

STAND. COM. REP. NO. **2255**

Honolulu, Hawaii

FEB 18 2016

RE: S.B. No. 2294
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Eighth State Legislature
Regular Session of 2016
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 2294 entitled:

"A BILL FOR AN ACT RELATING TO GOVERNMENT RECORDS,"

begs leave to report as follows:

The purpose and intent of this measure is to require agencies
to exercise reasonable care in the maintenance of all government
records under their control that are required to be made available
for public inspection.

Your Committee received testimony in support of this measure
from the 'Āina Haina Community Association. Your Committee
received testimony in opposition to this measure from the Office
of Information Practices.

Your Committee finds that in Molfino v. Yuen, Civ. No. 07-1-
0378, 2014 (Haw. Sup. Ct. Nov. 13, 2014), the Supreme Court upheld
a Circuit Court ruling that, absent a statutory requirement, a
government agency does not have a duty of reasonable care with
respect to maintaining government records for the purpose of
public inspection. This measure amends section 92F-18, Hawaii
Revised Statutes (HRS), to create a statutory requirement that
government agencies exercise reasonable care in maintaining those
government records open to public inspection.

Your Committee notes the concerns raised by the Office of
Information Practices regarding the broad definition of a
government record, liability issues when a government record is

2016-1118 SSCR SMA.doc



temporarily removed from its file, the standards in maintaining records, and the enforcement of this duty.

Accordingly, your Committee has amended this measure by:

- (1) Deleting section 2 and inserting the language suggested by the Office of Information Practices that proposed amendments to S.B. No. 140, H.D. 2 (Regular Session of 2015) to amend part V of chapter 92, HRS, to:
 - (A) Require each unit of government in the State and its political subdivisions to exercise reasonable care in the maintenance of all government records under its control that are required to be available for public inspection pursuant to chapter 92F, HRS;
 - (B) Create a rebuttable presumption that a unit of government in the State and its political subdivisions exercised reasonable care in its maintenance of its government records by adhering to a duly adopted records retention and destruction policy; and
 - (C) Establish damages for breaching a duty of exercising reasonable care in the maintenance of government records;
- (2) Changing the effective date from July 1, 2016, to upon approval; and
- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2294, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2294, S.D. 1, and be referred to your Committee on Ways and Means.



Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,




GILBERT S.C. KEITH-AGARAN, Chair



The Senate
 Twenty-Eighth Legislature
 State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

| | | | | |
|--|--|-------------------------|-----|----------|
| Bill / Resolution No.:* SB 2294 | Committee Referral: UDL, WAM | Date: 2/10/16 | | |
| <input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____ | | | | |
| The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313 | | | | |
| Members | Aye | Aye (WR) | Nay | Excused |
| KEITH-AGARAN, Gilbert S.C. (C) | / | | | |
| SHIMABUKURO, Maile S.L. (VC) | / | | | |
| GABBARD, Mike | / | | | |
| ██████████ | | | | |
| KIM, Donna Mercado | / | | | |
| THIELEN, Laura H. | / | | | |
| SLOM, Sam | | | | / |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| | | | | |
| TOTAL | 5 | | | 1 |
| Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted | | | | |
| Chair's or Designee's Signature: <div style="text-align: center; font-size: 2em; font-family: cursive;">  </div> | | | | |
| Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy | | | | |

*Only one measure per Record of Votes