number of public requests for records. 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 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 professional staff, such as investment officers and program specialists, in addition to its clerical and administrative staff. The bill's proposed cap would not reflect the actual expenses incurred or cost of average current salaries and overtime used in responding to these records requests.

The ERS is concerned that the reduction in the rate to five cents a page would shift more of the cost of responding to requests for information on to the system and encourage the filing of more complex and numerous inquiries from parties looking to use the information for their own profit. This increase in records requests could impact the ability for ERS staff to efficiently carry out operational responsibilities not related to these requests as resources are diverted to respond to these additional inquiries.

The ERS thanks the committee for the opportunity to provide testimony on S.B. 406, and humbly requests your favorable consideration regarding our concerns.

Jan. 28, 2024, 3 p.m.
Hawaii State Capitol
Conference Room 225 and Videoconference

To: Senate Committee on Government Operations
Sen. Angus McKelvey, Chair
Sen. Mike Gabbard, Vice Chair

From: Grassroot Institute of Hawaii
Ted Kefalas, Director of Strategic Campaigns

TESTIMONY IN SUPPORT OF SB406 — RELATING TO COPYING FEES

Aloha Chair McKelvey, Vice-Chair Gabbard and other members of the Committee,

The Grassroot Institute of Hawaii would like to offer support for [SB406](#), which would cap the cost of reproducing government records at five (5) cents per page, sheet or fraction thereof, with exceptions.

As an educational research organization and public watchdog group, the Grassroot Institute of Hawaii often uses open-records requests to research and analyze critical policy matters. Our Uniform Information Practices Act requests run the gamut, from permitting to budget documents.

Some agencies are generous and forthcoming, but that is not always the case. Thus, we have encountered a significant bar to greater transparency, namely the use of high search and reproduction costs as a strategy to discourage the pursuit of UIPA requests.

By capping reproduction costs at five cents per page, SB406 would help address part of this issue. However, we urge the Committee to consider adding additional limits to 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.

In addition, the Committee should also consider adding a broad waiver to all fees when the request is in the public interest. These additions would make a strong statement in favor of greater openness and transparency.

Thank you for the opportunity to testify.

Ted Kefalas
Director of Strategic Campaigns
Grassroot Institute of Hawaii



Senate Committee on Government Operations

Tuesday, January 28, 2025 3 PM Hearing in Conference Room 225 on
SB 406, Relating to Copying Fees

TESTIMONY

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

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii supports SB 406. We request amendment of SB 406 to also require that:

Reproduction costs shall not be charged for provision of documents to requesters in electronic format if the agency maintains those documents in an electronic format; provided that requesters may be charged for provision of documents in electronic format if the agency does not maintain those documents in an electronic format.

Thank you for the opportunity to submit testimony.



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

January 26, 2025

The Honorable Sen. Angus L.K McKelvey, Chair
The Honorable Sen. Mike Gabbard, Vice Chair
Senate Committee on Government Operations

From: Nancy Cook Lauer, publisher, All Hawaii News
www.allhawaiinews.com publisher@allhawaiinews.com 808.781.7945

In STRONG SUPPORT of SB 406, RELATING TO COPYING FEES

All Hawaii News, a state government and political news, commentary and aggregate blog covering Hawaii since 2008, supports SB 406, prohibiting the cost of reproducing government records from exceeding 5 cents per page, sheet, or fraction thereof, with exceptions.

Access to the public's public records shouldn't depend on how much money you make. A member of the public with less ability to pay shouldn't be treated differently than a wealthier one.

The numerous clerks employed at all levels of state and local government are charged with responding to public records requests as part of their job duties. The advent of electronic document and data management systems has actually made that job easier compared to the old days when paper files had to be retrieved from physical storage.

Public records belong to the people, not the government. The people already pay the taxes that support the workers who process the public records requests, the computers and software where the records reside and buildings that contain them.

This is a good-government bill that should be supported. I am grateful to the bill's introducers and to the committee for hearing this measure.

Mahalo nui for considering SB 406.

SB-406

Submitted on: 1/26/2025 2:21:05 PM

Testimony for GVO on 1/28/2025 3:00:00 PM

| Submitted By | Organization | Testifier Position | Testify |
|--|---|---------------------------|---------------------------|
| Tiffany Edwards Hunt, for Big Island Press Club | Testifying for Big Island Press Club | Support | Written Testimony Only |

Comments:

The Big Island Press Club strongly supports Senate Bill 406, relating to copying fees.

Government records are public, except in certain cases, such as court records lawfully sealed by a judge, or where employment, medical and statutorily recognized privacy issues make them confidential.

As such, members of the public should be able to request and receive copies of public records in the most expeditious and least expensive manner possible. Government officials should not have the authority to charge excessive search and copying fees of lawfully recognized public records that are too expensive or too burdensome for all but wealthy individuals or businesses to request and receive.

As an entity devoted to openness in government and the public's right to know since 1967, the Big Island Press Club urges passage of SB406 into law this legislative session.

Sincerely,

Tiffany Edwards Hunt

president, Big Island Press Club

P.O. Box 1920

Hilo, HI 96720



Senate Committee on Government Operations
Honorable Angus McKelvey, Chair
Honorable Mike Gabbard, Vice Chair

RE: Testimony in Support of S.B. 406, Relating to Copying Fees
Hearing: January 28, 2025 at 3:00 p.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 submit testimony **in support** of S.B. 406.

State and county agencies maintain records for the people of Hawai`i. Excessive costs for record requests are an obstacle to any general policy of open government and discourage the public from asking questions about government operations.

Public records are a critical mechanism for ensuring government transparency. By promoting the imposition of *reasonable* costs for public records, this measure protects the public benefit intended by the Legislature in enacting Hawai`i's public records law decades ago.

Thank you again for the opportunity to testify in support of S.B. 406.



JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



LATE

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

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

STATE OF HAWAI'I | KA MOKU'ĀINA O HAWAI'I
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 GOVERNMENT OPERATIONS

JANUARY 28, 2025, 3:00P.M.
CONFERENCE ROOM 225 AND VIA VIDEOCONFERENCE, STATE CAPITOL

S.B. 406

RELATING TO COPYING FEES

Chair McKelvey, Vice Chair Gabbard, and Members of the Committee, thank you for the opportunity to submit testimony on S.B. 406.

The Department of Accounting and General Services (DAGS) **opposes** and offers the following comments:

1. Setting a "shall not exceed 5 cents per page" limit is not a realistic portrayal of the cost of creating these copies, nor does it allow for the inflationary costs that State entities are experiencing year over year.
2. Over the past three months, the cost for the State Archives to reproduce and/or print a single page of paper in response to public requests has averaged 10.4 cents per page just in the lease fees for the photocopier. This cost does not include the labor time and materials required to produce that

- copy, cost of electricity and other related costs.
3. Setting such low fees would mean that State entities, who are already struggling with being underfunded and understaffed, would be spending more money with every page than they expend. If these low fees become law, State Archives would have expended more than the fees collected just in lease fees and does not include the staff time required to respond to the request and its associated costs.
 4. As DAGS is a huge proponent of public access to governmental records, we would suggest removing the unrealistically low per page cost and limiting the charges to cost incurred, to include: labor cost for search and actual time for reproducing, material cost, prorated electricity cost, equipment lease/rental/depreciation, and other directly related costs involved in providing the requested copy.

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