

THE FEASIBILITY OF TRANSFERRING THE OFFICE OF INFORMATION PRACTICES TO THE DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES

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FOREWORD

This report was prepared in response to House Concurrent Resolution No. 121 (2014), which directs the Legislative Reference Bureau to study the feasibility of establishing the Office of Information Practices on a permanent basis, administratively attached to the Department of Accounting and General Services.

The Bureau extends its appreciation to the Office of the Lieutenant Governor, the Department of Accounting and General Services, the Department of the Attorney General, the Department of Human Resources Development, the Judiciary, and the Office of Information Practices for assisting the Bureau in this study.

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Executive Summary

This study was prepared in response to House Concurrent Resolution No. 121 (2014), which directs the Bureau to conduct a study on the feasibility of establishing the Office of Information Practices as an administratively attached agency to the Department of Accounting and General Services. Furthermore, it directs the Bureau to study the feasibility of establishing positions within the Office of Information Practices as being subject to the civil service laws of the State. (See chapter 1.)

The Office of Information Practices is established as a temporary office for a special purpose and placed within the Office of the Lieutenant Governor for administrative purposes. All positions within the Office are exempt from the civil service. The primary responsibility of the Office is to administer two sets of statutes that promote open government by ensuring public access to both government records and board meetings. Specifically, the Office administers the government records law, which is the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (HRS), and the public agency board meetings law, which is part I of chapter 92, HRS, and is otherwise known as the Sunshine Law. (See chapter 2.)

First, there does not appear to be any legal barrier to establishing the Office of Information Practices as a permanent office administratively attached to the Department of Accounting and General Services. Such placement arguably satisfies the requirement in Hawaii State Constitution, Article V, section 6, that offices be grouped according to common purposes and related functions and allocated within a principal department. (See chapter 3.)

Further, it does not appear that the placement of the Office of Information Practices within the Department of Accounting and General Services would unduly increase the incidence of a conflict of interest arising due to the Office of Information Practices rendering an opinion against its host department. Such a risk currently exists with respect to the Office of the Lieutenant Governor and will exist no matter in which of the principal executive branch departments the Office of Information Practices may be placed because all executive departments are subject to both the Uniform Model Information Practices Act (Modified) and the Sunshine Law. Moreover, in comparing the number of inquiries the Office of Information Practices receives relating to the Department of Accounting and General Services with those relating to other departments, the Department of Accounting and General Services appears to be at average-risk in terms of the potential for a conflict. (See chapter 4.)

Also, administratively attaching the Office of Information Practices to the Department of Accounting and General Services would presumably provide the Office of Information Practices with some independence pursuant to section 26-35(a)(7) and (8), HRS, governing a department's administrative supervision of an attached agency. (See chapter 4.)

Second, there does not appear to be any legal barrier to establishing civil service positions at the Office of Information Practices or converting present positions to civil service. On the one hand, establishment of, or conversion to, civil service positions would seem to be consistent with the purpose of civil service laws, which is to enable civil servants to perform

EXECUTIVE SUMMARY

their duties free from coercive political influence and to render impartial service to the public according to the dictates of ethics and morality, in compliance with the law. On the other hand, a policymaker considering whether to convert positions in the Office of Information Practices to civil service may also wish to consider issues of uniformity and consistency with respect to similarly situated agencies and their personnel. For example, among the administratively attached agencies of the Department of Accounting and General Services, there are currently no executive director positions there that are subject to civil service laws. Similarly, making the staff attorney positions of the Office of Information Practices subject to civil service would also be unique as there seems to be no other attorney positions within the executive branch as a whole that are subject to civil service. (See chapter 5.)

Finally, while the actions proposed in the concurrent resolution appear *feasible*, the Bureau makes no specific recommendation on whether the Office of Information Practices *should* be transferred to the Department of Accounting and General Services or whether the positions at the Office of Information Practices *should* be made civil service. Both issues, but particularly the latter, involve considerable policy decisions to be resolved by the Legislature. However, for discussion purposes, the Bureau has included an annotated bill draft that addresses only the transfer of the Office of Information Practices to the Department of Accounting and General Services, which, if enacted, would be effectuated on July 1, 2016, in order to provide the affected agencies with sufficient time to ensure an orderly and efficient transfer. (See chapter 7.)

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Chapter 1

INTRODUCTION

This study was prepared in response to House Concurrent Resolution No. 121 (hereafter H.C.R. No. 121 (2014)), which was adopted by the Legislature during the Regular Session of 2014. The concurrent resolution directs the Bureau to conduct a study on the feasibility of establishing the Office of Information Practices as an administratively attached agency to the Department of Accounting and General Services. Furthermore, it directs the Bureau to study the feasibility of establishing positions within the Office of Information Practices as being subject to the civil service laws of the State. (See Appendix A) Specifically, the concurrent resolution requests the Bureau to:

- (1) Study the feasibility of establishing the Office of Information Practices on a permanent basis, administratively attached to the Department of Accounting and General Services; and
- (2) Consider the feasibility of establishing positions within the Office of Information Practices that would be subject to the Civil Service Law, as codified in chapter 76, Hawaii Revised Statutes (HRS).

Scope of the Report

In this report, the Bureau focused on the legal issues involved both in transferring the Office of Information Practices to the Department of Accounting and General Services and in establishing positions in the Office of Information Practices as being subject to the civil service laws of the State.

The Bureau understands that based upon the specific language contained in the concurrent resolution:

- (1) The transfer relates to the entire Office of Information Practices as a whole and does not include the transfer or distribution of some functions and duties to different state agencies or departments;
- (2) The establishing of civil service positions in the Office of Information Practices also includes the converting of presently exempt positions into civil service positions, as well as the establishing of future positions that would be subject to the civil service laws; and
- (3) It is beyond the scope of this report to examine or discuss whether the Department of Accounting and General Services is the most feasible department within the executive branch for the placement of the Office of Information Practices. It is furthermore beyond the scope of this report to examine or discuss whether it

would be appropriate to administratively attach the Office of Information Practices to another branch of state government, such as the Legislature or the Judiciary.

Methodology

In preparing this report, the Bureau reviewed the relevant laws and legislative history, corresponded with a representative of the Judiciary, and held meetings with representatives from the Office of the Lieutenant Governor, the Department of Accounting and General Services, the Department of Human Resources Development, the Department of the Attorney General, and the Office of Information Practices.

Chapter 2

THE OFFICE OF INFORMATION PRACTICES

The Office of Information Practices is an agency of the executive branch of the State. Its primary responsibility is to administer two sets of statutes that promote open government by ensuring public access to both government records and board meetings. Specifically, the Office of Information Practices administers:

- (1) The government records law, which is the Uniform Information Practices Act (Modified), chapter 92F, HRS;¹ and
- (2) The board meetings law, which is the Sunshine Law of part I, chapter 92, HRS.²

According to the Office of Information Practices, 2013 annual report,

OIP provides legal guidance and assistance under both the UIPA and Sunshine Law to the public as well as all state and county boards and agencies. Among other duties, OIP also provides guidance and recommendations on legislation that affects access to government records or board meetings.³

More specifically, the Office of Information Practices receives requests for assistance or requests for legal opinions from the public or from state and county agencies, and it responds to such requests by issuing formal or informal opinions regarding governmental compliance with the Sunshine Law or the Uniform Information Practices Act.⁴

The Office of Information Practices was originally established in 1988 and placed within the Department of the Attorney General.⁵ In 1989, the placement within the Department of the Attorney General was amended to be for "administrative purposes only."⁶ Finally, in 1998, the Office of Information Practices was transferred from the Department of the Attorney General to the Office of the Lieutenant Governor.⁷ Further, to comply with constitutional requirements concerning the placement of executive agencies with one of the principal departments, the statute was amended to establish the Office of Information Practices as a "temporary office . . . for a special purpose within the office of the lieutenant governor, for administrative purposes."⁸

¹ Sections 92F-26 ("The office of information practices shall adopt rules, under chapter 91, establishing procedures necessary to implement or administer this part . . ."), 92F-27.5(a) ("When an agency denies an individual access to that individual's personal record, the individual may appeal the denial to the office of information practices in accordance with rules adopted pursuant to section 92F-42(12)"), and 92F-42 ("The director of the office of information practices . . . Shall adopt rules that set forth an administrative appeals structure . . ."), HRS.

² Sections 92-1.5 and 92F-42(18), HRS.

³ Office of Information Practices Annual Report 2013, at p. 5.

⁴ *See generally*, the various Office of Information Practices Annual Reports from 2000 to 2013.

⁵ Act 262, section 1, Session Laws of Hawaii 1988.

⁶ Act 192, section 9, Session Laws of Hawaii 1989.

⁷ Act 137, section 4, Session Laws of Hawaii 1998.

⁸ Section 92F-41(a), HRS. *See also* discussion of Article V, section 6, of the Hawaii State Constitution in chapter 3.

The Office of Information Practices is headed by a Director who is appointed by the Governor to be its chief executive officer and who is exempt from chapter 76, HRS, relating to the civil service law.⁹ The Director in turn is authorized to "employ any other personnel that are necessary, including but not limited to attorneys and clerical staff without regard to chapter 76."¹⁰ In other words, all positions within the Office of Information Practices are exempt from the civil service.

Finally, general funds have been appropriated to the Office of Information Practices to support 8.50 full time equivalent positions for fiscal year July 1, 2014, to June 30, 2015. Five of those positions are permanent positions¹¹ that are funded under the State Budget Act.¹² Two and one-half positions are classified as temporary.¹³ The last position, which is a position to promote open data, is funded until June 30, 2015, under a separate legislative act.¹⁴

⁹ Section 92F-41(b), HRS.

¹⁰ Section 92F-41(d), HRS.

¹¹ The state budget act does not list temporary positions. The position ceilings list in the budget act refers to the maximum number of permanent positions that an expending agency is authorized for a particular program during a specified period or periods. *See, e.g.*, Act 134, section 2(d), Session Laws of Hawaii 2013.

¹² Program ID LTG105 - Enforcement of Information Practices, part of Program Area J on Individual Rights, under Act 122, part of section 3, Session Laws of Hawaii 2014, relating to the State Budget.

¹³ Pursuant to correspondence provided by the Director of the Office of Information Practices:

According to OIP's records, two "temporary" staff attorney positions were transferred from the AG's office to OIP 16 years ago in June 1998 under Act 137, SLH 1998, when OIP took over the AG's Sunshine Law responsibilities and OIP was "temporarily" placed within the Lt. Governor's office for administrative purposes. In 2004, one of those positions was split between two people, one of whom remains employed at OIP at .50 FTE. In 2006, the other half of the split position was increased from .50 FTE to 1.0 FTE by agreement between OIP and the Lt. Governor's office.

Therefore, OIP ended up with 2.5 FTE temporary staff attorney positions.

E-mail from Cheryl Kakazu Park, Director, Office of Information Practices, to author (August 28, 2014, 15:27 HST).

¹⁴ Act 263, section 3, Session Laws of Hawaii 2013.

Chapter 3

STATE CONSTITUTIONALITY OF THE TRANSFER

As stated previously, H.C.R. No. 121 (2014) directs the Bureau to study the feasibility of establishing the Office of Information Practices on a permanent basis, administratively attached to the Department of Accounting and General Services. In simpler terms, the concurrent resolution directs the Bureau to study the feasibility of transferring the Office of Information Practices from being administratively attached to the Office of the Lieutenant Governor to the Department of Accounting and General Services.

Preliminary Matters

As a preliminary matter, discussion on administrative attachment is deferred to chapter 4 entitled *Conflicts of Interests*. Basically, administrative attachment can be viewed as a means or method to ameliorate any negative impacts to the Office of Information Practices should a conflict of interest situation arise at the Department of Accounting and General Services.

As such, the directive to the Bureau becomes one of studying the feasibility of permanently establishing the Office of Information Practices as an administratively attached agency to the Department of Accounting and General Services. Such permanent establishment triggers at least two legal issues. The first is whether the permanent establishment meets the requirements of Hawaii State Constitution, Article V, section 6, which requires that all administratively attached agencies of the executive branch be attached to a principal department. The second is whether the permanent establishment will trigger or aggravate conflicts of interest issues relating to access to government records of the Department of Accounting and General Services.

The first issue, on state constitutionality, is discussed in this chapter. The second, on a conflict of interests, is discussed in the next chapter.

State Constitutionality of the Transfer

State constitutional requirements for establishing the Office of Information Practices on a permanent basis as an administratively attached agency to the Department of Accounting and General Services are set forth in Article V, section 6, of the Hawaii State Constitution, relating to executive and administrative offices and departments. Article V, section 6, requires that:

All executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments in such a manner as to group the same according to common purposes and related functions. Temporary commissions or

agencies for special purposes may be established by law and need not be allocated within a principal department.

In simpler words, Article V, section 6, requires the Legislature to allocate executive offices among and within its principal departments by common purposes and related functions. However, the Legislature may also create temporary offices for special purposes that are not part of a principal department.

The Department of Accounting and General Services is a principal department established by the Legislature in section 26-4, HRS, relating to the structure of government. Accordingly, Article V, section 6, raises two issues. Based upon the relevant language appears in Article V, section 6, the first issue is whether the Office of Information Practices shares common purposes and related functions with the Department of Accounting and General Services. The second issue is what the constitution requires regarding the conversion of the Office of Information Practices from a temporary office for a special purpose into a permanent office.

Common Purposes and Related Functions

The first issue arising under Article V, section 6, of the Hawaii State Constitution, is whether the Office of Information Practices shares common purposes and related functions with the Department of Accounting and General Services. In relevant part, Article V, section 6, requires that:

All executive and administrative offices, departments and instrumentalities of the state government and their respective powers and duties shall be allocated by law among and within not more than twenty principal departments *in such a manner as to group the same according to common purposes and related functions.*

(Emphasis added.)

Some of the purposes and functions of the Department of Accounting and General Services are established by the Legislature under section 26-6, HRS, relating to the Department of Accounting and General Services. Specifically, subsection (b) provides in pertinent part as follows:

(b) The department shall:

(1) Preaudit and conduct after-the-fact audits of the financial accounts of all state departments to determine the legality of expenditures and the accuracy of accounts;

...

(5) Manage the preservation and disposal of all records of the State;

...

- (9) Provide centralized computer information management and processing services, coordination in the use of all information processing equipment, software, facilities, and services in the executive branch of the State, and consultation and support services in the use of information processing and management technologies to improve the efficiency, effectiveness, and productivity of state government programs; and
- (10) Establish, coordinate, and manage a program to provide a means for public access to public information and develop and operate an information network in conjunction with its overall plans for establishing a communication backbone for state government.

Moreover, several agencies have been administratively attached to the department under other laws.

Accordingly, one constitutional issue that arises under Article V, section 6, appears to be whether the Office of Information Practices shares common purposes and related functions with the Department of Accounting and General Services, including its administratively attached agencies.

It appears that there are several common purposes and related functions shared between the Office of Information Practices and the Department of Accounting and General Services, based upon the following:

- (1) The express purposes and functions of the department;
- (2) The term "General Services" in the name of the department; and
- (3) The miscellaneous functions and purposes of the administratively attached agencies.

First of all, the express language of certain provisions under section 26-6, HRS, on the purposes and functions of the Department of Accounting and General Services, appears broad enough to encompass the purposes and functions of the Office of Information Practices.

One express purpose or function of the Department of Accounting and General Services is to ensure public access to public information. Specifically, section 26-6(b)(10), HRS, requires the department to "[e]stablish, coordinate, and manage a program to provide a means for public access to public information."¹ Also, section 26-6(c)(4), HRS, establishes the state communication system in the department to "[p]rovide a long-term means for public access to public information."

¹ Language specifying "a program" does not place a numerical limitation on the number of Department of Accounting and General Services programs for public access to public information. Section 1-17, HRS ("Words . . . in the singular or plural number signify both the singular and plural number").

The purpose or function of the Department of Accounting and General Services in ensuring public access to public information appears to overlap with the purpose or function of the Office of Information Practices in promoting open government, through the ensuring of public access to both government records and public board meetings. Indeed, the goals of these missions appear to be almost identical in nature.

A second express purpose or function of the Department of Accounting and General Services, pursuant to section 26-6(b)(5), HRS, is to "manage the preservation and disposal of all records of the State" This departmental purpose or function regarding the management of government records appears somewhat related to the purpose or function of the Office of Information Practices in ensuring public access to government records.

Secondly, the title of the Department of Accounting and General Services implies that its function and purpose is to provide "general services." This broad term would seem conducive to having the department be responsible for a variety of purposes and functions relating to state government, including those of the Office of Information Practices.

Thirdly and related to the last point, the Department of Accounting and General Services, is the host department for at least seventeen administratively attached agencies, which have a variety of functions and purposes. These can loosely be grouped around the miscellaneous purposes and functions relating to four diverse subject matter areas, as follows:

(1) Information technology:

Enhanced 911 Board--²

Its purpose is to oversee a special fund that was established to ensure adequate funding to deploy and sustain enhanced 911 service, and to develop and fund future enhanced 911 technologies;³

Information Privacy and Security Council--⁴

Its purpose is to identify best practices to assist government agencies in improving security and privacy programs relating to personal information;⁵

² The board is administratively attached to the Department of Accounting and General Services pursuant to section 138-2(a), HRS.

³ Section 138-3, HRS.

⁴ The council is administratively attached to the Department of Accounting and General Services pursuant to section 487N-5(a), HRS.

⁵ Section 487N-6(a), HRS.

Access Hawaii Committee--⁶

Its purpose is to provide oversight of the portal manager;⁷

Chief Information Officer--⁸

The officer's purpose is to organize, manage, and oversee statewide information technology governance, including supervision and oversight of the Information and Communication Services Division of the Department of Accounting and General Services;⁹

Information Technology Steering Committee--¹⁰

Its purpose is to assist the Chief Information Officer in developing the State's information technology standards and policies;¹¹

(2) Events and culture:

State Foundation on Culture and the Arts--¹²

Its purpose is the preservation and furtherance of culture and the arts and history and the humanities;¹³

Stadium Authority--¹⁴

Its purpose is to maintain, operate, and manage the stadium and facilities attached thereto and to provide for the maintenance, operation, management, and promotion of the Kapolei recreational sports complex;¹⁵

⁶ The committee is established within the Department of Accounting and General Services pursuant to section 27G-3(a), HRS, but without the term "administrative purposes" to indicate its administrative attachment. However, the committee is listed under "ATTACHED AGENCIES, BOARDS & COMMISSIONS" on the website of the Department of Accounting and General Services. State of Hawaii Department of Accounting and General Services, <http://ags.hawaii.gov> (last visited Sept. 14, 2014).

⁷ Section 27G-4, HRS. The portal manager, pursuant to section 27G-1, HRS, is the entity or person engaged to manage and operate the internet portal on behalf of the State.

⁸ The Chief Information Officer position is established within the Department of Accounting and General Services, and is appointed by the Governor pursuant to section 27-43(a), HRS.

⁹ Section 27-43(a), HRS.

¹⁰ The committee is established within the Department of Accounting and General Services because its purpose is to assist the Chief Information Officer in developing the State's information technology standards and policies, pursuant to section 27-43(b), HRS.

¹¹ Section 27-43(b), HRS.

¹² The foundation is administratively attached to the Department of Accounting and General Services pursuant to section 9-2(a), HRS.

¹³ Section 9-3, HRS.

¹⁴ The authority is administratively attached to the Department of Accounting and General Services pursuant to section 109-1(a), HRS.

¹⁵ Section 109-1(a), HRS.

King Kamehameha Celebration Commission--¹⁶

Its purpose is to have charge of all arrangements for the celebration each year on June 11 to commemorate the memory of King Kamehameha I;¹⁷

(3) Elections:

Office of Elections--¹⁸

Its purpose is to provide support to the Chief Election Officer;¹⁹

Elections Commission--²⁰

Its purpose is to advise the Chief Election Officer on matters relating to elections;²¹

Campaign Spending Commission;²²

Its purpose is to promote transparency in the campaign finance process;²³

Reapportionment Commission--²⁴

Its purpose is legislative and congressional reapportionment;²⁵

Boards of Registration--²⁶

Their purpose is to hear appeals from voters registered within the board's respective districts;²⁷

¹⁶ The commission is administratively attached to the Department of Accounting and General Services pursuant to section 8-5(a), HRS.

¹⁷ Section 8-5(e), HRS.

¹⁸ The Office of Information Practices is administratively attached to the Department of Accounting and General Services pursuant to section 11-1.5(a), HRS.

¹⁹ Section 11-1.5(a), HRS.

²⁰ The commission is administratively attached to the Department of Accounting and General Services pursuant to section 11-7(a), HRS.

²¹ Section 11-7.5(5), HRS.

²² The commission is administratively attached to the Department of Accounting and General Services pursuant to section 11-311(a), HRS.

²³ Section 11-301, HRS.

²⁴ The commission is administratively attached to the Office of Elections, pursuant to section 25-1(b), HRS.

²⁵ Section 25-2, HRS.

²⁶ The boards are administratively attached to the Department of Accounting and General Services pursuant to section 11-41(a), HRS.

²⁷ Section 11-41(c), HRS.

And

(4) Construction and contracts:

State Procurement Office--²⁸

Its purpose is to execute procurement office functions;²⁹

State Procurement Policy Board;³⁰

Its purpose is to adopt rules governing the public procurement, management, control, and disposal of any and all goods, services, and construction;³¹

Community Council on Purchase of Health and Human Services--³²

Its purpose is to advise the administrator of the State Procurement Office;³³

State Building Code Council--³⁴

Its purpose is to establish a comprehensive state building code.³⁵

While the Office of Information Practices would not fit neatly into *any* of these four categories, and could possibly become a lone member of an additional, fifth group--that of Information Practices, it nevertheless appears that the purposes and functions of the Office of Information Practices would be within the broad scope of the existing purposes and functions of the Department of Accounting and General Services, similar to that of its administratively attached agencies.

²⁸ The Office of Information Practices is administratively attached to the Department of Accounting and General Services pursuant to section 103D-204(a), HRS.

²⁹ Section 103D-205(a), HRS.

³⁰ The board is administratively attached to the Department of Accounting and General Services pursuant to section 103D-201(a), HRS.

³¹ Section 103D-202, HRS.

³² Although there is no express language regarding its administrative location, the council is evidently attached to the Department of Accounting and General Services because of its connection to the State Procurement Office.

³³ Section 103F-202(d), HRS.

³⁴ The council is administratively attached to the Department of Accounting and General Services pursuant to section 107-22(a), HRS.

³⁵ Section 107-24(a), HRS.

Conversion from Temporary Status to Permanent Status

The second of the two constitutional issues is the state constitutional requirement regarding the conversion of the Office of Information Practices from a temporary office for a special purpose into a permanent office. As explained below, the Hawaii State Constitution does not prevent an existing temporary agency such as the Office of Information Practices, established for a special purpose, from being transferred to a principal department and established as a permanent agency.

The Office of Information Practices is currently established within the Office of the Lieutenant Governor as a "temporary office" "for a special purpose." As explained in detail below, the reason for establishment within the Office of the Lieutenant Governor appears to have arisen from the challenges of finding an acceptable host department for the Office of Information Practices and the status as "temporary" and "for a special purpose" was done to fulfill state constitutional requirements.

It appears that the Office of the Lieutenant Governor was chosen as the host entity for the Office of Information Practices because the Legislature could not find another acceptable agency or branch of government to situate the office. From its establishment in 1988 until 1998 (when Act 137, Session Laws of Hawaii 1998, became effective), the Office of Information Practices was permanently established within the Department of the Attorney General, and then subsequently administratively attached to the Department of the Attorney General. Act 137, Session Laws of Hawaii 1998, transferred the Office of Information Practices from being administratively attached to the Department of the Attorney General to the Office of the Lieutenant Governor. The legislative history of Act 137, Session Laws of Hawaii 1998, indicates that placement within the Department of the Attorney General was not acceptable because "the possibility of a conflict of interest may exist when the Department of the Attorney General is called upon to enforce the open meetings law and to defend a state agency."³⁶

Other locations, as reflected in the several drafts of the legislation that became Act 137, were also rejected. The choice of the Legislature was discarded because of concerns that "the Legislature may not be the appropriate branch to administer the OIP. Unlike other state agencies, the OIP is peculiar in its quasi-judicial function of deciding which records are to be disclosed."³⁷ The choice of the Judiciary was discarded because placement there "may create a potential conflict of interest, or appearance thereof, and raises questions regarding the separation of powers."³⁸ Ultimately, the Legislature chose to place the Office of Information Practices, at least temporarily, in the Office of the Lieutenant Governor where it remains today. (For conflict of interests concerns regarding the Department of Accounting and General Services, see Chapter 4.)

³⁶ S. Stand. Comm. Rep. No. 2204, in 1998 Senate Journal, at 899.

³⁷ S. Stand. Comm. Rep. No. 2685, in 1998 Senate Journal, at 1083. *See also* Letter from Charleen M. Aina, Deputy Attorney General, Department of the Attorney General, to Jonathan Chun, Senator of the Seventh Senatorial District (Apr. 17, 2000) (Opining that transfer of the Office of Information Practices to the Office of the Ombudsman, a legislative service agency, could violate the separation of powers doctrine).

³⁸ H. Stand. Comm. Rep. No. 895-98, in 1998 House Journal, at 1405.

The placement of the Office of Information Practices within the Office of the Lieutenant Governor triggers state constitutional mandates not applicable to placement within the Department of the Attorney General. As stated previously, Hawaii State Constitution, Article V, section 6, requires that agencies be allocated among the principal departments, but provides an exception for temporary agencies for special purposes.³⁹ The relevant language from Article V, section 6, provides "[t]emporary commissions or agencies for special purposes may be established by law and need not be allocated within a principal department." The plain meaning of the provision is that the constitution authorizes the Legislature to create temporary offices for special purposes, and those offices do not need to be placed within a principal department. The Office of the Lieutenant Governor is not a principal department because it is not listed among the eighteen principal departments established by the Legislature under section 26-4, HRS, on the structure of state government. Rather, the Office of the Lieutenant Governor is a "constitutional office" created under the state constitution,⁴⁰ specifically, Article V, section 2, which provides in relevant part that "[t]here shall be a lieutenant governor who shall have the same qualifications as the governor." Since the Office of the Lieutenant Governor is not a principal department established by the Legislature, the Legislature established the Office of Information Practices within the Office of the Lieutenant Governor as "temporary" and "for a special purpose" to fulfill the requirements of Article V, section 6.⁴¹

However, given that the Office of Information Practices has been in existence for approximately twenty-six years, including its prior status as a permanent agency, it effectively would seem to be a *de facto* permanent agency, regardless of its designation as a temporary office.

Moreover, the Hawaii State Constitution, Article V, section 6, is silent as to whether the establishment of an office within a principal department shall be on a permanent basis or temporary basis for a special purpose. This means that not all offices placed within a principal department must be permanent. Thus, the Legislature is free to establish the Office of Information Practices within the Department of Accounting and General Service as either a permanent office (as requested by the concurrent resolution) or as a temporary office for a special purpose.

Accordingly, under Article V, section 6, of the Hawaii State Constitution, there does not appear to be any obvious constitutional barrier to permanently establishing the Office of Information Practices and administratively attaching it to the Department of Accounting and General Services.

³⁹ See Attorney General Opinion No. 96-1 for the analogous situation involving the placement of executive branch agencies within the Office of the Governor.

⁴⁰ Conf. Comm. Rep. No. 121, in 1998 House Journal, at 1002, in 1998 Senate Journal, at 795-96 (citing Attorney General Opinion No. 96-1).

⁴¹ *Id.* See also Letter from Diane S. Kishimoto, Deputy Attorney General, Department of the Attorney General, to Cal Kawamoto, Chair, Senate Transportation, Military Affairs and Government Operations Committee, and Brian Kanno, Chair, Senate Judiciary Committee (Feb. 13, 2002) ("if the office of information practices is made a permanent agency, it cannot be validly placed within the office of the lieutenant governor").

Conclusion

Establishing the Office of Information Practices as a permanent entity and administratively attaching it to the Department of Accounting and General Services does not violate the Hawaii State Constitution. Administratively attaching the Office of Information Practices to the Department of Accounting and General Services complies with the Article V, section 6, requirement that powers and duties be grouped by common purposes and related functions, because one of the department's functions is to ensure public access to public information, which mirrors the office's purpose of ensuring public access to government records and public board meetings. Furthermore, the office's current status as "temporary" and "for a special purpose" does not present an obstacle to becoming permanently established within a principal department.

Chapter 4

CONFLICT OF INTEREST

As indicated in the previous chapter, during the course of the legislative process leading to the enactment of Act 137, Session Laws of Hawaii 1998, the Legislature expressed concerns over a conflict of interest issue in its attempt to find an appropriate administrative location for the placement of the Office of Information Practices. However, it appears that the Office of Information Practices could potentially face a conflict of interest situation no matter in which of the principal executive branch departments it is placed, since all departments have government records and most departments have boards administratively attached to it or are administered by a board.

By a "conflict of interest," we mean a situation in which an agency of a department is faced with the prospect of taking a position on a matter within its jurisdiction that is contrary to the position of the department or another agency of the same department.¹ With regard to the Office of Information Practices, a conflict of interest may arise between it and its hosting entity under either the Uniform Information Practices Act or the Sunshine Law.

A conflict of interest may arise under the Uniform Information Practices Act if the Office of Information Practices is requested to offer an opinion on whether its host department should or should not release certain government records, following the host department's decision to not release those records. Since departments presumably create and maintain government records² and all departments are subject to the Act,³ a situation may arise where the Office of Information Practices's hosting department may not want to release a record, but the Office of Information Practices opines that the record be made public.

Likewise, a conflict of interest may arise under the Sunshine Law if the Office of Information Practices is requested to offer an opinion on whether a board of the host department did or did not comply with certain requirements of the Sunshine Law. Since departments either have boards administratively attached to it or are run by boards⁴ and all such boards are subject

¹ A statutory provision regarding "conflict of interests" can be found in the HRS; however, it is not directly applicable to this discussion. Section 84-14, HRS, addresses conflict of interests for public officers and employees. It prohibits, among other things, employees from taking any official action directly affecting "a business or other undertaking in which the employees has a substantial financial interest" Section 84-14(a), HRS. Furthermore, the definition of a "conflict of interest" in *Black's Law Dictionary* is not quite applicable here either. The dictionary focuses on "a real or seeming incompatibility between one's private interests and one's public or fiduciary duties" *Black's Law Dictionary* 314 (9th ed. 2009).

² Section 92F-3, HRS, defines "government record" as information maintained by an agency in written, auditory, visual, electronic, or other physical form.

³ Chapter 92F, HRS, applies to an "agency," which is defined under section 92F-3, HRS, to include "any unit of government in this State"

⁴ See generally, Guide to Government in Hawaii (14th ed. 2013) and Directory of State, County and Federal Officials, Supplement to Guide to Government in Hawaii (2014).

to the Sunshine Law,⁵ a situation may arise where the host department's board or an administratively attached board would be adversely affect by an opinion rendered on the Sunshine Law by the Office of Information Practices.

Accordingly, placement of the Office of Information Practices within the Department of Accounting and General Services will inevitably have the potential to create a conflict of interest whenever the Office of Information Practices renders an opinion or makes a decision regarding how the Department of Accounting and General Services or one of its boards should proceed on a matter under the Uniform Information Practices Act or the Sunshine Law. For the purposes of the feasibility of placing the Office of Information Practices within the Department of Accounting and General Services, the issues appear to be two-fold, specifically:

- (1) Whether the Department of Accounting and General Services is a lower risk or higher risk department than other departments with regard to creating a potential conflict of interest for the Office of Information Practices; and
- (2) What means or methods exist to increase the independence of the Office of Information Practices from its host department and thereby minimize or neutralize any negative consequences to the Office of Information Practices if a potential conflict of interest situation arises with the host department.

The short answer to the first issue is that the Department of Accounting and General Services appears to be an average risk department, which is discussed in the following section. The short answer to the second issue deals with administrative attachment, which is discussed in the final section of this chapter.

Average-Risk Department

In assessing whether the Department of Accounting and General Services is a low-risk, average-risk, or high-risk department with regard to the creating of a conflict of interest situation for the Office of Information Practices, the Bureau used, as its criterion, the amount of requests for assistance filed with the Office of Information Practices to obtain public information from a principal department. The Bureau reviewed the volume of requests for assistance that the Office of Information Practices received regarding the Department of Accounting and General Services in comparison to other departments. This assessment simply assumes that the higher the number of requests for assistance relating to the Department of Accounting and General Services in comparison to the other departments, the higher the risk is for a potential conflict of interest to arise, if the Office of Information Practices were to be placed within the Department of Accounting and General Services. Likewise, the lower the number of requests for assistance relating to the Department of Accounting and General Services in comparison to the other departments, the lower the risk.

⁵ Section 92-2, HRS, defines "board" to include any agency, board, commission, authority, or committee of the State which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

CONFLICT OF INTEREST

Based upon our review of its annual reports from fiscal years 2000-2014, the Office of Information Practices receives formal and informal requests for assistance. These requests for assistance are received from the public and from all branches of state and county government. Of the total requests for assistance (both formal and informal), the requests that relate to the Uniform Information Practices Act have greatly outnumbered the requests relating to the Sunshine Law, at least in the most recent reports, where such figures for comparison are available.⁶

A type of informal request for assistance is the Attorney of the Day request. It is handled through telephone calls and e-mails, allowing the public, agencies, and boards to receive general legal advice from the office, usually within the same day.⁷ These Attorney of the Day requests have tended to comprise the "majority"⁸ or "vast majority"⁹ of requests for assistance over the years. Furthermore, statistics for Attorney of the Day requests relating to the Uniform Information Practices Act are broken down by the executive branch department that is the subject of the request. Also, starting with the 2009 annual report, the break downs have been further separated into requests made by the public and those made by the departments themselves. Break downs by department are not provided for Attorney of the Day requests relating to the Sunshine Law.

Accordingly, because:

- (1) Uniform Information Practices Act requests greatly outnumber Sunshine Law requests;
- (2) Attorney of the Day requests comprise the majority or vast majority of requests for assistance; and
- (3) Attorney of the Day requests relating to the Uniform Information Practices Act are broken down by the state executive branch department that is the subject of the request;

we believe that it is reasonable to use the Attorney of the Day requests relating to the Uniform Information Practices Act to make inferences about the total volume or number of requests for assistance that the Office of Information Practices receives regarding the Department of Accounting and General Services in comparison to other departments. From these inferences, we attempt to evaluate whether the Department of Accounting and General Services is a low-risk, average-risk, or high-risk department with regard to the creating of a conflict of interest situation for the Office of Information Practices.

⁶ See the Office of Information Practices annual reports for fiscal years 2011, 2012, and 2013, where Uniform Information Practices Act requests outnumber Sunshine Law requests by 643 to 179, 718 to 356, and 936 to 291, in the respective fiscal years.

⁷ Office of Information Practices Annual Report 2013, at p. 19.

⁸ See the Office of Information Practices annual reports for fiscal year 2004 and fiscal years 2006 to 2010.

⁹ See the Office of Information Practices annual reports for fiscal years 2011 to 2014.

We reviewed the Attorney of the Day requests relating to the Uniform Information Practices Act from two basic perspectives. One perspective was to look at the total request numbers for fiscal years 2000 to 2014 relating to the Department of Accounting and General Services in comparison with other departments. The total request numbers include both the numbers of requests from the public and the numbers of requests from the departments. The other perspective was to present the yearly rankings of the Department of Accounting and General Services in comparison with other departments, based upon total request numbers in each fiscal year of that same fiscal period, in order to look at the department's yearly variations as against other departments.

The first perspective is set forth in Table 4-1. Specifically, the table depicts the total request numbers each fiscal year from fiscal years 2000 to 2014 relating to the eighteen executive branch departments and the Uniform Information Practices Act. The table indicates that for fiscal years 2000 to 2014 combined, the Office of Information Practices received a total of 4,851 Attorney of the Day requests. Of this total, 228 requests, or 4.7%, related to the Department of Accounting and General Services. The department's figure of 228 requests is lower than the executive-branch-wide median figure of 238.5 requests, or 4.91%, which is in turn lower than the executive-branch-wide mean figure of 270 requests, or 5.56%. In other words:

Mean > Median > Department of Accounting and General Services

A mean that is higher than the median suggests that the upper half of all departments in the executive branch has a concentration of departments that generate significantly larger numbers of total requests than departments in the lower half. Since the median is higher than the total requests related to the Department of Accounting and General Services, the long-term trend over the last fourteen fiscal years is that the Department of Accounting and General Services falls near the top of the lower half of all departments in the executive branch. Therefore, we conclude that the Department of Accounting and General Services appears to be an average-risk department.

Table 4-1

Total Number of Attorney of the Day Requests Pertaining to the Uniform Information Practices Act (received from the departments and from members of the public) by Department,¹⁰ FY 2000-2014

	'00	'01	'02	'03	'04	'05	'06	'07	'08	'09	'10	'11	'12	'13	'14	Total	% of Total
HTH	40	38	43	32	44	42	46	35	47	30	69	48	34	29	56	633	13.05
LNR	41	19	30	45	37	51	51	46	31	31	20	25	69	104	23	623	12.84
CCA	50	20	31	43	87	59	40	30	38	46	27	34	33	29	52	619	12.76
EDN	42	24	25	37	44	24	8	23	32	27	12	11	33	13	28	383	7.90
UOH	29	20	34	28	41	27	36	22	16	17	7	7	15	26	17	342	7.05
BED	17	13	14	42	46	29	32	13	20	9	12	14	6	19	12	298	6.14
TRN	26	11	17	24	13	21	25	16	19	15	11	19	17	18	33	285	5.88
HMS	34	16	18	19	10	29	11	9	20	15	10	6	20	19	12	248	5.11
LBR	20	11	21	33	31	17	16	15	10	12	7	13	18	11	11	246	5.07
ATG	24	22	29	23	19	15	11	7	16	16	10	6	10	11	12	231	4.76
AGS	18	7	19	24	17	17	15	18	21	16	19	7	9	10	11	228	4.70
PSD	19	6	11	25	30	30	12	9	14	11	9	13	2	9	9	209	4.31
AGR	9	14	6	16	12	12	13	9	11	12	9	8	14	12	18	175	3.61
BUF	14	9	22	4	19	12	7	4	2	2	3	5	3	3	7	116	2.39
TAX	13	7	8	10	5	4	2	2	2	6	3	5	7	13	1	88	1.81
HRD	4	3	9	11	5	3	1	4	4	1	7	6	4	2	5	69	1.42
HHL	4	0	6	6	2	3	3	6	2	1	3	2	4	4	5	51	1.05
DEF	3	2	0	0	0	1	0	0	1	0	0	0	0	0	0	7	0.14
Total	407	242	343	422	462	396	329	268	306	267	238	229	298	332	312	4851	100

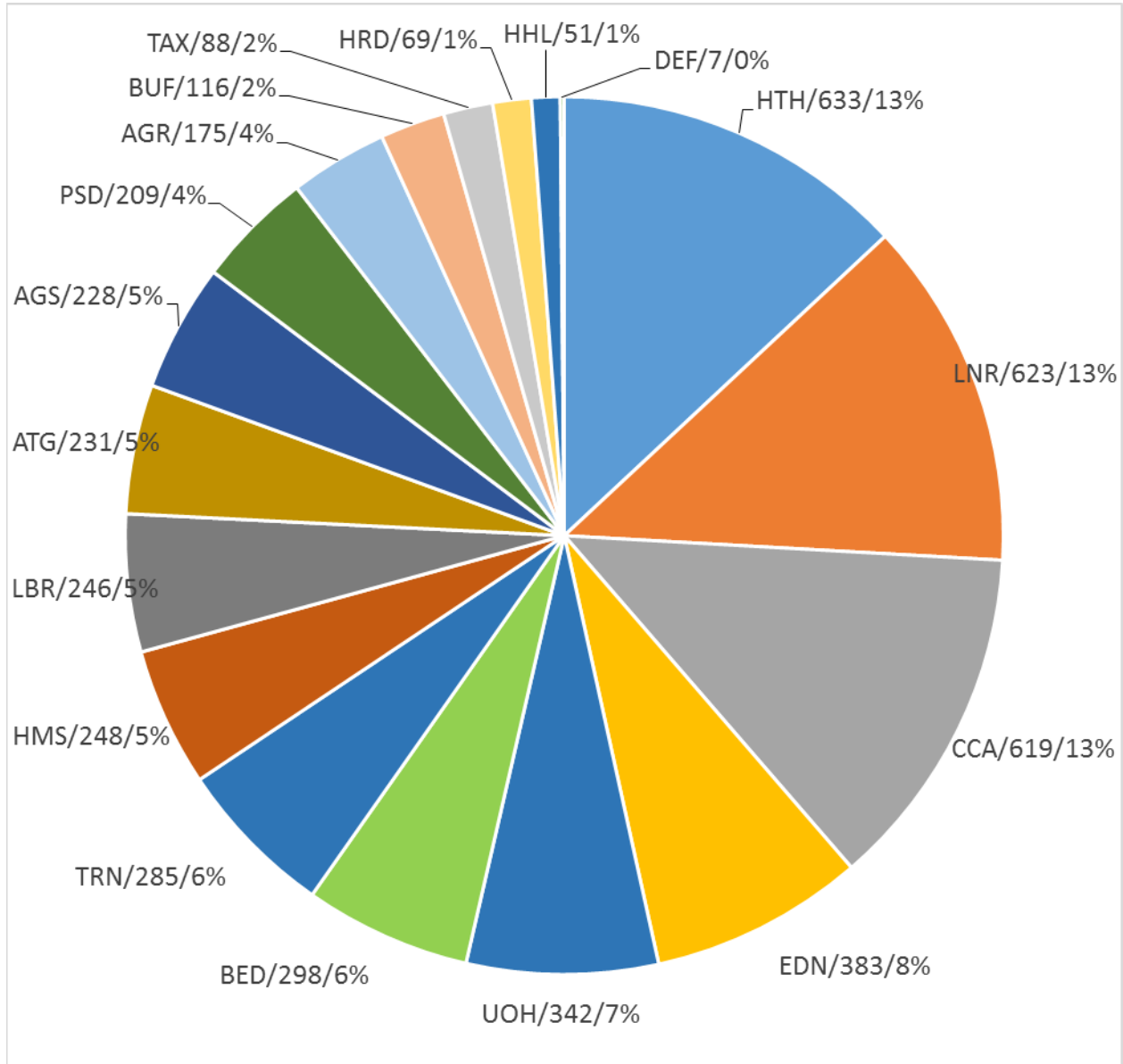
Table 4-1 above may be visually depicted in terms of a pie chart. Specifically, each slice of the pie represents an executive branch department, and the size of a slice indicates the percentage of that department's total requests in comparison with the total requests of all the departments. The pie chart is presented below as Table 4-2:

¹⁰ Each department is represented by their three-letter program ID from the state budget acts, where:

- (1) "AGR" represents the Department of Agriculture;
- (2) "AGS" represents the Department of Accounting and General Services;
- (3) "ATG" represents the Department of the Attorney General;
- (4) "BED" represents the Department of Business, Economic Development and Tourism;
- (5) "BUF" represents the Department of Budget and Finance;
- (6) "CCA" represents the Department of Commerce and Consumer Affairs;
- (7) "DEF" represents the Department of Defense;
- (8) "EDN" represents the Department of Education;
- (9) "HHL" represents the Department of Hawaiian Homelands;
- (10) "HMS" represents the Department of Human Services;
- (11) "HRD" represents the Department of Human Resources Development;
- (12) "HTH" represents the Department of Health;
- (13) "LBR" represents the Department of Labor and Industrial Relations;
- (14) "LNR" represents the Department of Land and Natural Resources;
- (15) "PSD" represents the Department of Public Safety;
- (16) "TAX" represents the Department of Taxation;
- (17) "TRN" represents the Department of Transportation; and
- (18) "UOH" represents the University of Hawaii System.

Table 4-2

All Requests 2000-2014
(Department Abbreviation/Number of Requests/Percentage of Total Requests)



The second perspective is set forth in Table 4-3. Specifically, the table depicts the rankings of the executive branch department based upon the total request numbers in each fiscal year from fiscal years 2000 to 2014 that relate to the Uniform Information Practices Act. The departments are ranked in descending order, from most requests to least requests. The table indicates that from fiscal years 2000 to 2014, the ranking of the Department of Accounting and General Services varied from a high of fourth in 2010 to a low in 2001 when it was tied with the Department of Taxation for thirteenth and fourteenth. In other words, over the past fourteen

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fiscal years, the Department of Accounting and General Services has never ranked among the top three departments for the most numbers of requests, nor has it ever ranked among the bottom four departments for the least number of requests.

Table 4-3

**Ranking of the Executive Departments with Regard to the Total Number of
Attorney of the Day Requests Pertaining to the Uniform Information Practices Act
(received from the departments and from members of the public), FY 2000-2014**

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
1	CCA	HTH	HTH	LNR	CCA	CCA	LNR	LNR	HTH	CCA	HTH	HTH	LNR	LNR	HTH
2	EDN	EDN	UOH	CCA	BED	LNR	HTH	HTH	CCA	LNR	CCA	CCA	HTH	HTH	CCA
3	LNR	ATG	CCA	BED	HTH	HTH	CCA	CCA	EDN	HTH	LNR	LNR	CCA	CCA	TRN
4	HTH	UOH	LNR	EDN	EDN	PSD	UOH	EDN	LNR	EDN	AGS	TRN	EDN	UOH	EDN
5	HMS	CCA	ATG	LBR	UOH	BED	BED	UOH	AGS	UOH	BED	BED	HMS	BED	LNR
6	UOH	LNR	EDN	HTH	LNR	HMS	TRN	AGS	BED	AGS	EDN	LBR	LBR	HMS	AGR
7	TRN	HMS	BUF	UOH	LBR	UOH	LBR	TRN	HMS	ATG	TRN	PSD	TRN	TRN	UOH
8	ATG	AGR	LBR	PSD	PSD	EDN	AGS	LBR	TRN	TRN	HMS	EDN	UOH	EDN	BED
9	LBR	BED	AGS	AGS	ATG	TRN	AGR	BED	UOH	HMS	ATG	AGR	AGR	TAX	HMS
10	PSD	LBR	HMS	TRN	BUF	AGS	PSD	AGR	ATG	LBR	AGR	AGS	ATG	AGR	ATG
11	AGS	TRN	TRN	ATG	AGS	LBR	HMS	PSD	PSD	AGR	PSD	UOH	AGS	LBR	AGS
12	BED	BUF	BED	HMS	TRN	ATG	ATG	HMS	AGR	PSD	UOH	HMS	TAX	ATG	LBR
13	BUF	AGS	PSD	AGR	AGR	AGR	EDN	ATG	LBR	BED	LBR	ATG	BED	AGS	PSD
14	TAX	TAX	HRD	HRD	HMS	BUF	BUF	HHL	HRD	TAX	HRD	HRD	HHL	PSD	BUF
15	AGR	PSD	TAX	TAX	TAX	TAX	HHL	BUF	BUF	BUF	BUF	BUF	HRD	HHL	HHL
16	HRD	HRD	AGR	HHL	HRD	HHL	TAX	HRD	HHL	HHL	HHL	TAX	BUF	BUF	HRD
17	HHL	DEF	HHL	BUF	HHL	HRD	HRD	TAX	TAX	HRD	TAX	HHL	PSD	HRD	TAX
18	DEF	HHL	DEF	DEF	DEF	DEF	DEF	DEF	DEF	DEF	DEF	DEF	DEF	DEF	DEF

Note: A shaded cell that is occupied by a program ID other than AGS indicates that the other department is tied for the particular fiscal year with the Department of Accounting and General Services, because it received the same number of requests.

We also used the same two basic perspectives to review the Attorney of the Day requests relating to the Uniform Information Practices Act, but in this case, relied only upon the requests received from the public, and not those received from the departments. A break down by whether the requests are from the public or from a department has been made available in the Office of Information Practices' annual reports since fiscal year 2009. Accordingly, a third perspective was to look at the request numbers from the public for fiscal years 2009 to 2014 relating to the Department of Accounting and General Services in comparison with other departments. A fourth perspective was to likewise look at the yearly rankings of the Department of Accounting and General Services in comparison with other departments, based upon the yearly request numbers from the public for that same fiscal period.

Arguably, the number of Attorney of the Day requests relating to the Uniform Information Practices Act that are made only by the public may be more indicative of the potential for a conflict of interest than the total requests that are made by both the public and the departments. It is assumed that an Attorney of the Day request from a department is less likely to raise a conflict of interest because the request is likely to occur prior to a decision by that department regarding a release of records, thus providing an opportunity for the department to

act in conformity with the advice of the Office of Information Practices. Conversely, an Attorney of the Day request from the public regarding a department is more likely to occur subsequent to an adverse decision by the department (if it is assumed that the department did not consult the Office of Information Practices prior to its decision), and thus is more likely to raise a conflict of interest.

The third perspective is set forth in Table 4-4. Specifically, the table depicts the annual number of requests made only by the public from fiscal years 2009 to 2014 relating to the eighteen executive branch departments and the Uniform Information Practices Act. The table indicates that for fiscal years 2009 to 2014 combined, there was a sum total of 684 Attorney of the Day requests pertaining to the Uniform Information Practices Act that were made by members of the public regarding the eighteen executive branch departments. The Department of Accounting and General Services generated a total of 22 requests during that time period.

Those 22 requests accounted for 3.22% of all Attorney of the Day requests pertaining to the Uniform Information Practices Act that were made by the public during that time period. The 22 requests were slightly higher than the median number of 21.5 requests (3.14%), but less than the mean number of 38 requests (5.56%). In other words:

Mean > Department of Accounting and General Services > Median

A mean that is higher than the median again suggests that the upper half of all departments in the executive branch has a concentration of departments that generate significantly larger numbers of total requests than departments in the lower half. Since the number of total requests relating to the Department of Accounting and General Services is slightly higher than the median, the trend over the last five fiscal years is that the Department of Accounting and General Services falls at the bottom of the top half of all departments in the executive branch. Based upon the foregoing, we again conclude that the Department of Accounting and General Services appears to be an average-risk department.

This five-year trend for requests from the public does not appear much different from that indicated under the first perspective, as set forth in Table 4-1, in which the long-term trend over the last fourteen fiscal years indicated that the total requests place the Department of Accounting and General Services near the top of the lower half of all departments in the executive branch. However, it does suggest that, if requests from the public do pose a greater risk for a potential conflict of interest situation than requests from departments, then due to its position at the bottom of the top half of all departments in the executive branch, the Department of Accounting and General Services is exposed to a slightly higher risk for a potential conflict of interest situation than many other departments.

Table 4-4

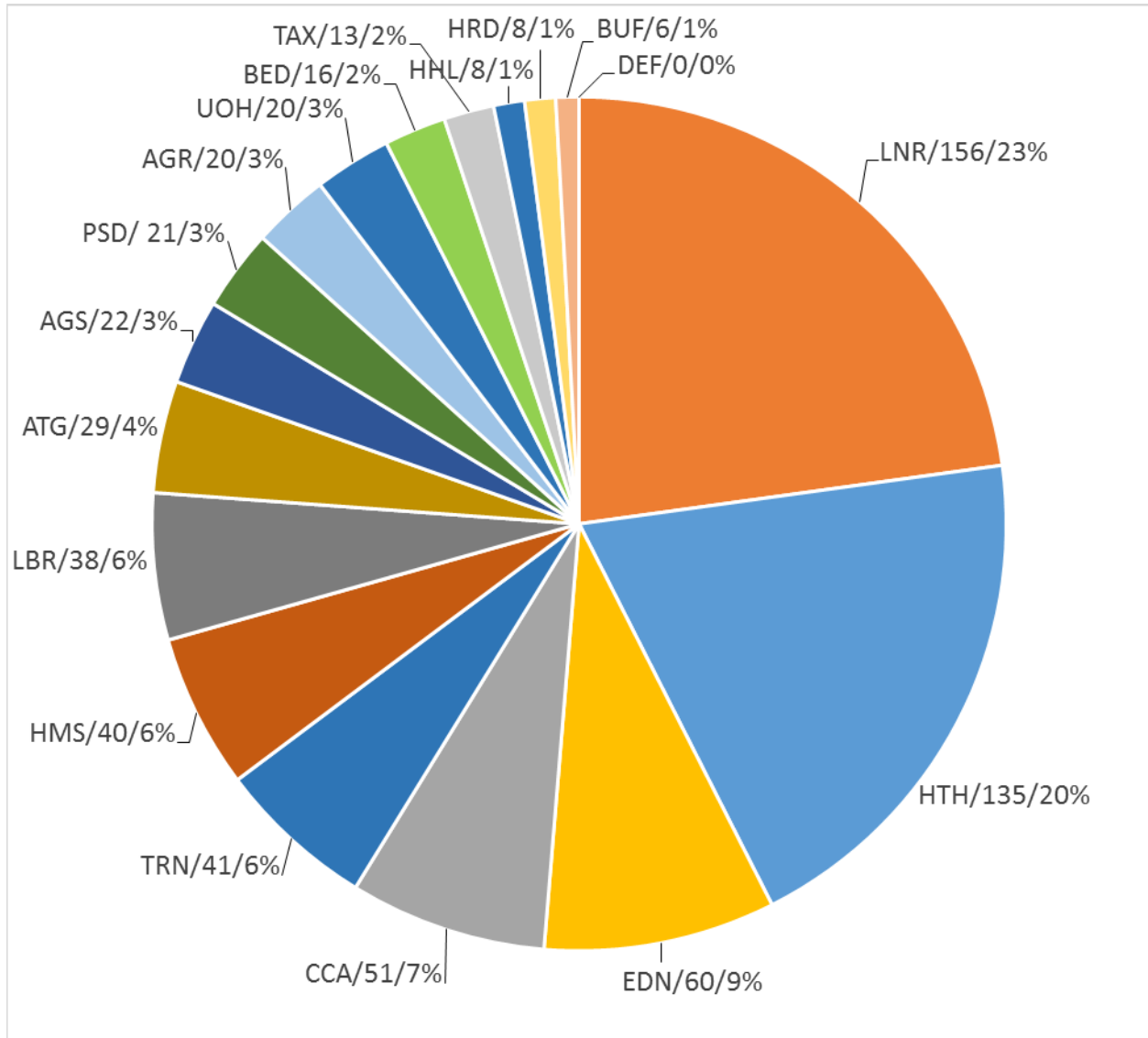
Number of Attorney of the Day Requests Pertaining to the Uniform Information Practices Act (received from members of the public by department), FY 2009-2014

	2009	2010	2011	2012	2013	2014	Total	% of Total
LNR	11	6	16	49	68	6	156	22.81
HTH	19	40	28	18	17	13	135	19.74
EDN	10	7	8	19	8	8	60	8.77
CCA	12	4	11	10	6	8	51	7.46
TRN	7	0	11	12	9	2	41	5.99
HMS	9	2	4	9	12	4	40	5.85
LBR	5	2	12	10	6	3	38	5.56
ATG	8	0	6	7	7	1	29	4.24
AGS	8	3	3	3	5	0	22	3.22
PSD	5	3	3	0	3	7	21	3.07
UOH	6	4	5	0	0	5	20	2.92
AGR	5	0	5	3	4	3	20	2.92
BED	2	2	6	3	3	0	16	2.34
TAX	1	0	3	2	7	0	13	1.90
HRD	0	2	2	2	2	0	8	1.17
HHL	0	1	1	2	3	1	8	1.17
BUF	1	1	1	0	3	0	6	0.88
DEF	0	0	0	0	0	0	0	0.00
Total	109	77	125	149	163	61	684	100.00

Table 4-4 above may also be visually depicted in terms of a pie chart. Each slice of the pie again represents an executive branch department. However, the size of a slice this time indicates the percentage of that department's requests from only the public, in comparison with the requests from the public for all departments. The pie chart is presented below as Table 4-5:

Table 4-5

Public Requests 2009-2014
(Department Abbreviation/Number of Requests/Percentage of Total Requests)



The fourth perspective is set forth in Table 4-6. Specifically, the table depicts the rankings of the executive branch departments based upon the annual number of requests made only by the public from fiscal years 2009 to 2014 that relate to the Uniform Information Practices Act. The departments are ranked in descending order, from most requests to least requests. The table below indicates that the ranking of the Department of Accounting and General Services varied from a tie for sixth and seventh in 2009 and 2010 to a tie for thirteenth to eighteenth in 2014. In other words, over the past five fiscal years, the Department of Accounting and General Services has never ranked among the top five departments for the most number of requests, but it has ranked at the bottom for the least number of requests.

Table 4-6

**Ranking of the Departments with Regard to the Number of
Attorney of the Day Requests Pertaining to the Uniform Information
Practices Act (received from members of the public), FY 2000-2014**

	2009	2010	2011	2012	2013	2014
1	HTH 19	HTH 40	HTH 28	LNR 49	LNR 68	HTH 13
2	CCA 12	EDN 7	LNR 16	EDN 19	HTH 17	EDN 8
3	LNR 11	LNR 6	LBR 12	HTH 18	HMS 12	CCA 8
4	EDN 10	UOH 4	TRN 11	TRN 12	TRN 9	PSD 7
5	HMS 9	CCA 4	CCA 11	LBR 10	EDN 8	LNR 6
6	AGS 8	AGS 3	EDN 8	CCA 10	TAX 7	UOH 5
7	ATG 8	PSD 3	BED 6	HMS 9	ATG 7	HMS 4
8	TRN 7	HRD 2	ATG 6	ATG 7	LBR 6	AGR 3
9	UOH 6	BED 2	AGR 5	AGS 3	CCA 6	LBR 3
10	AGR 5	LBR 2	UOH 5	AGR 3	AGS 5	TRN 2
11	PSD 5	HMS 2	HMS 4	BED 3	AGR 4	HHL 1
12	LBR 5	HHL 1	AGS 3	HHL 2	HHL 3	ATG 1
13	BED 2	BUF 1	PSD 3	HRD 2	BUF 3	AGS 0
14	BUF 1	DEF 0	TAX 3	TAX 2	BED 3	BED 0
15	TAX 1	TAX 0	HRD 2	DEF 0	PSD 3	BUF 0
16	DEF 0	AGR 0	HHL 1	BUF 0	HRD 2	DEF 0
17	HHL 0	TRN 0	BUF 1	PSD 0	DEF 0	HRD 0
18	HRD 0	ATG 0	DEF 0	UOH 0	UOH 0	TAX 0

Note: The number following each department's three letter program ID represents the number of Attorney of the Day requests relating to the Uniform Information Practices Act made by members for the public for that department that year.

The fourth perspective, as set forth in Table 4-5, shows consistency with Table 4-2. Based upon only requests from the public, the rank of the Department of Accounting and General Services has swung both above and below the middle of all the departments. This appears consistent with the department's rank, based upon requests from both the departments and the public, which also swung both above and below the middle of all departments, as noted above for Table 4-2.

Administrative Attachment

The issue of administrative attachment was deferred from chapter 3. It is addressed here as a possible means to increase the independence of the Office of Information Practices from its host department and thereby minimize or neutralize any negative consequences to the Office of Information Practices if a potential conflict of interest situation arises with the host department. The issue of administrative attachment is also the final element of the directive to the Bureau in H.C.R. No. 121 (2014) "to study the feasibility of establishing the Office of Information Practices on a permanent basis, *administratively attached* to the Department of Accounting and General Services" (Emphasis added.)

Reference to administrative attachment is found in section 26-35, HRS, on the administrative supervision of boards and commissions. Specifically, section 26-35, HRS, governs a department such as the Department of Accounting and General Services, with regard to the department's administrative supervision of a board or commission. The terms "board" and "commission" are understood within the administration to include an agency or office that is not specifically a board or commission, such as the Office of Information Practices.¹¹ Section 26-35(a), HRS, specifies eight applicable provisions for boards and commissions within a principal department for administrative purposes or subject to administrative control or supervision by the head of the principal department, otherwise referred to as "administratively attached agencies."

Specifically, section 26-35(a), HRS, states that:

- (a) Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter:
- (1) The head of the department shall represent the board or commission in communications with the governor and with the legislature; unless the legislature or a legislative committee requests to communicate directly with the board or commission;
 - (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department;
 - (3) All rules adopted by the board or commission shall be subject to the approval of the governor;
 - (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws;

¹¹ See *infra* chapter 6 concerning the Bureau staff's meeting with a representative from the Department of the Attorney General.

CONFLICT OF INTEREST

- (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department;
- (6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission;
- (7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department; and
- (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.

Subsection (a) has eight paragraphs. Of these eight paragraphs, paragraph (8) sets forth the general principle regarding what it means to be an administratively attached agency, as follows:

[T]he head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.

In other words, an administratively attached agency operates independently of its host department. The department head is prohibited from supervising or controlling the board or commission in the exercise of its functions, duties, and powers.

For administratively attached agencies with quasi-judicial functions, paragraph (7), also specifically ensures "[a]ny quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department."

We note that the Office of Information Practices appears to perform quasi-judicial functions, including ruling on agencies' denial of access to information and records.¹² Accordingly, paragraph (7), would appear to be applicable to the Office of Information Practices.

In other words, paragraphs (7) and (8) grant the administratively attached agency with a measure of independence from its host department. However, the other paragraphs tend to carve out exceptions to that independence. Specifically:

- (1) Paragraph (1) requires the department head to represent the administratively attached agency in communications with the Governor and with the Legislature;
- (2) Paragraph (2) requires the budget needs of the administratively attached agency to be submitted through the department head;

¹² Section 92F-42(1), HRS.

- (3) Paragraph (3) requires the administrative rules of the administratively attached agency to be subject to the approval of the Governor;¹³
- (4) Paragraph (4) requires personnel decisions of the administratively attached agency to be subject to the approval of the department head;
- (5) Paragraph (5) requires the administratively attached agency's purchases of supplies, equipment, or furniture to be subject to the approval of the department head; and
- (6) Paragraph (6) authorizes the department head to allocate the spaces for occupancy by the administratively attached agency.

We note that if the Office of Information Practices is simply transferred to be under the direct supervision of the Department of Accounting and General Services and not "administratively attached" to it (or any other department), section 26-35, HRS, would not apply and the Office of Information Practices would function simply as a division or program of the department. This means the department head would have the authority to supervise or control the Office of Information Practices in the exercise of its functions, duties, and powers, including its quasi-judicial functions. Accordingly, for the Office of Information Practices to retain its present level of control over its functions and duties, it would seem that it should be administratively attached to whichever principal department the Legislature may decide to move it. If transferred in this manner, section 26-35, HRS, will apply and paragraphs (7) and (8) of subsection (a) will continue to grant the Office of Information Practices with a measure of independence in its operations from the host department.

As noted previously, paragraphs (1) to (6) of subsection (a) carve out exceptions to an attached agency's independence. Thus, an administratively attached agency's independence from the host department may be further increased by exempting the agency from the application of any or all of paragraphs (1) to (6).

For example, presently, it appears that at least four of the administratively attached agencies of the Department of Accounting and General Services are exempt from some, but not all, of paragraphs (1) to (6) of subsection (a). Specifically, the Office of Elections,¹⁴ the Elections Commission,¹⁵ and the Campaign Spending Commission¹⁶ are exempt from paragraphs (1), (4), and (5). The Chief Information Officer appears to be partly exempt from paragraph (1), because the statutes that establish the position of the Chief Information Officer require the officer to report directly to the Governor.¹⁷

¹³ Paragraph (3) is consistent with section 91-3(c), HRS, which generally subjects the administrative rules of any state agency to the approval of the Governor.

¹⁴ Section 11-1.55, HRS.

¹⁵ Section 11-9, HRS.

¹⁶ Section 11-317, HRS.

¹⁷ Section 27-43(a), HRS.

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Accordingly, by simply establishing the Office of Information Practices as an administratively attached agency, section 26-35, HRS, will apply and will give the Office of Information Practices some measure of independence in its operations from its host department. Without section 26-35, HRS, the Office of Information Practices would simply operate as a division or program of the department and, consequently, would be subject to increased oversight by the department head. Moreover, exempting the Office of Information Practices from any or of paragraphs (1) to (6) of section 26-35(a), HRS, will provide the Legislature with some latitude in maximizing or minimizing the Office of Information Practices' degree of independence from its host department. Maximizing the independence of the Office of Information Practices from its host department might serve as a means to minimize or neutralize any negative consequences to the Office of Information Practices if a potential conflict of interest situation arises with the department.

In communications with the Bureau, representatives from the Department of Accounting and General Services expressed their view that the Office of Information Practices should not be granted any exemptions from section 26-35, HRS. Their position is that adherence to all paragraphs of subsection (a) would assist the Department of Accounting and General Services in consistently and efficiently administering all of its administratively attached agencies, and would minimize any additional administrative burden imposed by the transfer.

In contrast, the Director of the Office of Information Practices indicated that the Office of Information Practices should be exempted from three of the paragraphs in subsection (a), namely:

- Paragraph (1), on communications with the Governor and the Legislature;
- Paragraph (4), on personnel decisions; and
- Paragraph (5), regarding purchases of supplies, equipment, or furniture.

Although no specific reason was given by the Director of the Office of Information Practices to support this position, the Bureau notes that these three exemptions are the same three exemptions currently granted to the Office of Elections, the Elections Commission, and the Campaign Spending Commission, as noted above.

Chapter 5

CIVIL SERVICE POSITIONS

In addition to requesting that the Bureau study the feasibility of transferring the Office of Information Practices to the Department of Accounting and General Services, H.C.R. No. 121 (2014) also requests that the Bureau consider the feasibility of establishing positions within the Office of Information Practices that would be subject to the civil service laws under chapter 76, HRS.

As a preliminary matter, the Bureau finds that the feasibility of establishing civil service positions in the Office of Information Practices is unrelated to the feasibility of transferring the Office of Information Practices to the Department of Accounting and General Services. Furthermore, we understand the request to also include the feasibility of converting the positions within the Office of Information Practices that are presently exempt from the civil service laws into positions that are covered by the civil service laws, rather than establishing additional positions within the Office of Information Practices that would be subject to civil service.

Summary

The Bureau does not find any legal barriers to establishing or converting positions within the Office of Information Practices to civil service positions. Establishing all positions within the Office of Information Practices as civil service arguably could increase the autonomy of the Office of Information Practices by removing the possibility that the Director or staff attorneys could be terminated by the Governor for rendering an opinion contrary to political desires. However, we note that with regard to the Director position, there does not appear to be another similar agency director position in the State that is subject to civil service and, accordingly, the conversion of the Director of the Office of Information Practices to civil service would create a unique circumstance. Similarly, with regard to the staff attorney positions, there does not appear to be any attorney positions among the executive departments that are civil service and therefore converting the staff attorney positions of the Office of Information Practices to civil service would also create a deviation from current practice. With regard to the other Office of Information Practices positions, conversion to civil service would be consistent with similar existing positions. Additionally of note is that the Office of Information Practices does not support the conversion of its positions to civil service. Ultimately, the authority to establish or convert such positions rests within the policy-making powers of the Legislature.

We explain below.

The Civil Service Laws in its Constitutional Framework

The Hawaii State Constitution, Article XVI, section 1, entitled "Civil Service," states:

The employment of persons in the civil service, as defined by law, of or under the State, shall be governed by the merit principle.

In other words, the Legislature is constitutionally tasked with enacting the civil service laws and with ensuring that the laws reflect the merit principle.

The Legislature has established the civil service through the enactment of laws currently codified under chapter 76, HRS. Section 76-1, HRS, states, in pertinent part that:

The merit principle is the selection of persons based on their fitness and ability for public employment and the retention of employees based on their fitness and ability for public employment and the retention of employees based on their demonstrated appropriate conduct and productive performance. It is also the purpose of this chapter to build a career service in government, free from coercive political influences, to render impartial service to the public at all times, according to the dictates of ethics and morality and in compliance with all laws.

The Hawaii Supreme Court has described civil service as the "'the one great political invention' of nineteenth century democracy."¹ Civil service eliminates the "spoils system," which awards jobs based on political loyalty.² "The civil service also embodies positive principles of public administration such as openness, merit, and independence."³ "Openness is served through public announcement of job vacancies, clear articulation of qualifications, open application to all persons, and selection according to objective criteria."⁴ "Independence is served through the job security provided by civil service laws; because civil servants can be terminated only for just cause, they are more likely to speak out against unlawful activities occurring in their agencies."⁵

The Public Policy Favoring Inclusion, Unless Exempted

The Legislature has expressed the public policy that all positions in state government should be covered by the civil service laws. Section 76-16(a), HRS, states in pertinent part that:

The legislature declares that the public policy of the State is that . . . the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section [for positions in state government].

¹ *Konno v. County of Hawai'i*, 85 Hawaii 61, 69, 937 P.2d 397, 405 (1997) (quoting *United Public Workers v. Mitchell*, 330 U.S. 75, 121, 67 S.Ct. 556, 580, 91 L.Ed. 754 (1947) (Douglas, J., dissenting in part) (quoting G. Wallas, *Human Nature in Politics* 263 (2d ed.))).

² *Id.* 85 Hawaii at 68, 937 P.2d at 404 (citing Craig Becker, *With Whose Hands: Privatization, Public Employment, and Democracy*, 6 Yale L. & Pol'y Rev. 88, 94-99 (1988)).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

However, the Legislature also recognizes exemptions to the public policy of inclusion within the civil service. Accordingly, the Legislature has generally required that all positions in state government shall be a part of the civil service, unless specifically exempted. Specifically, section 76-16(b), HRS, states:

The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except

Section 76-16(b) thereafter lists specific exemptions for various positions in state government. Two in particular should be noted. One is paragraph (7), for officers appointed by the Governor. Section 76-16(b)(7), HRS, states:

Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate

The other is the miscellaneous paragraph (17), for positions exempted from the state civil service laws by any other law. Section 76-16(b)(17), HRS, states in relevant part that:

Positions specifically exempted from this part by any other law⁶

The Civil Service Laws and the Office of Information Practices

The section 76-16(b)(7) and (17), HRS, exemptions appear applicable to the Director and staff of the Office of Information Practices. First, the enabling statutes in chapter 92F, HRS, require that the Director be appointed by the Governor. Specifically, section 92F-41(b), HRS, requires that:

The governor shall appoint a director of the office of information practices to be its chief executive officer and who shall be exempt from chapter 76.

(Emphasis added.) Accordingly, the Director falls within the exemption under section 76-16(b)(7), HRS, for officers appointed by the Governor.

Second, the office's enabling statutes themselves expressly exempt both the Director and the staff from the state civil service laws. With regard to the Director, section 92F-41(b), HRS, specifies, again, that:

The governor shall appoint a director of the office of information practices to be its chief executive officer and who shall be exempt from chapter 76.

⁶ The proviso at the end of section 76-16(b)(17), HRS, was excluded from the material printed in the study since it would not pertain to the Office of Information Practices. The excluded proviso refers to positions specified under section 76-16(b)(9), HRS, which lists various types of positions at the Judiciary.

(Emphasis added.) Likewise, with regard to the staff of the Office of Information Practices, section 92F-41(d), HRS, exempts them as follows:

The director may employ any other personnel that are necessary, including but not limited to attorneys and clerical staff *without regard to chapter 76*.

(Emphasis added.) Accordingly, both the exemptions for the Director and the staff under section 92F-41(b) and (d), HRS, are incorporated within the exemption under section 76-16(b)(17), HRS, for positions exempted from the state civil service laws by "any other law." In other words, the "any other law" in this instance includes section 92F-41(b) and (d), HRS.

The particular legislative policy behind the exemption of the Office of Information Practices from civil service laws could not be ascertained from the legislative history behind the enactment of section 92F-41, HRS. The section was enacted in Act 262, part IV, Session Laws of Hawaii 1988. At the time, the Legislature appropriated funds for the Office of Information Practices to have a Director, a research position, and two clerical positions, as well as funds for printing and publication.⁷ However, neither the committee reports nor the numerous pieces of testimony specifically address why the positions were established as exempt from the civil service laws.

The Position of the Office of Information Practices on the Matter

Regardless of the public policy that favors inclusion within the civil service, a policymaker deciding on whether to establish positions in the Office of Information Practices as being subject to the civil service laws may also wish to consider the position of the Office of Information Practices on the matter.

In a meeting with Bureau staff, Director Cheryl Kakazu Park expressed the opinion that all positions of the Office of Information Practice, including that of the Director, should remain exempt from civil service.⁸ The Director indicated that the Office of Information Practices requires hiring and position flexibility that might be hampered if the employees were converted to civil service.

According to the Director, due to the small size of the office, employees have come to perform duties that include a wide variety of tasks that would traditionally fall outside their job

⁷ Conf. Comm. Rep. No. 112-88, in 1998 House Journal, at 819 and Conf. Comm. Rep. No. 235, in 1988 Senate Journal, at 691.

⁸ We note that prior to the adoption of H.C.R. No. 121 (2014), the Office of Information Practices testified and indicated support of the concurrent resolution. "The state Office of Information Practices ("OIP") supports the proposal, which would request a study by the Legislative Reference Bureau on the feasibility of attaching OIP on a permanent basis to the Department of Accounting and General Services (DAGS)." Testimony of the Office of Information Practices on H.C.R. No. 121, to the House Committee on Finance, dated April 2, 2014. *See also* testimony of the Office of Information Practices on H.C.R. No. 121, to the Senate Ways and Means Committee, dated April 17, 2014. Written testimonies by the Office of Information Practices discussed the transfer issue in detail, but were silent on indicating support or opposition on the civil service issue. *Id.* Thus at the time of the hearings, it appeared that the Office of Information Practices supported the entire concurrent resolution, which ultimately was adopted without amendment. *Id.*

title. For example, one of the staff attorneys serves as the information technology department to repair the office's computers. Additionally, the secretary to the director and the legal assistant have overlapping duties, especially when one of them is not available. Accordingly, if the employees within the Office of Information Practices are converted to civil service, it may either be difficult to draft appropriate job descriptions for the many tasks performed or, if an employee is placed within an existing civil service position job description and title, it would likely place additional restrictions on tasks the Director could request the employee to perform and therefore reduce the efficiency of the office.

Applicable statutes and Department of Human Resource Development policies support the Director's concern that civil service will impose increased restrictions. First, sections 76-13(7)⁹ and 76-13.5,¹⁰ HRS, when read in conjunction with section 26-5(b)¹¹ and (e),¹² HRS, and the definitions of "director"¹³ and "jurisdiction"¹⁴ in section 76-11, HRS, appear to require the Director of Human Resources Development to establish, implement, and maintain one or more classification systems covering civil service positions in the executive branch of state government.¹⁵ Accordingly, the Director of Human Resources Development has established Policy No. 200.002, entitled "Basic Policies and Practices in Position Classification," as part of its Policies and Procedures. This policy would presumably apply to the Office of Information Practices if the positions were made subject to the civil service laws.

In particular, two of the policy's provisions would appear to hinder the operations of the Office of Information Practices, as relayed by Director Park. First, Policy No. 200.002(VI)(A)(2)(a) requires that with regard to position descriptions, "[d]uties and assignments of a position shall be definitively established, clearly delineated, thoroughly understood by the employee and supervisor, and consistent with the duties and responsibilities of other positions and organizational relationships relevant to the subject position." Second, Policy No. 200.002(VI)(A)(2)(b)(i) requires that position descriptions include the "[m]ajor duties and responsibilities of the position, including the approximate percentage of time spent on each major duty." These provisions would appear to significantly impair the operational flexibility of the office, as described to the Bureau by Director Park, since the current duties and assignments of positions are not definitively established or clearly delineated, and as such, the time spent on each major duty might be difficult or impossible to determine.

Finally, as an aside, Director Park indicated that, rather than the conversion of positions to civil service status, the Office of Information Practices would benefit more from enhanced

⁹ Section 76-13(7), HRS, requires the director to develop and maintain classification systems.

¹⁰ Section 76-13.5(a), HRS, requires each director to establish, implement, and maintain one or more classification systems covering all civil service positions, not otherwise exempted by rules.

¹¹ Section 26-5(b), HRS, requires the Department of Human Resources Development to administer the state human resources program, including central human resources services such as classification.

¹² Section 26-5(e), HRS, precludes the section from affecting the civil service laws applicable to the Judiciary or the Hawaii Health Systems Corporation.

¹³ Section 76-11, HRS, defines "director" as the head of the central personnel agency for a jurisdiction.

¹⁴ Section 76-11, HRS, defines "jurisdiction" to mean the State, each of the four counties, the Judiciary, the Department of Education, the University of Hawaii, and the Hawaii Health Systems Corporation.

¹⁵ With the exception of the Department of Education, the University of Hawaii, and the Hawaii Health Systems Corporation.

employee retention initiatives. In Director Park's view, the means to achieve employee retention is not so much a conversion to civil service status but rather pay parity. According to information provided by the Director, the Office of Information Practices' attorneys each have ten to thirty years of legal experience. The two full-time attorneys have been with the Office of Information Practices for eleven and fourteen years, respectively, and the four part-time attorneys have been with the Office of Information Practices for time periods ranging from one month to twenty years. The attorneys' full-time equivalent annual salaries range from \$52,000 to \$78,000. One of the full-time attorney's position was authorized and is entirely funded by Act 263, Session Laws of Hawaii 2013, whose funding does not continue after fiscal year 2015. The Director has also expressed the opinion that if funding for the full-time attorney position provided by Act 263, Session Laws of Hawaii 2013, is not incorporated into its normal budget for fiscal year 2016, or otherwise renewed, significant operational problems for the Office of Information Practices will result.

Consistency with the Other Administratively Attached Agencies

On the assumption that the Office of Information Practices is transferred to the Department of Accounting and General Services as an administratively attached agency, a policymaker deciding upon whether to establish positions in the Office of Information Practices as being subject to the civil service laws may wish to consider, in addition to the public policy favoring inclusion, a policy of maintaining intra-departmental consistency. In other words, the policymaker may wish to consider whether the civil service status of positions in the Office of Information Practices would be consistent with the status under the civil service laws of comparable positions in the administratively attached agencies of the Department of Accounting and General Services.

First, the Department of Accounting and General Services appears to currently have at least seventeen administratively attached agencies. Most of these agencies are boards or commissions that are comprised of members. A couple of agencies are offices that are administered by a director or a similar officer, but are related in some way to a board or commission. Specifically, the Office of Elections is administered by a Chief Election Officer who is appointed by the Elections Commission. The State Procurement Office executes central procurement office functions while the State Procurement Policy Board adopts rules governing the procurement, management, control, and disposal of any and all goods, services, and construction.

Second, the members of boards or commissions are generally exempt from the civil service laws pursuant to paragraph (7) of section 76-16(b), HRS, which provides an exemption for members of any board, commission, or other state agency whose appointments are made by the Governor. As noted earlier, section 76-16(b)(7), HRS, provides exemptions for:

Department heads, officers, and *members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate . . .*

(Emphasis added.)

We note that some members of boards or commissions are ex officio members by virtue of the member's position as a department head or state officer. While these members are designated by statute to be on the board or commission, rather than appointed by the Governor, they are also generally exempt from the civil service laws pursuant to paragraph (7), because they were appointed by the Governor to be a department head or officer.¹⁶

Third, several of the administratively attached agencies are expressly authorized under their enabling statutes to appoint a director or similar officer to assist the agency in the administration of its duties. The enabling statutes exempt the corresponding director or similar officer (Administrator, Chief Election Officer, Chief Information Officer, Manager) from the civil service laws. As a result, there is no administratively attached agency of the Department of Accounting and General Services that currently has a director or a similar officer whose position is subject to the civil service laws.

Fourth, the director or similar officer is generally authorized under an enabling statute to appoint the other positions in the agency. Those statutes, without exception, exempt from the civil service laws two types of positions that operate in close proximity to the director, specifically, the executive assistant (or deputy manager in the case of the Stadium Authority), and the director's secretary, where such positions are specifically designated under the statutes. In other words, where the enabling statutes expressly authorize the director to fill positions for a deputy manager, an executive assistant, or a secretary, the statutes also exempt those positions from the civil service laws.

On the other hand, those enabling statutes often tend to subject staff positions to the civil service laws. For example, the enabling statutes for the Information Technology Steering Committee, the Stadium Authority, and the State Foundation on Culture and the Arts Commission subject the staff to chapter 76, HRS. However, the enabling statutes for the Campaign Spending Commission, Chief Information Officer, and King Kamehameha Celebration Commission exempt specified staff from chapter 76, HRS.

An anomaly to the general principle that the Legislature decides which positions are subject to, or exempt from, the civil service laws is the Office of Elections, where the enabling statutes delegate to the Chief Election Officer the authority to determine whether the staff shall be subject to, or exempt from, the civil service laws.¹⁷

¹⁶ Section 76-16(b)(7), HRS, ("The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except . . . Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate . . .")

¹⁷ Section 11-5, HRS ("the chief election officer may employ a staff with or without regard to chapter 76 at the discretion of the chief election officer").

CIVIL SERVICE POSITIONS

The table below sets forth the civil service status of positions within the Department of Accounting and General Services' administratively attached agencies. The table excludes board and commission members since the Office of Information Practices is not governed by a board or commission. Accordingly, only the administrative positions, such as director and staff, of the agencies are set forth below for purposes of comparison with the Office of Information Practices.

Table 5-1

Civil Service/Exempt Status of Positions in the Administratively Attached Agencies of the Department of Accounting and General Services

Attached Agency	Exempt Positions	Civil Service Positions
Access Hawaii Committee		
Boards of Registration		
Campaign Spending Commission	Executive Director ¹⁸ Necessary persons ¹⁹	
Chief Information Officer	Chief Information Officer ²⁰ Persons ²¹	
Community Council on Purchase of Health and Human Services		
Elections Commission	Chief Election Officer ²²	
Enhanced 911 Board		
Information Privacy and Security Council		
Information Technology Steering Committee		Staff ²³
King Kamehameha Celebration Commission	Arts program specialist ²⁴ Part-time clerk typist ²⁵	
Office of Elections	Chief Election Officer ²⁶ Staff, per discretion of the Chief Election Officer ²⁷ Precinct officials and other election employees ²⁸	Staff, per discretion of the Chief Election Officer ²⁹
Reapportionment Commission		
Stadium Authority	Manager ³⁰ Deputy Manager ³¹	Other employees, subordinates, and assistants ³⁴

¹⁸ Section 11-314(12), HRS.

¹⁹ *Id.*

²⁰ Sections 27-43(a) and 76-16(b)(7), HRS.

²¹ Section 27-43(a)(6), HRS.

²² Section 11-1.6(a), HRS.

²³ Section 27-43(c), HRS, establishes the shared services technology special fund, which shall be used to fund the operations of the Chief Information Officer and the Information Technology Steering Committee, including the employment and training of staff and other activities deemed necessary by the Chief Information Officer to carry out the purposes of section 27-43, HRS. Since neither section 27-43, HRS, nor section 76-16(b), HRS, exempts the staff from the civil service law, it would appear that they are therefore subject to chapter 76, HRS,

²⁴ Section 8-5(d), HRS.

²⁵ *Id.*

²⁶ Section 11-1.6(a), HRS.

²⁷ Section 11-5(a), HRS.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Section 109-2(5), HRS.

³¹ *Id.*

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Attached Agency	Exempt Positions	Civil Service Positions
	Secretary ³² Persons hired on contract or otherwise and paid out of the stadium special fund ³³	
State Foundation on Culture and the Arts Commission	Executive Director ³⁵	Necessary additional staff ³⁶
State Building Code Council	Executive Director ³⁷ Executive Assistant ³⁸	
State Procurement Office	Administrator ³⁹ Private secretary ⁴⁰	
State Procurement Policy Board		At least one full-time support staff ⁴¹

Based upon the information in the preceding table, subjecting the Director of the Office of Information Practices to chapter 76, HRS, would be inconsistent with general current practices within the Department of Accounting and General Services since the directors or similar officers of the other administratively attached agencies are all, without exception, exempt from chapter 76, HRS. However, with regard to the non-attorney staff of the Office of Information Practices (the secretary to the director, legal assistant, and records report management specialist) it would be consistent for staff members to be subject to chapter 76, HRS. Generally, the staff among the administratively attached agencies tend to be subject to, rather than exempt from, chapter 76, HRS.

It should be noted that any inconsistency in the application of civil service laws among the Office of Information Practices and the other administratively attached agencies does not appear to present a legal issue or barrier. The resulting inconsistency merely reflects a policy choice. Here, the policy choice is between inclusion in the civil service, on one hand, and intra-departmental consistency, on the other.

In making that policy choice, a policymaker may wish to consider whether the Office of Information Practices performs duties that place it in a unique position from that of the other administratively attached agencies of the Department of Accounting and General Services. In particular, the Director of the Office of Information Practices could be placed in a position to render an opinion under the Uniform Information Practices Act that is contrary to a prior decision reached by the Governor. Since the Governor presently has the authority to appoint and

³⁴ Section 109-2(5), HRS.

³² *Id.*

³³ Pursuant to section 109-2(5), HRS, persons hired on contract or otherwise as provided in section 109-3, HRS, which establishes the stadium special fund, are excepted from the requirement that appointments must be made in conformity with the applicable provisions of chapter 76, HRS. Likewise, section 109-3, HRS, provides that all services required for the stadium and related facilities shall be performed by persons hired on contract or otherwise, without regard for chapter 76, HRS.

³⁵ Section 9-2(c)(6), HRS.

³⁶ Section 9-2(c)(7), HRS.

³⁷ Section 107-23, HRS.

³⁸ *Id.*

³⁹ Sections 103D-204(b) and 76-16(b)(7), HRS.

⁴⁰ Section 103D-204(d), HRS.

⁴¹ Under section 103D-201(c), HRS, the policy board shall be assisted by employees of the Department of Accounting and General Services, which is required to provide at least one full-time support staff to the policy board. Presumably, the staff is covered by the civil service laws.

to dismiss the Director at will, a perception may exist that the Director does not have the liberty to render opinions free from any political, i.e., gubernatorial, influence. It may be argued that both a significantly greater degree of autonomy and the public's perception of autonomy would be provided to the Director by making the position subject to the civil service laws. Indeed, the express purpose of the civil service laws as stated under section 76-1, HRS, is as follows:

It is also the purpose of [the civil service] chapter to build a career service in government, free from coercive political influences, to render impartial service to the public at all times, according to the dictates of ethics and morality and in compliance with all laws.

Consistency with Other Statutorily-Authorized Attorney Positions in the Executive Branch

As indicated earlier, a group of professionals that the Director of the Office of Information Practices is specifically authorized to employ under the office's enabling statutes are attorneys, and the Director is authorized to employ them without regard to chapter 76, HRS. Furthermore, the attorneys at the Office of Information Practices evidently comprise a sizable percentage of the entire staff. Specifically, as of fiscal year 2014-2015, the Office of Information Practices had a total position count, including the Director, of 8.5 full time equivalent positions. That position count evidently covered ten actual persons. Among the ten were six attorneys, specifically, two full-time staff attorneys and four part-time staff attorneys.

In contrast to the Office of Information Practices, none of the administratively attached agencies at the Department of Accounting and General Services are specifically authorized under their enabling statutes to appoint attorneys. However, attorney positions authorized by statute do exist elsewhere in the executive branch of state government. Accordingly, a policymaker deciding on whether to establish the attorney positions in the Office of Information Practices as subject to the civil service laws may wish to consider, in addition to the public policy favoring inclusion in the civil service, a policy of maintaining consistency among attorneys in the executive branch of state government in instances where the attorney position is expressly authorized by statute. In other words, the policymaker may wish to consider whether subjecting attorney positions in the Office of Information Practices to the civil service laws would be consistent with the status under the civil service laws of attorney positions expressly authorized by statute elsewhere in the executive branch.

Generally, attorney positions in the executive branch that are expressly authorized by statute are exempt from chapter 76, HRS. In addition to the attorney positions in the Office of Information Practices, these attorney positions are found in the Department of the Attorney General; Department of Business, Economic Development and Tourism; Department of Commerce and Consumer Affairs; Department of Labor and Industrial Relations; and the University of Hawaii. Two possible anomalies are the Organized Crime Unit of the Department of the Attorney General and the Securities Compliance Branch of the Department of Commerce and Consumer Affairs. The Organized Crime Unit's enabling statutes provide that its attorneys shall be "subject to removal by the attorney general only as provided in chapter 76." However, representatives from the Department of the Attorney General informed the Bureau that the unit currently employs no attorneys and that existing unit employees are exempt from the civil

service. The Securities Compliance Branch is statutorily authorized to employ attorneys, and their *compensation* is subject to chapter 76, HRS.

The following table sets out the state executive branch departments and offices that are expressly authorized by statute to specifically employ or appoint attorneys and the status of those attorneys under the civil service laws:

Table 5-2
Civil Service/Exempt Status of Statutorily-Authorized
Attorney Positions in the Executive Branch of State Government

Department	Division, Unit, Agency, Office, or Position	Exempt	Civil Service	Other
Attorney General	Child Support Enforcement Agency ⁴²	●		
	Deputy Attorney Generals ⁴³	●		
	Drug Nuisance Abatement Unit ⁴⁴	●		
	Medicaid Fraud Unit ⁴⁵	●		
	Organized Crime Unit ⁴⁶			●
Business, Economic Development and Tourism	Hawaii Tourism Authority, for contract negotiations ⁴⁷	●		
Commerce and Consumer Affairs	Attorneys funded by the compliance resolution fund ⁴⁸	●		
	Attorneys funded by the captive insurance administrative fund ⁴⁹	●		
	Cable Television Division ⁵⁰	●		
	Division of Consumer Advocacy ⁵¹	●		
	Insurance Division ⁵²	●		
	Insurance Fraud Investigations Branch ⁵³	●		
	Mortgage Licensing ⁵⁴	●		
	Office of Consumer Protection ⁵⁵	●		
	Public Utilities Commission ⁵⁶	●		

⁴² Section 576D-11(4), HRS.

⁴³ Sections 28-8, 28-8.3(a), and 76-16(b)(10), HRS.

⁴⁴ Section 28-131(b), HRS.

⁴⁵ Section 28-91, HRS.

⁴⁶ Section 28-71, HRS, provides that "[e]very attorney and specialist shall be entitled to hold the attorney's and specialist's position during good behavior, subject to removal by the attorney general only as provided in chapter 76."

⁴⁷ Section 201B-2.5(b), HRS.

⁴⁸ Section 26-9(o), HRS.

⁴⁹ Section 431:19-101.8(d), HRS.

⁵⁰ Section 440G-12(d), HRS.

⁵¹ Section 269-53, HRS.

⁵² Sections 431:2-215(b) and 431:2-216(b), HRS.

⁵³ Section 431:2-402(d), HRS.

⁵⁴ Section 454F-15(f)(1), HRS, provides that the Commissioner of Financial Institutions may retain attorneys who may be exempt from chapter 76, as examiners, auditors, or investigators.

⁵⁵ Section 487-3(a), HRS.

CIVIL SERVICE POSITIONS

Department	Division, Unit, Agency, Office, or Position	Exempt	Civil Service	Other
	Securities Compliance Branch ⁵⁷			•
Labor and Industrial Relations	Civil Rights Commission ⁵⁸	•		
	Hawaii Labor Relations Board ⁵⁹	•		
Office of the Lieutenant Governor	Office of Information Practices ⁶⁰	•		
University of Hawaii	University General Counsel ⁶¹	•		

Based upon the forgoing, it would therefore appear inconsistent if the attorney positions expressly authorized by statute for the Office of Information Practices were subject to chapter 76, HRS, since the attorney positions expressly authorized by statute elsewhere in the executive branch are generally exempt from chapter 76, HRS. Furthermore, it would appear that when an attorney position in the executive branch is specifically created under statute, it is done so in order to expressly exempt that position from the civil service laws. In contrast, a position that is simply authorized by the Legislature without such an express exemption would presumably be subject to the civil service laws, as it is in the Judiciary,⁶² since it would not fall under any of the express exemptions listed under section 76-16(b), HRS.

However, it should be noted again that any inconsistency between attorney positions statutorily authorized for the Office of Information Practices and attorney positions statutorily authorized elsewhere in the executive branch does not appear to present a legal issue or a legal barrier. The resulting inconsistency merely reflects a policy choice. Here, the policy choice is between inclusion in the civil service, on one hand, and consistency among state executive branch attorney positions authorized by statute, on the other.

Again, in making that policy choice, a policymaker may wish to consider whether the attorneys at the Office of Information Practices perform duties that place them in a unique position from that of the other attorneys in state government. As stated earlier, the attorneys could be placed in a position to render opinions under the Uniform Information Practices Act that are contrary to prior decisions reached by the Governor. Since the Governor presently has the authority to appoint and to dismiss the Director at will, and the Director has the authority to appoint and dismiss the Office of Information Practices staff attorneys, it could be inferred that

⁵⁶ Section 269-3(a), HRS.

⁵⁷ Section 485A-601(b), HRS, provides that the Commissioner of Securities shall employ attorneys whose compensation shall be fixed by the Commissioner with the approval of the Governor, subject to chapter 76, HRS. However, it appears that the attorneys are compensated out of the compliance resolution fund, since the fees of persons subject to chapter 485A, HRS, on the Uniform Securities Act, are paid into the compliance resolution fund. Section 26-9(o), HRS, specifies that "[a]ny law to the contrary notwithstanding, the director [of commerce and consumer affairs] may use the moneys in the fund to employ, without regard to chapter 76, hearings officers and attorneys."

⁵⁸ Section 368-3(8), HRS.

⁵⁹ Section 89-5(f) and (g), HRS.

⁶⁰ Section 92F-41(d), HRS.

⁶¹ Section 304A-1005(a), HRS.

⁶² See *infra* note 63.

the attorneys do not appear to be at liberty to draft opinions free from any political, i.e., gubernatorial, influence. Like the Director, it is arguable that a significantly greater degree of autonomy would be provided to staff attorneys by making their positions subject to the civil service laws. As indicated earlier, the express purpose of the civil service laws as stated under section 76-1, HRS, is as follows:

It is also the purpose of [the civil service] chapter to build a career service in government, free from coercive political influences, to render impartial service to the public at all times, according to the dictates of ethics and morality and in compliance with all laws.

Finally, neither the Department of the Attorney General nor the Department of Human Resources Development are aware of any staff attorney positions in the executive branch that are subject to all of the civil service laws. If the Legislature converts the attorney positions in the Office of Information Practices from exempt positions into civil service positions, then the Department of Human Resources Development will be tasked with developing a new class specification for attorneys and working with the Office of Information Practices to draft job descriptions for attorney positions.⁶³

Conversions of Exempt Positions into Civil Service

Since all positions at the Office of Information Practices are currently occupied by personnel who are exempt from the civil service laws, there may be further policy issues to consider when converting a filled position from exempt to a civil service. Specifically, a policymaker deciding on whether to convert a presently filled exempt position in the Office of Information Practices into a civil service position may also wish to consult the criteria that were previously established under Act 300, section 18, Session Laws of Hawaii 2006, regarding the conversion of presently filled exempt positions into civil service positions.

Act 300, section 18, Session Laws of Hawaii 2006, specifically required the Department of Human Resources Development and the Hawaii Government Employees Association to consider the following criteria "[t]o establish a logical, workable, and fair process for converting positions in various departments from exempt, to civil service positions":

⁶³ As an aid in establishing civil service attorney positions, the Department of Human Resources Development and the Office of Information Practices may wish to review the civil service class specifications and positions descriptions for attorneys in the Judiciary. According to a representative of the Judiciary, the attorney positions in the Judiciary are generally subject to the civil service due to the all-inclusive nature of section 76-16(b), HRS; the limited applicability of the exemption under section 76-16(b)(9), HRS, for law clerks and other specified Judiciary positions; and the general inapplicability of the exemption in section 76-16(b)(17), HRS, for positions specifically exempted from the civil service by any other law.

Four samples of Judiciary attorney position descriptions are attached as Appendix C. Two sample positions are classified as SR-24 and the other two are SR-28. Salary schedules for these positions are covered under the collective bargaining agreements for bargaining unit (13), which covers professional and scientific employees. Effective July 1, 2013, the annual salary schedule for an SR-24 position ranges from \$53,364 to \$78,996. Likewise, the annual salary schedule for an SR-28 position ranges from \$64,920 to \$96,096. The annual salary schedule for an SR-24 position appears to closely match the current full-time equivalent annualized salary range of \$52,000 to \$78,000 for attorneys at the Office of Information Practices. Related class specification documents have also been attached as Appendix C.

CIVIL SERVICE POSITIONS

- (1) Whether the criteria and statutory authority used to exempt positions from civil service are no longer needed;
- (2) Whether the position has a confidential relationship between an elected official, department head, or policy making level staff;
- (3) Whether the position directs programs defined by statute or by departmental, board, or commission policy or possesses significant authority to bind the agency to a course of action; and
- (4) Whether the position involves substantial responsibility for formulating basic departmental or executive policy or involves directing and controlling program operations of a department or division of a department.

Accordingly, a policymaker may wish to consider applying the above criteria as well to each of the positions at the Office of Information Practices, since the answers for each may differ depending upon whether the position is that of the Director, the Director's secretary, or other staff members.

Furthermore, Act 300, Session Laws of Hawaii 2006, also set forth certain substantive requirements regarding the conversion of exempt positions into civil service positions that remain applicable today, even though they are not codified into the HRS. These should also be taken into consideration when deciding whether to convert positions. These provisions are found in Act 300, sections 19 and 20, Session Laws of Hawaii 2006. Section 19 gives a person who is occupying an exempt position at the time that it is converted into a civil service position the option of remaining exempt from the civil service. Specifically, section 19 states:

An employee who occupies an exempt position for at least one year at the time it is replaced by a civil service position through the process established by this Act⁶⁴ shall have a one-time election to remain exempt from civil service. Once that position is vacated by the employee, the position shall be converted to civil service.

Similar language implemented by the Department of Human Resources Development under its Policies and Procedures Policy Number 1000.0002, entitled "Appointment of Exempt Employees to Replacement Civil Service Positions" extends the Act 300, section 19, Session Laws of Hawaii 2006, conversion process to all appropriate conversions.⁶⁵

⁶⁴ The "process established by this Act" apparently refers to the "logical, workable, and fair process" in section 18(a) of the Act, specifically, Act 300, Session Laws of Hawaii 2006.

⁶⁵ Policy number 1000.0002 states in pertinent part:

When it is determined that services which have previously been provided by exempt positions should instead be provided by civil service positions, appropriate processes must be established in order to facilitate the conversion of exempt employees to civil service. Conversion processes have previously be established by Act 300, SLH 2006. *Those processes are hereby extended to all appropriate conversions.*

(Emphasis added.) State of Hawaii Department of Human Resources Development Policies and Procedures, Policy Number 1000.0002(II). The policy further states:

Act 300, section 20, Session Laws of Hawaii 2006, appoints to the converted civil service position the person who was occupying the exempt position at the time of the conversion. It also allows the applicable collective bargaining agreement or supplemental agreement to determine the person's compensation. Specifically, section 20 states that:

(a) An employee who occupies an exempt position for at least one year at the time it is replaced by a civil service position through the process established by this Act shall be appointed to the civil service position that replaces the employee's exempt position; provided that the employee meets the minimum qualification requirements and any other applicable public employment requirements.

(b) If the employee is appointed to the civil service position, the employee's compensation shall be determined according to the applicable collective bargaining agreement or supplemental agreement covering exempt employees without loss of seniority, prior service credit, accrued vacation, accrued sick leave, or other employee benefits.

Timeframe for the Conversion of Positions into Civil Service

The Department of Human Resources Development has indicated that conversion of positions in the Office of Information Practices into civil service would take approximately one year. Specifically, the Department of Human Resources Development, working in conjunction with the Office of Information Practices, would first attempt to place the staff positions into existing employment classifications. For the director position, staff-attorney positions, and staff positions that cannot be placed into existing employment classifications, the Department of Human Resources Development would need to create employment classifications, draft position descriptions, calculate salaries, and provide the employees the option to remain civil service exempt. Accordingly, a 2015 measure implementing the conversion of Office of Information Practices positions into civil service should have an effective date of July 1, 2016, or later.

An employee who occupies an exempt position for at least one year of continuous credible service at the time it is to be replaced by a civil service position shall have a one-time election to remain exempt from civil service (as long as there is a legal basis for the position to be exempt from civil service). If the employee elects to remain exempt, the position shall be converted to civil service when the employee vacates the position.

Id. at (V)(D).

Chapter 6

MEETINGS WITH AGENCIES

As stated in chapter 1, the focus of this report is the legal issues involved in both transferring the Office of Information Practices to the Department of Accounting and General Services and establishing the positions in the Office of Information Practices as subject to the civil service. However, in our discussions with the agencies, other issues were raised that deserve to be mentioned in this report. These include non-legal issues, such as transition, implementation, and staff support, as well as other legal issues not previously addressed in this report, such as deputy attorney general status. This chapter summarizes our discussions with the agencies concerning these issues, even at the risk of repeating discussions that were referenced earlier in this report.

During June and July 2014, members of the Bureau conducted separate meetings regarding H.C.R. No. 121 (2014) with representatives from the Department of Accounting and General Services, Department of Human Resources Development, the Office of the Lieutenant Governor, the Department of the Attorney General, and the Office of the Information Practices to ascertain their opinions and input on the feasibility of transferring the Office of Information Practices to the Department of Accounting and General Services, along with the feasibility of applying the civil service law to the employees of the Office of Information Practices. No department expressed opposition to the transfer, although, the Office of Information Practices indicated its opposition to the conversion of its positions to civil service as contained in the concurrent resolution.

Department of Accounting and General Services Meeting

On June 13, 2014, members of the Bureau met with representatives from the Department of Accounting and General Services. The Department of Accounting and General Services indicated that they did not oppose the transfer of the Office of Information Practices. The representatives observed that, currently, the Office of Information Practices is the sole administratively attached agency to the Office of the Lieutenant Governor, thereby possibly enjoying expedited review and approval of its administrative requests (e.g. payroll, equipment, and supply requests, etc.). The representatives noted that if the Office of Information Practices is transferred to the Department of Accounting and General Services, it would become one of the department's many administratively attached agencies. As such, it would be treated in the same manner as the department's other administratively attached agencies, including being required to follow the department's rules and procedures, which could be more stringent than those at the Office of the Lieutenant Governor, if any. The "cultural situation" at the Department of Accounting and General Services might therefore be different than that at the Office of the Lieutenant Governor.

The Department of Accounting and General Services also pointed out that, prior to any transfer, the present host department would need to pay any outstanding bills, cut off new bills, and transfer personnel records.

The Department of Accounting and General Services also made the following specific requests if the Office of Information Practices is to be transferred to it:

- (1) All provisions of section 26-35, HRS, (administrative supervision of boards and commissions) be made applicable to the Office of Information Practices;
- (2) If a bill initiating the transfer is enacted during the 2015 regular session, the effective date of the transfer be July 1, 2016, to ensure a planned and orderly transition; and
- (3) An appropriation be made to restore funding that was previously cut for two permanent civil service positions in the Department of Accounting and General Services to support the increased workload of overseeing the various additionally attached agencies, including the Office of Information Practices.

The Department of Accounting and General Services also provided the Bureau with a memorandum further detailing their requests relating to the transfer. A copy of this memorandum is attached as Appendix B.

Department of Human Resources Development Meeting

On July 2, 2014, members of the Bureau met with representatives from the Department of Human Resources Development. The department did not express an opinion on the transfer. The discussion focused on what would be necessary to convert the current Office of Information Practices positions to civil service.

To implement the conversion to civil service, the Department of Human Resources Development would first attempt to place the employee into an existing classification. This would involve examining the tasks and duties of each employee and the complexity of the work performed. If the duties and work of an employee do not fit into an existing classification, as is the expectation for some positions since there is no known civil service class for attorneys and agency directors, the department would need to create new employee classifications. To create new classifications, the Department of Human Resources Development would work with the agency to write position descriptions, establish minimum qualifications, and determine salary range (SR) amounts.

Creating new classifications would take time, and the Department of Human Resources Development also requested a July 1, 2016, or later, effective date to facilitate the transfer and conversion of positions to civil service.

Department of the Attorney General Meeting

On July 11, 2014, members of the Bureau met with a representative from the Department of the Attorney General. The discussion involved whether section 26-35, HRS, applied to agencies, whether staff attorney positions were considered deputy attorneys general, and other legal matters.

Section 26-35, HRS, addresses the administrative supervision of boards and commissions. As previously mentioned, the Department of Accounting and General Services requested that all provisions of section 26-35, HRS, should be made to apply to the Office of Information Practices. Accordingly, the Bureau requested clarification of whether section 26-35, HRS, which literally mentions only boards and commissions, was also applicable to administratively attached agencies without a board or commission. The Deputy Attorney General explained that it is the practice of departments is to apply section 26-35, HRS, to agencies and there appears to be no evidence anyone has objected to its application.

The Bureau also requested clarification of the application of section 28-8.3, HRS, in conjunction with section 76-16, HRS. As stated previously, the Office of Information Practices employs attorneys. However, section 28-8.3(a), HRS, prohibits departments from retaining attorneys subject to various exceptions, none of which are applicable to the Office of Information Practices. Additionally, section 28-8.3(c), HRS, states that every attorney employed by any department on a full-time basis is a deputy attorney general, except for various exceptions that are also not applicable to the Office of Information Practices. Section 76-16(b)(10), HRS, exempts deputy attorneys general from civil service. Accordingly, one interpretation of the law is that the attorneys employed by the Office of Information Practices may be deemed deputy attorneys general pursuant to section 28-8.3(c), HRS, and are therefore exempt from civil service under section 76-16(b)(10), HRS.

Accordingly, the Bureau questioned whether the Office of Information Practices should be provided specific exception under section 28-8.3(a), HRS, to employ attorneys and whether the existing full-time employed attorneys in the Office of Information Practices are considered deputy attorneys general under section 28-8.3(c), HRS.

The representative from the Department of the Attorney General stated that under current administrative practices, the Office of Information Practices attorneys are not currently considered to be deputy attorneys general and that, as such, a corresponding exception should be added to section 28-8.3(c), HRS, to clarify this. Also, section 28-8.3(a), HRS, should be amended to specifically authorize the Office of Information Practices to employee attorneys. The Bureau has incorporated these recommended amendments into the proposed bill attached as Appendix D.

Office of the Lieutenant Governor Meeting

On July 14, 2014, members of the Bureau met with a representative from the Office of the Lieutenant Governor. The Office of the Lieutenant Governor indicated that it does not oppose the transfer.

Transfer of the agency would require the Office of the Lieutenant Governor to gather and transfer documents relating to the Office of Information Practices, including personnel files and leave forms.

Office of Information Practices Meeting

On July 15, 2014, members of the Bureau met with the Director of the Office of Information Practices, Cheryl Kakazu Park. The Office of Information Practices supports the transfer to the Department of Accounting and General Services, but indicated its position that all employees should remain exempt from the civil service and excluded from collective bargaining.

In contrast to the position of the Department of Accounting and General Services, the Office of Information Practices believes it should be made exempt from:

- (1) Section 26-35(a)(1), HRS, requiring the department head to represent the administratively attached agency in communications with the Governor and with the Legislature;
- (2) Section 26-35(a)(4), HRS, requiring personnel decisions of the administratively attached agency to be subject to the approval of the department head; and
- (3) Section 26-35(a)(5), HRS, requiring the administratively attached agency's purchases of supplies, equipment, or furniture to be subject to the approval of the department head.

Regarding the civil service aspect of H.C.R. No. 121 (2014), the Office of Information Practices informed the Bureau that many of the employees of the small office have overlapping and fluid job responsibilities. For example, the Secretary to the Director (1.0 FTE) and the Legal Assistant (1.0 FTE) often perform the other's tasks when one is out of the office. Additionally, since the Office of Information Practices does not have an information technology department or dedicated employee to service their computers and network, one of the attorneys services the computer and technology-related aspects of the office. Accordingly, defining job responsibilities for the civil service system would be difficult.

It appears that the Office of Information Practices originally supported the application of the civil service laws to the positions within the Office of Information Practices as a means to promote job security and to continue to draw qualified employees. However, the Director indicated that a greater concern is the issue of pay parity with the attorneys of other agencies and departments. The Office of Information Practices informed the Bureau that the legal experience

of the six attorneys ranges from ten to thirty years. The two full-time attorneys have been with the Office of Information Practices for eleven and fourteen years and the four part-time attorneys have been with the Office of Information Practices from one month to twenty years. Expressed as an annual amount, the full time equivalent salary of each of the six attorneys ranges from \$52,000 to \$78,000.

Due to the position of the Office of Information Practices regarding the civil service aspect of H.C.R. No. 121 (2014), and various other considerations outlined in this study, the proposed bill attached as Appendix D does not contain language converting any of the positions in the Office of Information Practices to civil service.

The Director also expressed concern over a possible interpretation of the express language of section 92F-41(d), HRS, which reads: "The director may employ any other personnel that are necessary, including but not limited to attorneys and clerical staff without regard to chapter 76." Apparently, questions have arisen over whether this language granting the Director discretion extends to discretion whether to apply chapter 76, HRS, to attorneys and clerical staff. It is the Bureau's understanding that the language as drafted in section 92F-41(d), HRS, does not grant the Director discretion in applying chapter 76, HRS, to the employees of the Office of Information Practices, and that all employees of the Office of Information Practices are exempt from chapter 76, HRS. Nevertheless, the Bureau has clarified this language in the proposed bill attached as Appendix D.

Chapter 7

FINDINGS AND RECOMMENDATIONS

House Concurrent Resolution No. 121, which was adopted by the Legislature during the Regular Session of 2014, directs the Bureau to conduct a study on the feasibility of permanently establishing the Office of Information Practices as an administratively attached agency to the Department of Accounting and General Services. The concurrent resolution also directs the Bureau to study the feasibility of establishing positions within the Office of Information Practices as being subject to the civil service laws.

Transfer of the Office of Information Practices to the Department of Accounting and General Services

There does not appear to be any legal barrier to establishing the Office of Information Practices as a permanent office administratively attached to the Department of Accounting and General Services. Such placement arguably satisfies the requirement in Hawaii State Constitution, Article V, section 6, that offices be grouped the same according to common purposes and related functions. (See chapter 3.)

Further, it does not appear that such placement would unduly increase the incidence of a conflict of interest arising due to the Office of Information Practices rendering an opinion against its host department. Such risk currently exists with the Office of the Lieutenant Governor and will exist no matter in which of the principal executive branch departments the Office of Information Practices may be placed because all executive departments are subject to both the Uniform Model Information Practices Act (Modified) and the Sunshine Law. Moreover, in comparing the number of inquiries the Office of Information Practices receives relating to the Department of Accounting and General Services with those relating to other departments, the Department of Accounting and General Services appears to be at average-risk in terms of the potential for a conflict. (See chapter 4.)

Administratively attaching the Office of Information Practices to the Department of Accounting and General Services, as envisioned in the concurrent resolution, would presumably provide the Office of Information Practices with some independence pursuant to section 26-35(a)(7) and (8), HRS, governing a department's administrative supervision of an attached agency. If the Legislature so desires, it could provide further independence to the Office of Information Practices by exempting the Office of Information Practices from other provisions of section 26-35, HRS, that would subject it to control of the department head. We note that the Office of Information Practices supports its exemption from the requirements that:

- (1) The department head represent the administratively attached agency in communications with the Governor and with the Legislature;

- (2) Personnel decisions of the administratively attached agency be subject to the approval of the department head; and
- (3) The administratively attached agency's purchases of supplies, equipment, or furniture be subject to the approval of the department head.

Conversely, the Department of Accounting and General Services has expressed the view that the Office of Information Practices should be subject to all of the provisions of section 26-35, HRS, thus providing consistency in the oversight exercised by the Department of Accounting and General Services over the majority of its other administratively attached agencies. (See discussion on administrative attachment in chapter 4.)

Finally, as a practical matter, it should be recognized that the transfer of the Office of Information Practices to the Department of Accounting and General Services would ultimately require the moving of various files and documents and a substantial amount of paperwork and accounting. Accordingly, the Department of Accounting and General Services has requested that the effective date of any bill introduced in the Regular Session of 2015 that initiates a transfer should have a delayed effective date of July 1, 2016, to allow adequate time to the affected departments and agencies to implement the change. (See chapter 6.)

Establishment or Conversion of Positions Subject to Civil Service

There does not appear to be any legal barrier to establishing civil service positions at the Office of Information Practices or converting present positions to civil service. On the one hand, establishment of, or conversion to, civil service positions would seem to be consistent with the purpose of civil service laws, which is to enable civil servants to perform their duties free from coercive political influence and to render impartial service to the public according to the dictates of ethics and morality, in compliance with the law. Thus, arguably civil service status would protect the Director of the Office of Information Practices and the staff from termination in retaliation for rendering an opinion contrary to an executive branch stance on a matter or, at the least, increase the public's perception of the office's autonomy. (See chapter 5.)

On the other hand, a policymaker considering whether to convert positions in the Office of Information Practices to civil service may also wish to consider issues of uniformity and consistency with respect to similarly situated agencies and their personnel. For example, among the administratively attached agencies of the Department of Accounting and General Services, there are currently no executive director positions there that are subject to civil service laws. Accordingly, making the position of the Director of the Office of Information Practices subject to civil service laws would be inconsistent with those other executive director positions within the Department of Accounting and General Services. Similarly, making the staff attorney positions of the Office of Information Practices subject to civil service would also be unique as there are no other attorney positions within the executive branch as a whole that are subject to civil service. Conversely, making the non-attorney staff positions of the Office of Information Practices subject to civil service laws would be consistent with similar staff positions of some of

the other agencies administratively attached to the Department of Accounting and General Services. (See chapter 5.)

We note that the Office of Information Practices expressed the view that all positions should remain exempt from civil service because of the flexibility it allows for employees perform a variety of tasks. Creating position description and class specifications as required under civil service would restrict the duties and tasks existing office employees could perform, thus decreasing the efficiency of the office. (See chapters 5 and 6.)

We note that prior to converting any positions to civil service, the Department of Human Resources Development and the Office of Information Practices would need sufficient time to draft position descriptions, draft class specifications, and assign salary ranges for the positions. Accordingly, the Department of Human Resources Development, also requested a July 1, 2016, effective date in the event any bill to accomplish this is introduced during the 2015 regular session. (See chapter 6.)

Conclusion

While the actions proposed in the concurrent resolution appear *feasible*, the Bureau makes no specific recommendation on whether the Office of Information Practices *should* be transferred to the Department of Accounting and General Services or whether the positions at the Office of Information Practices *should* be made civil service. Both issues, but particularly the latter, involve considerable policy decisions to be resolved by the Legislature. In addition, the Office of Information Practices and the Department of Human Resources Development have raised a number of issues concerning the conversion or establishment of civil service positions. Accordingly, for discussion purposes, the Bureau has included an annotated bill draft, which is attached as Appendix D, that addresses only the transfer of the Office of Information Practices to the Department of Accounting and General Services.

HOUSE CONCURRENT RESOLUTION

REQUESTING A FEASIBILITY STUDY ON THE ATTACHMENT OF THE OFFICE
OF INFORMATION PRACTICES ON A PERMANENT BASIS TO THE
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES.

1 WHEREAS, the Office of Information Practices was
2 established by Act 262, Session Laws of Hawaii 1988; and
3

4 WHEREAS, the Office of Information Practices administers
5 the Uniform Information Practices Act, codified as chapter 92F,
6 Hawaii Revised Statutes, which requires open access to
7 government records, and the Sunshine Law, codified as chapter
8 92, Hawaii Revised Statutes, which requires open public
9 meetings; and
10

11 WHEREAS, the Office of Information Practices was
12 established on a temporary basis, and is currently attached to
13 the Office of the Lieutenant Governor for administrative
14 purposes; and
15

16 WHEREAS, establishing the Office of Information Practices
17 on a permanent basis would provide stability and continuity in
18 legal opinions and guidelines affecting state and county
19 agencies, as well as promote independence from undue political
20 influence; now, therefore,
21

22 BE IT RESOLVED by the House of Representatives of the
23 Twenty-seventh Legislature of the State of Hawaii, Regular
24 Session of 2014, the Senate concurring, the Legislative
25 Reference Bureau is requested to study the feasibility of
26 establishing the Office of Information Practices on a permanent
27 basis, administratively attached to the Department of Accounting
28 and General Services; and
29



1 BE IT FURTHER RESOLVED that, as part of its study, the
2 Legislative Reference Bureau is requested to consider the
3 feasibility of establishing positions within the Office of
4 Information Practices that would be subject to the Civil Service
5 Law, as codified in chapter 76, Hawaii Revised Statutes; and
6

7 BE IT FURTHER RESOLVED that the Legislative Reference
8 Bureau is requested to submit a report of its findings and
9 recommendations, including any proposed legislation, to the
10 Legislature no later than twenty days prior to the convening of
11 the Regular Session of 2015; and
12

13 BE IT FURTHER RESOLVED that certified copies of this
14 Concurrent Resolution be transmitted to the Lieutenant Governor,
15 the Comptroller, the Director of the Office of Information
16 Practices, and the Director of the Legislative Reference Bureau.
17
18
19

OFFERED BY: 

MAR 07 2014



Appendix B

NEIL ABERCROMBIE
GOVERNOR



Dean H. Seki
Comptroller

Maria E. Ziellinski
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

June 30, 2014

TO: Ms. Charlotte A. Carter-Yamauchi, Acting Director
Office of the Legislative Reference Bureau

FROM: Dean H. Seki *[Signature]*
Comptroller

SUBJECT: House Concurrent Resolution No. 121 – Feasibility Study on the Transfer of
the Office of Information Practices from the Office of the Lieutenant Governor
to the Department of Accounting and General Services

Thank you for allowing us the opportunity to provide input on House Concurrent Resolution No. 121 – Requesting a Feasibility Study on the Attachment of the Office of Information Practices (OIP) on a Permanent Basis to the Department of Accounting and General Services (DAGS). Should your findings and recommendations of this study result in the transfer of OIP to DAGS, we would like to respectfully request that the following be included in your study:

1. That the transfer occur on July 1, 2016 to ensure a planned and orderly transition for both the OIP and DAGS.
2. Two general funded permanent civil service support staff positions to handle the anticipated workload of the transfer and the 69% increase in DAGS appropriations compared to 2011. Although the latter is unrelated to the OIP transfer, the complexity and volume of financial transactions has significantly increased the administrative offices workload.

For item no. 1, time is required to receive and setup the updated personnel files, budget (transfer of funds), and fiscal (payroll, pCard, purchase orders, contract encumbrances) paperwork, etc. When the transfer of the Campaign Spending Commission and Office of Elections from the Office of the Lieutenant Governor (LG) to DAGS occurred on July 1, 2003, having less than one month (Act 117, SLH 2003 was signed on June 2, 2003) to implement the transfer resulted in chaos for the staff of all offices involved (including the Office of the Lieutenant Governor). Having one year from the time the Governor signs the transfer bill will assist us greatly. Additionally, if the new positions are approved, it may take us approximately six to nine months to establish and fill the two new positions.

Regarding item no. 2, the Administrative Services Office (ASO) is requesting for the restoration of one (1) Account Clerk V, SR15 position (\$37,000) and our Personnel Office is requesting for the restoration of one (1) Personnel Clerk V, SR13 (\$34,000) position. Our justification is based on the attached Exhibit A which details the growth of DAGS without replacing the two positions that were eliminated during the 2009 Reduction in Force (RIF).

The following is our justification for the two positions:

Account Clerk V

On July 1, 2003, the Campaign Spending Commission and the Office of Elections was transferred from the LG to DAGS. Thereafter, two attached agencies (Enhanced 911 Board and State Building Code Council) and the Office of Information Management and Technology (OIMT) was also included under the umbrella of DAGS. Additionally the Washington Place program was transferred from the Office of the Governor in 2012. As reflected in the footnote in Exhibit A, the ASO and the Personnel Office permanent position counts have decreased by 20% and 25% respectively. We are anticipating a significant increase in the fiscal and personnel processing transaction count in fiscal year 2015 because of the 69% funding increase compared to the fiscal year 2011. The dollars amount handled per ASO employee will increase by approximately 67% in fiscal year 2015 compared to fiscal year 2011. The increase in fiscal transaction count affects the timely payment for goods, services, and construction rendered by vendors and contractors because this position reviews and approves all requests for payment

The pay adjustments issue is elaborated in detail below which affects this position significantly because one of the primary responsibilities of this position is to prepare, examine, and pre-audit semi-monthly payrolls and post to the payroll turnaround change schedules so that all employees are paid accurately and on time.

Personnel Clerk V

As described above, since 2003, six (6) additional agencies have come under the umbrella of DAGS. Since the 2009 RIF, the DAGS has established or re-established 105 positions. The addition of programs and employees has increased the Personnel Clerks workload tremendously. Prior to the 2009 RIF, the Personnel Office had three (3) Personnel Clerk Vs that serviced 871 employees and processed approximately 439 employment transactions annually. Currently, our two (2) Personnel Clerks service a total of 780 employees and will process approximately 450 employment transactions by the end of the year. Each of our current Personnel Clerks are servicing 35% more employees and processing 54% more employment transactions since the RIF.

Ms. Charlotte A. Carter-Yamauchi, Acting Director
Office of the Legislative Reference Bureau
June 30, 2014
Page 3

Pay adjustments have also become increasingly complex over the years as a result of different effective dates and salary increase amounts for the different bargaining units which has significantly impacted the Personnel Clerks workload. Determining the proper pay adjustment is complex as in many instances, the adjustments are retroactive and requires additional time for processing and review. Additionally, the Personnel Clerks are required to adhere to strict deadlines so that the ASO can process the pay adjustments. The pay adjustments has also created a backlog of work for the Personnel Clerks and requires a Personnel Management Specialist II, who was formerly a Personnel Clerk V, to assist with the increase in backlog.

With the addition of programs and employees to our department, and complex and time sensitive pay adjustments, it is becoming increasingly difficult to provide the quality and level of service our programs deserve. It has also become difficult to comply with rules, policies, procedures, and state and federal employment laws. The Personnel Office critically needs a Personnel Clerk V to improve overall program efficiency in our Personnel Services Branch.

To summarize, if the transfer takes place, we request that you include the following in your study: 1) that it does not occur sooner than July 1, 2016 to ensure a planned and orderly transition for both the OIP and DAGS and 2) include two general funded permanent positions to allow DAGS to operate efficiently and maintain the service levels to the programs and public.

If you have any questions, please call me at 586-0400 or have your staff call Mr. Kerry Yoneshige of the DAGS-Administrative Services Office at 586-0690.

Attachment

c: Comptroller's Office

**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
ADMINISTRATIVE SERVICES OFFICE**

Exhibit A

**House Concurrent Resolution No. 121 - Requesting a Feasibility Study on the Transfer of OIP to DAGS
Comparison of No. of Employees, Funding, & Number of Dollars Handled Per ASO Employee
Between Fiscal Year 2011 and 2015**

June 30, 2014

	Post - RIF FY 2011	SD1, CD1 (Pending Signing of Budget Bill by Gov.) FY 2015	\$ Difference Between FY 2011 & 2015	% Difference Between FY 2011 & 2015
No. of Permanent Position Counts (Includes 76 for CIP Staff)	738	787	49	6.6%
Funding:				
General	60,463,771	90,209,026	29,745,255	49.2%
Special	21,928,551	23,996,145	2,067,594	9.4%
Revolving	36,799,934	37,508,122	708,188	1.9%
Federal	8,419,647	8,980,650	561,003	6.7%
Trust	4,694,053	4,740,925	46,872	1.0%
Inter-Dept. Transfer	11,757,048	37,543,171	25,786,123	219.3%
Total Operating Fund	144,063,004	202,978,039	58,915,035	40.9%
Bond Funds (CIP)	35,690,000	100,695,000	65,005,000	182.1%
Total Operating & CIP	179,753,004	303,673,039	123,920,035	68.9%
Estimated Total \$ Handled Annually Per ASO Employee (12 pos.)	15,000,000	25,000,000	10,000,000	66.7%

Notes:

1) During the 2009 Reduction-in-Force (RIF) action, the Administrative Services Office lost one Account Clerk V (pos. no. 13275) and the Personnel Office lost one Personnel Clerk V (pos. no. 35455).

2) When the transfer of the Campaign Spending Commission and the Office of Elections occurred in 2003, the Administrative Services Office had 15 authorized positions compared to 12 in FY2015 (20% decrease). The Personnel Office had 12 authorized positions in 2003 compared to 9 in FY 2015 (25% decrease) .

Appendix C

Position No. 5 9398
ATTORNEY (Program) I, SR-24

I. INTRODUCTION:

This position is located in the First Circuit, Administrative Services Division, Staff Services Office, Court Research Unit. This position provides legal advice, and guidance, and legal technical staff support to the Chief Court Administrator and Chief Judge/Probate Judge(s) primarily in the areas of probate, guardianship, conservatorship, and trust matters. The position also provides legal advice and guidance, and legal technical staff support to the Chief Court Administrator and Chief Judge in other matters, as directed.

II. MAJOR DUTIES AND RESPONSIBILITIES:

- | | | |
|----|-------------------------------|-----|
| A. | Legal Technical Staff Support | 30% |
|----|-------------------------------|-----|
1. Reviews, analyzes, and interprets various legal matters as directed, and makes recommendations to the Chief Court Administrator and/or Chief Judge.
 2. Provides information, legal advice and guidance to the Chief Court Administrator, Chief Judge, their designees, and other court staff on matters as assigned.
 3. Investigates complex factual, jurisdictional, and procedural issues; and prepares clear, concise, and logical memoranda for a judge in any civil or criminal trial division on referral by the Chief Judge.
 4. Drafts and revises rules of court and related materials for committees such as the Committee on the Uniform Probate Code and Probate Court Practices, the Committee on the Rules of Civil Procedure and Circuit Court Civil Rules, the Committee on the Rules of Evidence, and the Standing Committee on Civil Pattern Jury Instructions, etc.
 5. Prepares and reviews court orders and related materials for the Chief Judge and Administrative Judges.
 6. Composes informational articles for local legal publications concerning court policies and procedures and/or changes in statutes, rules and administrative orders affecting the practice of law; and prepares materials for and anticipated changes in court practices, administrative orders, and court rules.
 7. Consults with other government agencies regarding the court's cases or procedures.

8. Under the direction of the Chief Court Administrator, responds to inquiries from the public and other government agencies.
9. Under the direction of the Chief Court Administrator, may serve as the legal counsel for the Court in cases as follows:
 - A. Analyzes, interprets and drafts legal documents (i.e. Petitions, Motions, Orders, Affidavits, Complaints, Appeals, Answers) at the request of the Chief Clerk.
 - B. Represents the Chief Clerk in civil cases with regard to escheats, loss of funds and/or property in his/her temporary care and custody, interpleaders, etc.
 - C. Institutes suits to recover funds and/or property under and/or law should be under the Chief Clerk's care and custody.
 - D. Reviews, analyzes and interprets all legal documents submitted for signature of the Chief Clerk.
- B. Probate, Guardianship, Conservatorship, and Trust Matters 20%
 1. Conducts legal research, review and analyses on probate, guardianship, conservatorship, and trust matters, as directed by the Chief Court Administrator or Chief Judge/Probate Judge(s).
 2. Investigates complex factual, jurisdictional, and procedural issues related to probate, guardianship, conservatorship, and trust matters.
 3. Prepares memoranda concerning cases on the general probate calendar (probate, guardianship of the property, and trust matters).
 4. Provides information, legal advice and guidance to the Chief Court Administrator, Chief Judge/Probate Judge(s), and other court personnel concerning decedents' estate, guardianship and trust matters.
 5. Attends Probate Court proceedings. Prepares oral and written recommendations to the court concerning matters brought to court for resolution on the regular probate calendar, and concerning probate, guardianship and trust matters that do not pertain to a court on behalf of the Chief Court Administrator/Court Administrator on the small estates and guardianship calendar or on request of the Court Administrator for the Estate and Probate Branch.
 6. Maintains specialized knowledge of probate, guardianship, conservatorship, and trust statutes, rules of court, case law, and courtroom practices and procedure.

- C. Family Court Matters 20%
1. As directed by the Chief Court Administrator, assists the Family Court Attorney in conducting legal research, review and analyses of specific legal documents, drafting and implementing selecting Family Court policies, procedures and forms.
- D. Investigations 15%
1. Receives and reviews oral and written complaints and inquiries of possible violations of laws, rules, regulations, policies and other requirements.
 2. Identifies the issues and develops plan for carrying out the investigation by identifying documentary and other evidence that must be obtained.
 3. Interviews witnesses and other individuals with knowledge of relevant facts, and collects documentary, physical and other evidence.
 4. Consults with other staff when necessary.
 5. Researches, analyzes evidence and information to provide an assessment and detailed written report of the investigation with findings.
 6. Attends meetings to discuss cases and performs follow-up investigations as necessary.
- E. Legislative and Other Duties 15%
1. Analyzes issues involving probate, guardianship, conservatorship, trust, and other matters affecting the courts that require legislative action; assists in developing plans, making recommendations, and drafting bills to address those issues.
 2. Reviews, screens, and tracks bills; drafts testimony.
 3. Attends legislative hearings and committee meetings, as necessary.
 4. Conducts research on matters being considered by the legislature.
 5. Drafts responses to requests for comments on bills relating to the First Circuit and/or Judiciary.
 6. Assists the courts, divisions, and programs in understanding and/or implementing newly enacted statutes; drafts policies, procedures, guidelines, and legal forms, as necessary.
 7. Performs other related duties as required.

III. CONTROLS OVER THE POSITION:

This position is under the general supervision of the Position No. 4763 Chief Court Administrator, ES-02. Instructions are general in terms of broad requirements rather than specific or detailed requirements.

Position Description

Attorney, SR-28

I. INTRODUCTION

This position is located in the Staff Attorney's Office, Intergovernmental/Community Relations, Office of the Administrative Director of the Courts. The Staff Attorney provides legal counsel to the Administrative Director and the Judiciary support services and programs statewide. The essential functions of the position include the following tasks:

- Perform legal research of case law, statutes and regulations, treatises, and other references and materials.
- Assist in legislative activities, such as developing concepts and making recommendations for legislative proposals, and drafting bills and testimony.
- Draft various written documents, such as legal opinions and pleadings, correspondence, and policies.
- Analyze problems and situations that arise in the courts and programs and give advice, recommendations to address the particular problem or situation.
- Appear as the Judiciary's counsel in legal proceedings.
- Communicate effectively and interact with Judiciary employees at all levels, as well as staff from external agencies and businesses.

II. DUTIES AND RESPONSIBILITIES

A. Legal Advice and Counsel (50%)

Serves as legal advisor to the Administrative Director of the Courts, and all courts, divisions and programs of the Judiciary relating to the administration of the Judiciary. Reviews, analyzes, and interprets various legal matters and makes recommendations to the Administrative Director of the Courts and other Judiciary staff.

Reviews lawsuits, writs, subpoenas and other judicial actions in which the Judiciary, its officers and/or employees are a party or are otherwise involved. Coordinates the handling of judicial actions with the Department of the Attorney General.

As necessary, represents the Judiciary as legal counsel in legal proceedings where the Judiciary is a party.

Reviews and makes recommendations on issues relating to the Judiciary's responsibilities and liabilities on various matters.

Reviews requests from the public and/or other entities for access to Judiciary records and other information. Makes recommendations as to the disposition of such requests.

Provides legal support services on various Judiciary projects.

Provides assistance and reviews matters relating to internal investigations.

Provides guidance and makes recommendations on disputes and claims involving the Judiciary.

Performs a variety of legal research and issues written opinions.

B. Legislative Activities (25%)

Analyzes issues that require legislative action; assists in developing plans, making recommendations to address those issues.

Reviews and drafts bills and testimony.

Attends legislative hearings and committee meetings.

Conducts research on matters being considered by the legislature.

Drafts responses to requests for comments on bills relating to the Judiciary.

Assists the courts, divisions, and programs in understanding and/or implementing newly enacted statutes.

C. Review and Drafting of Legal and Other Documents (20%)

Conducts review and drafting of various legal documents, including but not limited to contracts, leases, and authorization forms.

Assists in drafting employment, fiscal and other Judiciary policies and procedures, as directed. Reviews existing policies and procedures and makes recommendations thereto.

Reviews correspondence from the public, government officials and other entities on a variety of issues. Drafts responses to such correspondence.

D. Other Duties (5%)

Performs special assignments and projects.

III. CONTROLS OVER THE POSITION

Position is under the general supervision of Senior Staff Attorney.

IV. SUPERVISION EXERCISED BY THE POSITION

This position does not supervise any positions.

V. SPECIAL CONDITIONS OF EMPLOYMENT

None.

Position Description
Courts of Appeal, Intermediate Court of Appeals, Office of the Chief Judge
Attorney, SR-28
#

INTRODUCTION

This position is located in the Intermediate Court of Appeals (ICA), under the supervision of the Chief Judge. This position is responsible for: 1) screening appeals upon completion of briefing; preparing legal memoranda, with special attention to jurisdictional and procedural issues; 2) processing motions or petitions, and recommending their disposition; 3) processing cases or classes of cases and recommending their disposition; and 4) doing other projects related to the Intermediate Court Appeal's work.

DUTIES AND RESPONSIBILITIES

- 20% Reviews and analyzes jurisdictional statements and advises the court concerning whether the court has authority to hear the case. Screens appeals after briefing is complete and prepares legal memoranda for the court. In preparing the memoranda, combs the record, analyzes pleadings, determines whether all claims have been resolved or the appeal has been taken upon proper certification; verifies timeliness, notes defects or failures to comply with appellate rules, and addresses other matters as instructed by the Chief Judge. Makes recommendations about compliance with rules and about attorney sanctions. Subject position must work within strict and short deadlines. All recommendations must be supported by clear, precise, legal reasoning.
- 20% Screens motions to determine whether they are routine procedural motions to be given to a judge for immediate decision or whether they are substantive motions which require a response before action can be taken by the court. Recommends how procedural motions will be processed. Questions about substantive motions will be analyzed in a brief memorandum applying court rules or other authority and a recommendation will be made about the disposition of the motion. The memorandum must (a) isolate relevant facts, (b) clarify and weigh the respective arguments, (c) discuss in depth the legal issues, whether or not raised by the parties, (d) recommend disposition of the motion and (e) include a draft of the proposed order.
- 40% Reviews, researches, and analyzes appeals or classes of appeals as assigned by the Chief Judge or a panel and recommends disposition. The recommendation includes a proposed published, memorandum, or per curiam opinion, or a proposed summary disposition order.
- 20% May be required to attend hearings on motions, or other matters set for oral argument. May be required to train, supervise, or advise Law Clerks. Assists

the court and the Administrative Director with experimentation and implementation of improved appellate court operating procedures. Responds to the extent permitted by disciplinary and other rules to inquiries about cases or rules. Performs other related duties as assigned.

CONTROLS OVER THE POSITION

This position works under the general supervision of #57255E Chief Judge of the Intermediate Court of Appeals.

QUALIFICATION REQUIREMENTS OF THE WORK

This position requires a good understanding of appellate procedure and of appellate and original jurisdiction. The position requires the ability to analyze specific procedural problems and to arrive at practical solutions; to prepare clear legal memoranda; to engage in precise legal reasoning; and to work well with appellate judges, other court staff, and the general public. The incumbent of the position must be able to review voluminous records and must be able to isolate relevant facts and issues with precision and accuracy.

POSITION DESCRIPTION
Attorney (Program) I, SR-24
Position No. 500658E

I. INTRODUCTION

This position is located in the Third Circuit, under the Office of the Chief Court Administrator.

II. MAJOR DUTIES AND RESPONSIBILITIES

This position provides legal advice, guidance, and technical staff support services to the Chief Court Administrator, Chief Judge, and Judges, and administrators; and provides legal representation regarding Third Circuit matters. This position also may assist with handling the mortgage foreclosure and other specific case types under the Third Circuit's jurisdiction; and provides professional staff specialist services to the Chief Court Administrator which supports the initiatives of the Judiciary, the Third Circuit's court operations and programs.

A. Legal Technical Staff Support

50%

1. Reviews, analyzes, and interprets various legal matters as directed, and makes recommendations to the Chief Court Administrator and/or Chief Judge.
2. Provides information, legal advice and guidance, and counsel to the Chief Court Administrator, Chief Judge, their designees, and other court administrators/staff on matters as assigned. Prepares and reviews court orders and related materials for the Chief Judge and his/her designees. Prepares clear, concise, and logical memoranda for a judge in any civil or criminal trial division on referral by the Chief Judge. The incumbent in this position must drive to various locations outside of the office to attend meetings.
3. Conducts case reviews, legal research, and investigates complex factual, jurisdictional, and procedural issues, as well as probate, guardianship, conservatorship, trust matters, and foreclosure proceedings. Provides legal counsel, advice, and guidance to the Chief Court Administrator, Chief Judge, and other court personnel concerning decedents' estate, guardianship and trust matters, and foreclosure cases and proceedings. Assists the Judge in preparation for proceedings, such as pre-meditations, mediation conferences, hearings and trials; attends such proceedings; and assists the Judge in resolving matters before the court and in courtroom proceedings related to foreclosure cases. May attend court proceedings, and prepares oral and written recommendations to the court concerning matters related to probate, guardianship, and trust matters. Monitors case disposition and ensures case are being closed. Oversees and monitors the docketing of appeals. The

incumbent in this position must drive to various locations outside of the office to attend pre-mediation and mediation conferences, hearings, trials, and other court proceedings.

4. Drafts and revises rules of court and related materials for committees. Works with respective Judges and committee members to collaborate on the revision and impact of such rules of court. Ensures that program policies, procedures and operations are consistent with State and Federal statutory requirements.
5. Consults with other government agencies regarding the court's cases or procedures; and provides findings and recommendations to the Chief Court Administrator and/or Chief Judge.
6. Under the direction of the Chief Court Administrator (In the capacity of the Chief Clerk of the Court), may serve as the legal counsel to the Chief Court Administrator for the Court. Analyzes, interprets and drafts legal documents; represents the Chief Court Administrator in civil cases; institutes suits to recover funds and/or property which should be under the Chief Court Administrator's care and custody; and reviews, analyzes, and interprets all legal documents submitted for signature of the Chief Court Administrator.
7. Assists program staff, support personnel and professional positions under contract in seeking alternate remedies to litigation, including but not limited to, mediation and settlement conferences, without jeopardizing the best interests of the program or program's clients.
8. Under the direction of the Chief Court Administrator, responds to inquiries from the public, attorneys, and other government agencies.

B. Third Circuit Operational Support Services

50%

1. Establishes and determines program performance measures, goals, and objectives; develops evaluation methods and standards; conducts research, efficiency studies, and evaluation of the Third Circuit's programs and operations; and provides written and oral reports to the Chief Court Administrator regarding the status of ongoing projects. Provides advice on various alternatives, methods, and solutions to organizational issues based on the evaluation and research conducted; and makes written recommendations to the Chief Court Administrator.
2. Attends staff meetings and participates in the preparation and formulation of the Third Circuit's goals and objectives, and review and implementation of overall planning and programming activities of the Third Circuit. The incumbent in this position must drive to various locations outside of the office to attend meetings.

3. Serves as a liaison for the Third Circuit, providing assistance to and expertise on court and legal processes for the Judiciary Information Management System (JIMS) project. Actively participates in meetings, studies, pilot projects, etc., involving JIMS and CourtTools; and provides feedback and recommendations to the Chief Court Administrator and Chief Judge on its impact on Third Circuit's operations and programs. The incumbent in this position must travel to the neighbor islands and drive to various locations to attend meetings.
4. Conducts investigations which includes, but is not limited to:
 - a. Receiving and reviewing oral and written complaints and inquiries of possible violations of laws, rules, regulations, policies and other requirements.
 - b. Identifies the issues and develops a plan for carrying out the investigation by identifying documentary and other evidence that must be obtained.
 - c. Interviews witnesses and other individuals with knowledge of relevant facts, and collects documentary, physical, and other evidence. The incumbent in this position must drive to various locations outside of the office to interview witnesses and other individuals.
 - d. Consults with other staff when necessary.
 - e. Researches, analyzes evidence and information to provide an assessment and detailed written report of the investigation with findings.
 - f. Attends meetings to discuss cases and performs follow-up investigations as necessary. The incumbent in this position must drive to various locations outside of the office to attend meetings.
5. Performs other duties as assigned.

III. CONTROLS OVER THE POSITION

This position independently performs work under the general supervision of Position No. 58795 Chief Court Administrator I.

Duties are performed within the policy framework established by the Judiciary, Third Circuit, and in accordance with administrative directives, pertinent laws, statutes, rules, and orders of the Court.

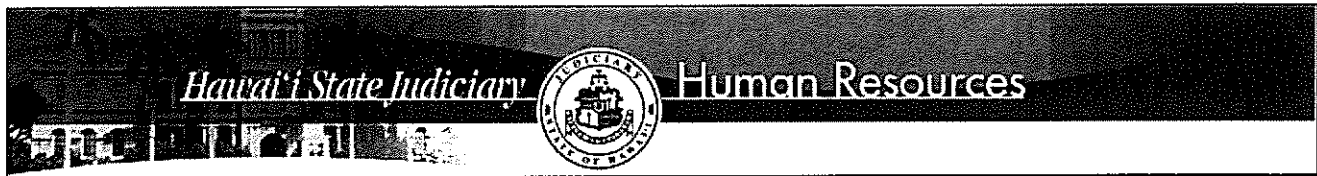
IV. WORKING CONDITIONS

The incumbent in this position may be required to work a variable work schedule and to work beyond a normal work schedule including evenings, days off, and holidays.

The incumbent in this position must be able to attend meetings on the neighbor islands. This work may exceed normal business hours and may require travel and overnight stays.

V. SELECTIVE CERTIFICATION REQUIREMENTS

The incumbent in this position must possess a current and valid driver's license to drive to various locations to attend meetings and other Third Circuit business related matters.



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PART I

72.250

THE JUDICIARY

STATE OF HAWAII

Class Specification for the Class:

ATTORNEY

Duties Summary:

Independently performs highly specialized legal duties involving appellate court functions and administrative functions of the Judiciary. Provides legal advice and counsel to the Justices of the Supreme Court and/or the Judges of the Intermediate Court of Appeals or the Administrative Director of the Courts.

Distinguishing Characteristics:

A position in this class provides legal advice and counsel to the Chief Justice, the Justices of the Supreme Court, and/or the Judges of the Intermediate Court of Appeals or the Administrative Director of the Courts, on matters that have legal consequences and impact on the State of Hawaii's legal and judicial system and community, the general public and the Judiciary court operations. A position in this class reviews, screens, analyzes and interprets legal documents such as notices of appeal, briefs, substantive motions, petitions, stipulations, and writs to determine compliance and consistency with statutes and court rules; researches, develops, recommends, drafts and prepares analytical bench memoranda, opinions and orders; summarizes points of supporting and/or contradictory materials, applicable points of law and makes recommendations to the Justices of the Supreme Court and/or the Judges of the Intermediate Court of Appeals within short time constraints; determines and recommends whether or not the Supreme Court or the Intermediate Court of Appeals has jurisdiction in matters before it; reviews, analyzes and interprets statewide Judiciary policies and procedures, rules and regulations, collective bargaining agreements and Hawaii Revised Statutes to determine legal ramifications and makes recommendations to the Chief Justice or the Administrative Director of the Courts; reviews and analyzes the proposed activities and problems of all program levels to interpret, draft and provide responses and legal opinions; and drafts and presents Judiciary bills and testimony to the Legislature.

Examples of Duties:

Positions may not be assigned all of the duties listed, nor do the examples necessarily include all the duties that may be assigned. The omission of specific statements does not preclude management from assigning such duties if such duties are a logical assignment for the position. The classification of a position should not be based solely on the example of duties performed.

Provides legal advice and counsel to the Chief Justice, Justices of the Supreme Court and/or the Judges of the Intermediate Court of Appeals or the Administrative Director of the Courts. Advises the court on appellate procedures; reviews, screens, analyzes and interprets legal documents such as notices of appeal, briefs, substantive motions, petitions, stipulations, and writs to determine conformance and consistency with statutory and court rules; researches, develops, recommends, drafts and prepares analytical bench memoranda, motions, opinions, orders and responses; summarizes points of supporting and/or contradictory materials, applicable points of law and makes recommendations to the Justices of the Supreme Court and/or the Judges of the Intermediate Court of Appeals; assists in the planning, directing, and coordinating of publications such as the Hawaii Appellate Handbook; drafts and revises rules of the civil and criminal procedures, rules of professional responsibility and other court rules. Makes recommendations to the Motions Justice of the Supreme Court to assist in the determination and implementation of court policy in the differentiation between routine motions and substantive motions; advises the Supreme Court Clerk's Office whether a given motion merits ex parte submission to a justice for immediate signature, or whether the motion should be filed without signature pending response from opposing parties; provides legal direction and guidance to the Supreme Court Clerk's Office in matters affecting the motions docket; advises clerks on procedural questions and/or the acceptability of motions submitted for filing; is required to be present during oral hearings; assists Justices of the Supreme Court by forwarding communications from the court to attorneys or parties; responds so far as permitted by judicial ethics to telephone calls from attorneys or parties regarding the mechanics of motions procedure; may assist the Chief Justice in responding to correspondence from court organizations and members of the public; may draft speeches, welcome addresses and responses for the Chief Justice; provides assistance to law clerks and externs; reviews and researches briefs and determines and recommends to the Assignments Justice of the Supreme Court whether a case has jurisdiction in accordance to Chapter 602 of the Hawaii Revised Statutes and should be assigned to the Supreme Court or the Intermediate Court of Appeals within twenty (20) working days after filing in accordance with Rule 31 of the Rules of Court; assists in the handling of attorney discipline cases and special cases involving the supreme court's supervisory jurisdiction over all trial courts; recommends specific sanctions for non-compliance with the Rules of Court upon attorneys. May confer with management level Judiciary personnel on various legal matters, e.g., on ramifications of individual court policies and procedures, amendments to the Rules of Court, Judiciary rules and procedures, collective bargaining agreements, and the Hawaii Revised Statutes, legal impact of present and proposed activities, proposed legislation and developments in the case law; reviews for legal soundness and accuracy on program material originating from the different divisions; drafts and presents Judiciary bills and testimony to the Legislature; attends hearings on Legislative bills impacting the Judiciary; discusses with the Chief Justice and/or the Administrative Director the impact upon the Judiciary of proposed legislation and as a result, notifies divisions; at the close, of the legislative session, drafts response to the Governor's request for comments on all bills affecting the Judiciary; assists the statewide programs on any legal questions or proposals; recommends policies and develops the procedures and regulations; implements new or amended legislation; responsible for insuring that the policies, procedures, and regulations are consistent with the intent of the law and are administratively sound, efficient and economical in operation.

Knowledges and Abilities Required:

Knowledge of: Court rules and procedures, including a specialized knowledge of the Hawaii Rules of Court, analogous rules of court from other jurisdictions, and case law from Hawaii and other jurisdictions relating to court practice and procedure.

Ability to: Research and analyze specific administrative, legal and appellate procedural problems and arrive at practical solutions; prepare clear legal memoranda; engage in precise legal reasoning; draft legislative bills; present and analyze relevant policy questions and equitable considerations; temper legal reasoning with common sense; understand the basic philosophy and policies of the Chief Justice and the court and the Administrative Director of the Courts in order to implement such philosophy and policies; and work well with others varying in temperaments and personal outlooks.

.....
This is the first specification for the new class, ATTORNEY.

APPROVED: February 27, 1989

EFFECTIVE:

PART II

72.250

THE JUDICIARY STATE OF HAWAII

Minimum Qualification Specification for the Class:

ATTORNEY

Education Requirement:

Graduation from an accredited school of law.

Experience Requirement:

Two (2) years of experience in the satisfactory performance of duties in one or more of the following areas (or the equivalent): legal research and writing; litigation; advising administrative agencies and interpretation of policy to members of the bar and the public; review of and drafting of legislation, OR

One (1) year of experience in the federal appellate and/or state appellate courts. Such experience must include the active participation in investigative research, legal writing and processing of legal documents for the appellate courts. Such experience must also demonstrate a knowledge of appellate procedures and government policies and procedures as well as responsibility for managing confidential, complex, jurisdictional and controversial issues.

License Requirement:

Applicants must possess a license to practice law in all courts of the State of Hawaii.

Quality of Experience:

Possession of the required number of years of experience will not in itself be accepted as proof of qualification for a position. The applicant overall experience must have been of such scope and responsibility as to conclusively demonstrate that he/she has the ability to perform the duties of the position for which he/she is being considered.

Selective Certification:

Certain positions may require that certification and selection be restricted to eligibles who possess the pertinent specialized experience and knowledge required to perform the duties of the position. The connection between the kind of training or experience requested for selective certification and the duties and responsibilities of the position to be filled must be shown.

Test:

For competitive actions, all applicants must qualify on the appropriate examination for the class. For non-competitive actions, the appropriate written examination may be waived.

Physical and Medical Requirements:

Applicants must meet the physical and medical standards established for the class.

This is an amendment to the ATTORNEY minimum qualification specification which were approved on February 27, 1989.

APPROVED: January 13, 1995

EFFECTIVE:



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PART I

72.247

THE JUDICIARY

STATE OF HAWAII

Class Specification for the Class:

ATTORNEY (PROGRAM) I

Duties Summary:

Performs specialized legal duties limited in scope to a particular program. Provides legal advice and counsel to program administrators, staff, support and professional contract positions, and others involved in assisting the program meet applicable statutory mandates.

Distinguishing Characteristics:

This class is distinguished by its responsibility for providing legal guidance, advice, counsel and representation to program administrators, staff, support and professional contract positions, and others involved in matters that have legal consequences and impact on the program's policies, procedures, practices and operations.

A position in this class analyzes and interprets legal documents to determine compliance and consistency with statutes and court rules; conducts legal research and review; prepares motions and other legal documents; engages in litigation on behalf of the program's interests; and evaluates and modifies policies, procedures, orders and forms to ensure consistency with compliance to statutes, laws and changes affecting the program.

Examples of Duties:

Positions may not be assigned all of the duties listed, nor do the examples necessarily include all the duties that may be assigned. The omission of specific statements does not preclude management from assigning such duties if such duties are a logical assignment for the position. The classification of a position should not be based solely on the examples of duties performed.

Provides legal advice, instruction, direction and counsel to program administrators, staff, support, professional contract positions and others involved in assisting the program; prepares motions and other legal documents; conducts case review and research pertinent to the program; develops a legal education component for the program that provides a basic foundation for program staff

and professionals on contract in carrying out their program duties; provide legal representation to the program and the staff at court hearings, case conferences and other case staffings as required; provides legal representation during the appellate process; ensures that program policies, procedures and operations are consistent with State and Federal statutory requirements; and assists program staff, support and professional positions under contract in seeking alternate remedies to litigation, including but not limited to, mediation and settlement conferences, without jeopardizing the best interests of the program or program's clients.

Knowledges and Abilities Required:

Knowledge of: Court rules and procedures, including a specialized knowledge of Hawaii Rules of Court, analogous rules of court from other jurisdictions, and case law from Hawaii relating to court practices and procedures.

Ability to: Research and analyze legal and procedural problems and arrive at practical solutions; prepare clear legal memoranda; engage in precise legal reasoning; draft legislative bills; present and analyze relevant policy questions and equitable considerations; temper legal reasoning with common sense; understand the basic philosophy and policies of the program; and work well with others of varying temperaments and personal outlooks.

This retitles the class, ATTORNEY (PROGRAM) to ATTORNEY (PROGRAM) I.

APPROVED: March 3, 2004

EFFECTIVE: August 15, 2002

PART I

72.249

THE JUDICIARY

STATE OF HAWAII

Class Specification for the Class:

ATTORNEY (PROGRAM) II

Duties Summary:

Oversees a legal program which is limited in scope and complexity, and provides legal technical advice and counsel to First Judicial Circuit administrators and staff; or oversees a non-legal program, and provides the legal technical advice and counsel on questions and issues which arise in the everyday functioning of the program, or in the interaction with the program's clients.

Distinguishing Characteristics:

This class' dual concept reflects either responsibility for overseeing a legal program which is limited in scope and complexity, providing legal technical advice and counsel to First Judicial Circuit administrators and staff; or for overseeing a non-legal program, and providing legal technical advice and counsel for the program it administers. In addition, both class types have responsibility for

supervising subordinate positions.

A position in this class analyzes and interprets legal documents to determine compliance and consistency with statutes and court rules; conducts legal research and review involving program matters that have legal consequences and impact on the program's rules, policies, procedures, practices and operations; prepares motions and other legal documents; engages in litigation on behalf of the program's interests; and evaluates and modifies policies, procedures, orders and forms to ensure consistency with compliance to statutes, laws and changes affecting the program; and supervises subordinate staff.

Examples of Duties:

Positions may not be assigned all of the duties listed, nor do the examples necessarily include all the duties that may be assigned. The omission of specific statements does not preclude management from assigning such duties if such duties are a logical assignment for the position. The classification of a position should not be based solely on the examples of duties performed.

Oversees a legal program which is limited in scope and complexity, and provides legal technical advice, instruction, direction and counsel to program administrators and staff; or oversees a non-legal program and performs legal services for the program it administers; prepares motions and other legal documents; conducts case review and research pertinent to the program; develops a legal education component for the program that provides a basic foundation for program staff and professionals on contract in carrying out their program duties; provides legal representation to the program and the staff at court hearings, case conferences and other case staffings as required; provides legal representation during the appellate process; ensures that program policies, procedures and operations are consistent with State and Federal statutory requirements; and assists program staff, support and professional positions under contract in seeking alternate remedies to litigation, including but not limited to, mediation and settlement conferences, without jeopardizing the best interests of the program or program's clients. Reviews legislative bills that may have impact upon the program; drafts bills and testimonies as required. Provides technical guidance and consultation to subordinates; evaluates work performance, approves leave and assumes responsibility for disciplinary actions; maintains operational statistics; prepares budgetary and resource allocation justifications; serves in liaison capacity representing the program with outside agencies and/or professionals that have interaction with program functioning; and performs other related duties as required.

Knowledges and Abilities Required:

Knowledge of: Court rules and procedures, including a specialized knowledge of Hawaii Rules of Court, analogous rules of court from other jurisdictions, and case law from Hawaii relating to court practices and procedures; and principles and practices of supervision.

Ability to: Research and analyze legal and procedural problems and arrive at practical solutions; prepare clear, legal memoranda; engage in precise legal reasoning; draft legislative bills; present and analyze relevant policy questions and equitable considerations; temper legal reasoning with common sense; plan, direct, coordinate, supervise and review the work of subordinates; plan training programs for subordinates; understand the basic philosophy and policies of the program; and work well with others of varying temperaments and personal outlooks.

This is the first class specification approved for the class, ATTORNEY (PROGRAM) II.

APPROVED: March 3, 2004

EFFECTIVE: March 3, 2004

PART II

72.247; 72.249

THE JUDICIARY STATE OF HAWAII

Minimum Qualification Specifications for the Class:

ATTORNEY (PROGRAM) I ATTORNEY (PROGRAM) II

Education Requirements:

Graduation from an accredited school of law.

Experience Requirements:

Applicants must have had progressively responsible experience of the kind and quality described below and in the amounts shown:

General Experience: Work experience which demonstrated the satisfactory performance of duties in one or more of the following areas (or the equivalent): legal research and writing; litigation; review of and drafting of legislation; review of new laws for impact on court requirements; or development of policies, procedures, and legal forms to implement new laws.

Supervisory Aptitude: Applicants must possess *Supervisory Aptitude. Supervisory aptitude is the demonstration of aptitude or potential for performing supervisory duties through successful completion of regular or special assignments which involve some supervisory responsibilities by detail to supervisory positions; by completion of training courses in supervision accompanied by application of supervisory skills in work assignments; or by favorable appraisals of a supervisor indicating the possession of supervisory potential.

Class Title	General Experience	Specialized Experience	Total (Years)
Attorney (Program) I	2	0	2
Attorney (Program) II	3	*	3

License Requirement:

Applicants must possess an active license to practice law in all courts of the State of Hawaii.

Quality of Experience:

Possession of the required number of years of experience will not in itself be accepted as proof of qualification for a position. The

applicant's overall experience must have been of such scope and responsibility as to conclusively demonstrate that he/she has the ability to perform the duties of the position for which he/she is being considered.

Selective Certification:

Certain positions may require that certification and selection be restricted to eligibles who possess the pertinent specialized experience and knowledge required to perform the duties of the position. The connection between the kind of training or experience requested for selective certification and the duties and responsibilities of the position to be filled must be shown.

Test:

For competitive actions, all applicants must qualify on an appropriate examination for the class. For non-competitive actions, the examination may be waived.

Physical and Medical Requirements:

Applicants must meet the physical and medical standards established for the class.

This retitles the class, ATTORNEY (PROGRAM) to ATTORNEY (PROGRAM) I; and this is the first minimum qualification requirements approved for the new class, ATTORNEY (PROGRAM) II.

APPROVED: March 3, 2004

EFFECTIVE: March 3, 2004

Appendix D

NOTES ABOUT THE ATTACHED DRAFT BILL

Bill Title

The bill draft is simply entitled "A Bill for an Act Relating to the Transfer of the Office of Information Practices." With such a title, the contents of the bill draft, if introduced, could be amended during the legislative process to transfer the Office of Information Practices to a principal executive department other than the Department of Accounting and General Services, or to a branch of state government other than the executive branch, if the Legislature so decides. In contrast, due to constitutional concerns,¹ a bill entitled "A Bill for an Act Relating to the Transfer of the Office of Information Practices to the Department of Accounting and General Services" may lack the flexibility to serve as an appropriate vehicle to transfer the Office of Information to an agency other than the Department of Accounting and General Services.

Section 1: Exemptions from Section 26-35, HRS

For discussion purposes, section 1 of the bill draft adds a new section to chapter 92F, part IV, HRS, to exempt the Office of Information Practices from certain provisions of section 26-35, HRS, relating to the administrative supervision of boards and commissions.

The Director of the Office of Information Practices supports exempting the Office of Information Practices from the following provisions of section 26-35(a), HRS:

- (1) Subsection (a)(1), on communications with the Governor and the Legislature;
- (2) Subsection (a)(4), on the employment of officers and employees; and
- (3) Subsection (a)(5), on the purchases of supplies, equipment, and furniture.

The Bureau notes that these exemptions are identical to the exemptions granted to the Office of Elections, the Elections Commission, and the Campaign Spending Commission. These three agencies are the only administratively attached agencies of the Department of Accounting and General Services that have any exemptions from section 26-35, HRS. Accordingly, the proposed new section to chapter 92F, HRS, is modeled upon sections 11-1.55, 11-9, and 11-317, HRS, which set forth the exemptions, in identical language, for the Office of Elections, the Elections Commission, and the Campaign Spending Commission, respectively.

The Bureau notes that the Department of Accounting and General Services does not support any exemptions for the Office of Information Practices and would prefer that section 26-35, HRS, apply in its entirety to the Office. The Department of Accounting and General Services' position is that not granting any exceptions from section 26-35, HRS, would promote

¹ Hawaii State Constitution, Article III, section 14, requires in part that: "Each law shall embrace but one subject, which shall be expressed in its title."

efficiency and consistency in the administration of the department's administratively attached agencies.

Section 2: Conforming Amendment to Section 26-1, HRS

Section 2 of the bill draft amends section 26-1, HRS, on the Office of the Lieutenant Governor, by repealing a provision relating to the Lieutenant Governor's administrative responsibility for the Office of Information Practices. This amendment is necessary to conform section 26-1, HRS, to section 92F-41, HRS, which is being amended in section 5 of the bill draft to transfer the Office of Information Practices from the Office of the Lieutenant Governor to the Department of Accounting and General Services.

Section 3: Conforming Amendment to Section 26-6, HRS

Section 3 of the bill draft amends section 26-6, HRS, on the Department of Accounting and General Services, by adding a new provision that gives the department administrative responsibility over the Office of Information Practices. The language of the new provision is substantively identical to the language that is being repealed from section 26-1, HRS, in section 2. The amendment in section 3 is necessary to conform section 26-6, HRS, to the proposed amendment to section 92F-41, HRS, (see section 5, transferring the Office of Information Practices from the Office of the Lieutenant Governor to the Department of Accounting and General Services).

Section 4: Conforming Amendment to Section 28-8.3, HRS

Section 4 of the bill draft amends section 28-8.3(a) and (c), HRS, by:

- (1) Adding the Office of Information Practices to the list of agencies in subsection (a) that are exempt from the requirement that no agency of the State other than the Department of the Attorney General may employ or retain attorneys for certain specified activities; and
- (2) Adding the Office of Information Practices to the list of agencies in subsection (c) whose full-time attorneys are not considered deputy attorneys general.

The amendment to subsection (a) is necessary for consistency with section 92F-41(d), HRS, which expressly authorizes the Director of the Office of Information Practices to employ attorneys. The amendment to subsection (c) is necessary to conform to actual administrative practices, i.e., according to the Department of the Attorney General, the attorneys employed by the Office of Information Practices are not considered deputy attorneys general.

Section 5: Substantive and Clarifying Amendments to Section 92F-41, HRS; Conversion to Civil Service Positions is Not Included

Section 5 of the bill draft contains the primary substantive provision. It amends section 92F-41(a), HRS, by:

- (1) Transferring the Office of Information Practices from the Office of the Lieutenant Governor to the Department of Accounting and General Services; and
- (2) Repealing language that establishes the Office of Information Practices as temporary and for a special purpose. Because the Department of Accounting and General Services, unlike the Office of the Lieutenant Governor, is a principal executive branch department, this language is no longer necessary to meet state constitutional requirements.

The Director of the Office of Information Practices expressed concerns to the Bureau that the phrasing of the following language of section 92F-41(d), HRS, is ambiguous and can be interpreted in conflicting ways: "[t]he director may employ any other personnel that are necessary, including but not limited to attorneys and clerical staff without regard to chapter 76." Specifically, concerns have been raised whether this language grants the Director discretionary authority to hire personnel subject to or exempt from chapter 76, HRS. In light of dissimilar language in other sections granting such discretion to an agency head to apply chapter 76, HRS,² it would appear that the language in section 92F-41(d), HRS, is not intended to grant such discretion. Accordingly, section 5 of the bill draft also amends section 92F-41(d), HRS, to clarify that the Director of the Office of Information Practices may hire personnel and that the personnel hired shall all be exempt from the civil service laws.

Sections 6 to 9: Boilerplate Transfer Provisions

Sections 6 to 9 of the bill draft contain boilerplate transfer provisions. Section 6 effects the transfer of employees. Section 7 effects the transfer of appropriations and personal property. Section 8 effects the transfer of rules, policies, procedures, and related material. Section 9 effects the transfer of deeds, leases, contracts, and other documents.

Section 10: Appropriation to the Department of Accounting and General Services for the Restoration of 2.0 Full Time Equivalent Positions for Increased Administrative Support

Section 10 of the bill draft appropriates an unspecified amount of funds to the Department of Accounting and General Services for two full-time equivalent positions to assist

² For example, section 11-5, HRS ("the chief election officer may employ a staff with or without regard to chapter 76").

the department in providing administrative support for the Office of Information Practices and the department's other administratively attached agencies.

According to the Department of Accounting and General Services, these positions are needed to handle the anticipated workload of the transfer and the 69% increase in the Department of Accounting and General Services appropriations, compared to 2011. While acknowledging that the latter is not entirely related to the transfer of the Office of Information Practices, the Department of Accounting and General Services maintains that the growth in the number of attached agencies to the Department of Accounting and General Services in recent years and the complexity and volume of financial transactions has significantly increased the administrative office's workload.

Specifically, the Department of Accounting and General Services has requested the restoration of one Account Clerk V, SR-15 position (\$37,000) in the Administrative Services Office and the restoration of one Personnel Clerk V, SR-13 position (\$34,000) in the Personnel Office. These two positions were eliminated during the 2009 reduction-in-force. The appropriation is for the 2015-2017 fiscal biennium.

Section 11: Ramseyering Boilerplate

Section 11 of the bill draft is a boilerplate provision to indicate the manner in which existing statutory material is repealed and new statutory material is added.

Section 12: Staggered Effective Date

Assuming that a measure to effectuate the transfer of the Office of Information Practices is introduced during the Regular Session of 2015, section 12 of the bill draft sets staggered effective dates for various provisions of the measure as follows: all substantive provisions relating to the actual transfer of the Office of Information Practices taking effect on July 1, 2016, (sections 1, 2, 3, 5, 6, 7, 8, and 9); the clarification that Office of Information Practices attorneys are not deputy attorneys general taking effect upon approval (section 4); and the appropriation to augment Department of Accounting and General Services administrative staff taking effect on July 1, 2015, (section 10).

The Department of Accounting and General Services has recommended a delayed effective date of one year for the transfer to ensure a planned, smooth, and orderly transition for the transfer of the Office of Information Practices from the Office of the Lieutenant Governor to the Department of Accounting and General Services. As the receiving department, the Department of Accounting and General Services would need to receive and set up the updated personnel files, update its budget from the transfer of funds, and address payroll, pCard, purchase orders, contract encumbrances, and conduct various other paperwork.

The Department of Accounting and General Services indicated it would like to avoid a situation like what occurred with the transfer of the Office of Elections. On June 2, 2003, the

Governor signed what became Act 117, Session Laws of Hawaii 2003, transferring the Office of Elections from the Office of the Lieutenant Governor to the Department of Accounting and General Services. Since the measure was effective upon approval, the Department had to implement the transfer at the start of the fiscal year, July 1, 2003. Having less than a month to implement the transfer resulted in considerable difficulties for the staff of both offices and the Office of the Governor.

We note that the Department of Human Resources Development has also indicated that a delayed effective date of one year would be necessary for the measure, if exempt employees are to be transitioned to civil service employees, to ensure a planned, smooth, and orderly transition if the Legislature desires to move in this direction.

If positions in the Office of Information Practices are converted into civil service positions and existing classifications do not exist for those positions, the Department of Human Resources Development, in conjunction with the Office of Information Practices, would need time to, among other things, create appropriate employment classifications, draft position descriptions, classify employees, calculate new salaries, and provide the employees with the option to remain exempt from the civil service laws.

A BILL FOR AN ACT

RELATING TO THE TRANSFER OF THE OFFICE OF INFORMATION PRACTICES.

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

SECTION 1. Chapter 92F, part IV, Hawaii Revised Statutes,
is amended by adding a new section to be appropriately
designated and to read as follows:

"§92F- Exemptions. (a) The office of information
practices shall be exempt from section 26-35(a)(1), (4), and (5)
and shall:

(1) Make direct communications with the governor and
legislature;

(2) Make all decisions regarding employment, appointment,
promotion, transfer, demotion, discharge, and job
descriptions of all officers and employees of or under
the jurisdiction of the office of information
practices without the approval of the comptroller; and

(3) Purchase all supplies, equipment, or furniture without
the approval of the comptroller.

(b) The office of information practices shall follow and
be subject to all applicable personnel laws."

H.B. NO.

1 SECTION 2. Section 26-1, Hawaii Revised Statutes, is
2 amended to read as follows:

3 **"§26-1 Office of the lieutenant governor.** (a) Except as
4 otherwise provided by law, the lieutenant governor is designated
5 the secretary of state for intergovernmental relations and shall
6 perform the duties and functions heretofore exercised by the
7 secretary of Hawaii. The duties and functions shall include,
8 but not be limited to, recordation of all legislative and
9 gubernatorial acts, certification of state documents, and
10 maintenance of an official file of rules adopted by state
11 departments as provided in chapter 91. The lieutenant governor
12 may employ staff as necessary without regard to chapter 76.

13 (b) The lieutenant governor, with the approval of the
14 governor, may designate some other officer of the government of
15 the State to authenticate documents on behalf of the lieutenant
16 governor during the lieutenant governor's temporary absence
17 outside the State or during the lieutenant governor's illness
18 whenever the documents require the signature of the lieutenant
19 governor. The person shall affix the person's own signature to
20 the document with the words, "for the lieutenant governor"
21 following and the signature shall be deemed to satisfy the
22 requirement of the lieutenant governor's signature on the

H.B. NO.

1 document. The designation and approval shall be in writing and
2 shall be filed in the office of the governor and a copy thereof,
3 certified by the governor, shall be filed with the public
4 archives. The person so designated shall serve without
5 additional compensation and the lieutenant governor shall be
6 responsible and liable on the lieutenant governor's official
7 bond for all acts done by the person so designated in the
8 performance of the duties on behalf of the lieutenant governor.

9 (c) Nothing in this section shall be construed to
10 authorize the person to exercise and discharge the powers and
11 duties of the office of the governor as provided by the first
12 paragraph of Article V, section 4, of the Constitution of the
13 State. The person shall not be authorized to exercise any
14 powers whenever a successor to the lieutenant governor assumes
15 the duties of the lieutenant governor pursuant to Article V,
16 section 4, of the Constitution.

17 ~~[(d) In addition to the functions and duties provided by~~
18 ~~law, the lieutenant governor shall assume administrative~~
19 ~~responsibility for the office of information practices.~~

20 ~~(e)]~~ (d) The governor shall identify and direct other
21 duties as necessary to the lieutenant governor.

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1 [~~(f)~~] (e) A lieutenant governor whose legal residence is
2 on an island other than Oahu and who is required to remain away
3 from the island of the lieutenant governor's legal residence but
4 within the State overnight or longer while on official business
5 shall receive an allowance to cover personal expenses such as
6 board, lodging, and incidental expenses. The allowance
7 authorized under this subsection shall be set at a daily single
8 rate to be determined by a joint agreement between the senate
9 president and speaker of the house of representatives. This
10 rate shall:

11 (1) Not exceed the greater of the maximum allowance for
12 such expenses payable to any public officer or
13 employee of the State; and

14 (2) Be reasonably calculated to cover the expenses
15 specified in this subsection.

16 [~~(g)~~] (f) The allowance authorized under subsection (f)
17 shall be in addition to and shall not supplant any portion of
18 the salary of the lieutenant governor determined pursuant to
19 section 26-51. The allowance shall be paid out of any available
20 appropriation made by the legislature for expenses, other than
21 the salary, of the lieutenant governor."

H.B. NO.

SECTION 3. Section 26-6, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The department shall:

- (1) Preaudit and conduct after-the-fact audits of the financial accounts of all state departments to determine the legality of expenditures and the accuracy of accounts;
- (2) Report to the governor and to each regular session of the legislature as to the finances of each department of the State;
- (3) Administer the state risk management program;
- (4) Establish and manage motor pools;
- (5) Manage the preservation and disposal of all records of the State;
- (6) Undertake the program of centralized engineering and office leasing services, including operation and maintenance of public buildings, for departments of the State;
- (7) Undertake the functions of the state surveyor;
- (8) Establish accounting and internal control systems;
- (9) Provide centralized computer information management and processing services, coordination in the use of

H.B. NO.

1 all information processing equipment, software,
2 facilities, and services in the executive branch of
3 the State, and consultation and support services in
4 the use of information processing and management
5 technologies to improve the efficiency, effectiveness,
6 and productivity of state government programs; ~~[and]~~

7 (10) Establish, coordinate, and manage a program to provide
8 a means for public access to public information and
9 develop and operate an information network in
10 conjunction with its overall plans for establishing a
11 communication backbone for state government~~[÷]~~; and

12 (11) Assume administrative responsibility for the office of
13 information practices."

14 SECTION 4. Section 28-8.3, Hawaii Revised Statutes, is
15 amended as follows:

16 1. By amending subsection (a) to read:

17 "(a) No department of the State other than the attorney
18 general may employ or retain any attorney, by contract or
19 otherwise, for the purpose of representing the State or the
20 department in any litigation, rendering legal counsel to the
21 department, or drafting legal documents for the department;

H.B. NO.

1 provided that the foregoing provision shall not apply to the
2 employment or retention of attorneys:

3 (1) By the public utilities commission, the labor and
4 industrial relations appeals board, and the Hawaii
5 labor relations board;

6 (2) By any court or judicial or legislative office of the
7 State; provided that if the attorney general is
8 requested to provide representation to a court or
9 judicial office by the chief justice or the chief
10 justice's designee, or to a legislative office by the
11 speaker of the house of representatives and the
12 president of the senate jointly, and the attorney
13 general declines to provide such representation on the
14 grounds of conflict of interest, the attorney general
15 shall retain an attorney for the court, judicial, or
16 legislative office, subject to approval by the court,
17 judicial, or legislative office;

18 (3) By the legislative reference bureau;

19 (4) By any compilation commission that may be constituted
20 from time to time;

21 (5) By the real estate commission for any action involving
22 the real estate recovery fund;

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- 1 (6) By the contractors license board for any action
- 2 involving the contractors recovery fund;
- 3 (7) By the office of Hawaiian affairs;
- 4 (8) By the department of commerce and consumer affairs for
- 5 the enforcement of violations of chapters 480 and
- 6 485A;
- 7 (9) As grand jury counsel;
- 8 (10) By the Hawaiian home lands trust individual claims
- 9 review panel;
- 10 (11) By the Hawaii health systems corporation, or its
- 11 regional system boards, or any of their facilities;
- 12 (12) By the auditor;
- 13 (13) By the office of ombudsman;
- 14 (14) By the insurance division;
- 15 (15) By the University of Hawaii;
- 16 (16) By the Kahoolawe island reserve commission;
- 17 (17) By the division of consumer advocacy;
- 18 (18) By the office of elections;
- 19 (19) By the campaign spending commission;
- 20 (20) By the Hawaii tourism authority, as provided in
- 21 section 201B-2.5;

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1 (21) By the division of financial institutions for any
2 action involving the mortgage loan recovery fund; ~~[or]~~

3 (22) By the office of information practices; or

4 ~~[(22)]~~ (23) By a department, ~~[in the event]~~ if the attorney
5 general, for reasons deemed by the attorney general to
6 be good and sufficient, declines to employ or retain
7 an attorney for a department; provided that the
8 governor waives the provision of this section."

9 2. By amending subsection (c) to read:

10 "(c) Every attorney employed by any department on a full-
11 time basis, except an attorney employed by the public utilities
12 commission, the labor and industrial relations appeals board,
13 the Hawaii labor relations board, the office of Hawaiian
14 affairs, the Hawaii health systems corporation or its regional
15 system boards, the department of commerce and consumer affairs
16 in prosecution of consumer complaints, insurance division, the
17 division of consumer advocacy, the University of Hawaii, the
18 Hawaii tourism authority as provided in section 201B-2.5, the
19 Hawaiian home lands trust individual claims review panel, the
20 office of information practices, or as grand jury counsel, shall
21 be a deputy attorney general."

H.B. NO.

SECTION 5. Section 92F-41, Hawaii Revised Statutes, is amended as follows:

1. By amending subsection (a) to read:

"(a) There is established [~~a temporary~~] an office of information practices [~~for a special purpose~~] within the [~~office of the lieutenant governor~~] department of accounting and general services for administrative purposes."

2. By amending subsection (d) to read:

"(d) The director may employ any other personnel that are necessary, including [~~but not limited to~~] attorneys and clerical staff. All personnel of the office of information practices shall be employed without regard to chapter 76."

SECTION 6. All rights, powers, functions, and duties of the office of the lieutenant governor relating to the office of information practices are transferred to the department of accounting and general services.

Employees shall be transferred without loss of salary, seniority (except as prescribed by applicable collective bargaining agreements), retention points, prior service credit, any vacation and sick leave credits previously earned, and other rights, benefits, and privileges, in accordance with state personnel laws and this Act; provided that the employees possess

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1 the minimum qualifications and public employment requirements
2 for the class or position to which transferred or appointed, as
3 applicable; provided further that subsequent changes in status
4 may be made pursuant to applicable civil service and
5 compensation laws.

6 Any employee who, prior to this Act, is exempt from civil
7 service and is transferred as a consequence of this Act may
8 retain the employee's exempt status, but shall not be appointed
9 to a civil service position as a consequence of this Act. An
10 exempt employee who is transferred by this Act shall not suffer
11 any loss of prior service credit, vacation or sick leave credits
12 previously earned, or other employee benefits or privileges as a
13 consequence of this Act; provided that the employees possess
14 legal and public employment requirements for the position to
15 which transferred or appointed, as applicable; provided further
16 that subsequent changes in status may be made pursuant to
17 applicable employment and compensation laws. The director of
18 the office of information practices may prescribe the duties and
19 qualifications of these employees and fix their salaries without
20 regard to chapter 76, Hawaii Revised Statutes.

21 SECTION 7. All appropriations, records, equipment,
22 machines, files, supplies, contracts, books, papers, documents,

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1 maps, and other personal property heretofore made, used,
2 acquired, or held by the office of the lieutenant governor
3 relating to the functions transferred to the department of
4 accounting and general services shall be transferred with the
5 functions to which they relate.

6 SECTION 8. All rules, policies, procedures, guidelines,
7 and other material adopted or developed by the office of
8 information practices to implement provisions of the Hawaii
9 Revised Statutes which are reenacted or made applicable to the
10 department of accounting and general services by this Act, shall
11 remain in full force and effect until amended or repealed by the
12 office of information practices pursuant to chapter 91, Hawaii
13 Revised Statutes. In the interim, every reference to the office
14 of the lieutenant governor or the lieutenant governor in those
15 rules, policies, procedures, guidelines, and other material is
16 amended to refer to the department of accounting and general
17 services or the comptroller as appropriate.

18 SECTION 9. All deeds, leases, contracts, loans,
19 agreements, permits, or other documents executed or entered into
20 by or on behalf of the office of information practices pursuant
21 to the provisions of the Hawaii Revised Statutes, which are
22 reenacted or made applicable to the department of accounting and

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1 general services by this Act, shall remain in full force and
2 effect. Upon the effective date of this Act, every reference to
3 the office of the lieutenant governor or the lieutenant governor
4 therein shall be construed as a reference to the department of
5 accounting and general services or the comptroller as
6 appropriate.

7 SECTION 10. There is appropriated out of the general
8 revenues of the State of Hawaii the sum of \$ or so much
9 thereof as may be necessary for fiscal year 2015-2016 and the
10 same sum or so much thereof as may be necessary for fiscal year
11 2016-2017 to fund one full-time equivalent account clerk V
12 position (1.0 FTE) and one full-time equivalent personnel clerk
13 V position (1.0 FTE) to provide administrative support for the
14 office of information practices and the other administratively
15 attached agencies.

16 The sums appropriated shall be expended by the department
17 of accounting and general services for the purposes of this Act.

18 SECTION 11. Statutory material to be repealed is bracketed
19 and stricken. New statutory material is underscored.

20 SECTION 12. This Act shall take effect upon its approval;
21 provided that:

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1 (1) Sections 1, 2, 3, 5, 6, 7, 8, and 9 shall take effect
2 on July 1, 2016; and

3 (2) Section 10 shall take effect on July 1, 2015.

4

INTRODUCED BY: _____

H.B. NO.

Report Title:

OIP; LG; DAGS; Transfer; Administrative Attachment; Attorneys;
Civil Service; Appropriation

Description:

Transfers OIP from LG to DAGS. Increases the independence of OIP as an administratively attached agency. Clarifies the employment status of OIP attorneys and the civil service exemption for OIP personnel. Appropriates funds to DAGS for administrative support.

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