

S.B. NO. 2735

JAN 24 2018

A BILL FOR AN ACT

RELATING TO THE INDEPENDENCE OF THE OFFICE OF INFORMATION PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Part I of chapter 92, Hawaii Revised Statutes,
2 the Sunshine Law, and chapter 92F, Hawaii Revised Statutes, the
3 Uniform Information Practices Act (Modified), are intended to
4 encourage public scrutiny and participation in government
5 processes. The office of information practices, which
6 administers both laws, serves as a neutral third party providing
7 advice and resolving disputes involving the laws. In that
8 capacity, the office of information practices provides advice
9 and counsel to the general public and to all state and county
10 agencies, including the state attorney general, county
11 corporation counsels, the judiciary, the legislature, all
12 executive branch agencies, and independent entities such as the
13 University of Hawaii and the office of Hawaiian affairs. The
14 office's powers and duties are vested in its director. However,
15 unlike legislative agency heads and good government agencies
16 such as the ombudsman, the auditor, the ethics commission's
17 executive director, and the director of the legislative
18 reference bureau, all of whom have term length and salary set by

S . B. NO. 2735

1 statute, the office of information practices' director's term,
2 removal, and salary are at the governor's sole discretion.

3 To avoid the potential for undue political interference
4 with the office of information practices' government function,
5 to promote the office's independence and neutrality, and to
6 provide administrative stability and help retain the office's
7 competent staff, the legislature intends through this Act to
8 statutorily set the office of information practices' director's
9 term, removal, and salary based on the existing statutory
10 provisions relating to legislative and executive agency heads.

11 SECTION 2. Section 92F-41, Hawaii Revised Statutes, is
12 amended by amending subsection (b) to read as follows:

13 "(b) The governor shall nominate and, by and with the
14 advice and consent of the senate, appoint a director of the
15 office of information practices to be its chief executive
16 officer, who shall serve for a period of six years and shall
17 continue in office until a successor is nominated and appointed,
18 and who shall be exempt from chapter 76. The governor may
19 remove or suspend the director from office for cause after due
20 notice and public hearing. Effective July 1, 2018, the salary
21 of the director shall be the same as the salary of the director
22 of health, without diminution during the director's term of

S. B. NO. 2735

1 office unless by general law applying to all salaried officers
2 of the State."

3 SECTION 3. There is appropriated out of the general
4 revenues of the State of Hawaii the sum of \$ or so much
5 thereof as may be necessary for fiscal year 2018-2019 to
6 implement the purposes of this Act. The sum appropriated shall
7 be expended by the office of information practices.

8 SECTION 4. New statutory material is underscored.

9 SECTION 5. This Act, upon its approval, shall take effect
10 on July 1, 2018.

11

12

INTRODUCED BY:



13

BY REQUEST

14

S. B. NO. 2735

1

Report Title:

Relating to the Independence of the Office of Information Practices

Description:

Statutorily establishes the Office of Information Practices' Director's term for six years and thereafter until a successor is appointed, and sets the salary equivalent to the salary of the Director of Health.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: Department of Accounting and General Services, Office of Information Practices.

TITLE: A BILL FOR AN ACT RELATING TO THE INDEPENDENCE OF THE OFFICE OF INFORMATION PRACTICES.

PURPOSE: To statutorily establish the OIP Director's term for six years and thereafter until a successor is appointed, and set the salary equivalent to the Health Director's salary.

MEANS: Amend section 92F-41(b), Hawaii Revised Statutes (HRS).

JUSTIFICATION: All powers and duties of OIP are vested in the Director, who is its chief executive officer and may employ any other personnel, including attorneys and clerical staff, under section 92F-41, HRS. The Director's term, removal, and salary depend on the Governor's discretion, who thus has the ability to exercise undue influence over OIP's decisions.

In contrast, the Auditor, Ombudsman, and Legislative Reference Bureau (LRB) Director have terms and salaries set by statute, which promotes greater independence and prevents them from favoring one house of the Legislature over the other. The Auditor's term is 8 years, and the Ombudsman and LRB Director's terms are six years, but they can actually serve for a much longer time as holdovers until their successors are appointed. They cannot be removed except for cause (Auditor) or due to neglect of duty, misconduct, or disability (Ombudsman and LRB Director). Their salaries are also set to be the same as the Health Director's salary, and cannot be diminished during their terms unless by general law applying to all salaried officers of the State. The State Ethics Commission Executive Director serves at the State Ethics Commission's

discretion, but is also paid a statutorily established salary set to be the same as the Health Director.

OIP has consistently opposed the creation of a commission as its decisions are based on legal interpretations and are already subject to potential judicial review. A commission would only serve to delay OIP's decisions, increase OIP's backlog, increase workload, and increase costs. Moving the power to appoint the OIP Director from the Governor to a commission would not remove political influences, especially if the Governor still had the power to appoint the commission members, and it may actually increase political pressures on the OIP Director by commission members and those responsible for appointing them. Instead, as the Legislature has done with its legislative agency officers, the OIP Director's term, removal, and salary should be set by statute, and should not be dependent on the discretion of a person or political body to whom the Director, in the public's perception, may appear to be beholden.

Under the proposal, the Governor would continue to nominate the OIP Director, but the appointment would be subject to the advice and consent of the Senate, and a newly appointed OIP Director would serve a statutorily set term of "a period of six years and shall continue in office until a successor is nominated and appointed." The term length and the holdover provision combine the Ombudsman's and LRB Director's statutory provisions with wording in section 26-34, HRS, applicable to the Chief Information Officer and the Director of Environmental Quality Control. Additionally, removal of the OIP Director should only be by the Governor for cause after due notice and public hearing.

Like the Auditor, Ombudsman, LRB Director, and State Ethics Commission's Executive Director, the OIP Director's pay should be statutorily set to be the same as the Health Director's salary, which in turn, is set by the Commission on Salaries. The salary should not be diminished during the Director's term, unless by general law applying to all salaried officers of the State.

Extending to the OIP Director these protections enjoyed by other good government appointees would enhance OIP's independence as its chief executive officer would be free from the potential for undue political influence by the Governor, who currently has the unfettered discretion to appoint, remove, and set the compensation for the Director. Providing stability at the top would also promote security for OIP's staff, who serve at the Director's discretion and are necessarily exempt from the protections of the civil service system as attorneys or confidential personnel. Under the proposal, OIP's staff can rest reasonably assured that the Governor will not suddenly and without cause replace the OIP Director with a new appointee who could bring in new staff to replace them. A sense of job security would also help to retain OIP's competent employees, whose specialized knowledge and uniform administration of the laws help all state and county agencies comply with Hawaii's open records and open meetings laws and protect the public's right to government accountability and transparency.

The general fund appropriation included in this measure has been made with consideration of the statutorily defined appropriation ceiling for the Executive Branch pursuant to section 37-92, Hawaii Revised Statutes. With general fund appropriations of \$7,665,740,429 for fiscal year 2018-2019 authorized for the Executive Branch by the regular and special sessions

SB. NO. 2735

of 2017, the appropriation ceiling for the Executive Branch has already been exceeded by \$15,217,672 or 0.2 percent in fiscal year 2018-2019. Funding requested in this measure to make the OIP Director's salary the same as the Health Director's salary will result in the appropriation ceiling for the Executive Branch to now be exceeded in fiscal year 2018-2019 by an additional \$ _____ or _____ percent. This current declaration takes into account general fund appropriations currently authorized for fiscal year 2018-2019 and this measure only, and does not include other general fund appropriations for fiscal year 2018-2019 that may be authorized for the Executive Branch in other legislation submitted to the Legislature during the regular session of 2018.

Impact on the public: This bill would increase OIP's independence, and the public's confidence in government and OIP's neutrality, by removing the threat of undue political influence over OIP's decisions.

Impact on the department and other agencies: This bill would give the OIP Director and staff the same protections as other good government agencies, and would thus promote stability for the OIP and its continued independence in providing consistent and neutral advice to the agencies as well as the general public.

Impact on Governor's Priorities: This bill would promote the Governor's objective of restoring the public's trust in government by removing the threat of undue political influence over OIP's decisions and increasing OIP's independence.

GENERAL FUND: The salary parity portion of this bill will require an additional appropriation from general fund.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: July 1, 2018.