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1ST CIRCUIT COURT  
STATE OF HAWAII  
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT  
STATE OF HAWAII

RIGHT TO KNOW COMMITTEE, a Hawaii )  
non-profit corporation; LEAGUE OF )  
WOMEN VOTERS OF HAWAII, a Hawaii )  
non-profit corporation; SOCIETY OF )  
PROFESSIONAL JOURNALISTS, )  
HAWAII CHAPTER, an Indiana not-for- )  
profit corporation; UNIVERSITY OF )  
HAWAII CHAPTER OF THE SOCIETY OF )  
PROFESSIONAL JOURNALISTS, an )  
Indiana not-for-profit corporation; BIG )  
ISLAND PRESS CLUB, INC. a Hawaii )  
non-profit corporation; HAWAII )  
POLITICAL REFORM PROJECT, dba )  
Hawaii Pro-Democracy Initiative, a Hawaii )  
non-profit corporation; CITIZEN VOICE, a )  
Hawaii non-profit corporation; and )  
HONOLULU COMMUNITY MEDIA )  
COUNCIL, a Hawaii non-profit )  
corporation, )

Plaintiffs, )

CIVIL NO. 05-1-1760-10 EEH  
(Declaratory Judgment)

DEFENDANTS' MOTION TO DISMISS  
COMPLAINT FILED OCTOBER 3, 2005;  
MEMORANDUM IN SUPPORT OF  
MOTION; DECLARATION OF  
DONOVAN M. DELA CRUZ;  
DECLARATION OF DON S. KITAOKA;  
EXHIBITS A THROUGH G; NOTICE OF  
HEARING AND CERTIFICATE OF  
SERVICE

Hearing:

Date: 12/14/05

Time: 8:45 AM

Judge: The Honorable Eden E. Hifo

(No Trial Date)

vs.

CITY COUNCIL, CITY AND COUNTY OF  
HONOLULU, DONOVAN DELA CRUZ,  
TODD K. APO, BARBARA MARSHALL,  
CHARLES K. DJOU, ANN H.  
KOBAYASHI, ROD TAM; ROMY M.  
CACHOLA, GARY H. OKINO,  
and NESTER GARCIA, in their official  
capacities as members of the Honolulu  
City Council,

Defendants.

DEFENDANTS' MOTION TO DISMISS COMPLAINT FILED OCTOBER 3, 2005

Defendants CITY COUNCIL, CITY AND COUNTY OF HONOLULU; and  
DONOVAN M. DELA CRUZ, TODD K. APO, BARBARA MARSHALL, CHARLES K.  
DJOU, ANN H. KOBAYASHI, ROD TAM, ROMY M. CACHOLA, GARY H. OKINO, and  
NESTOR R. GARCIA, in their official capacities as members of the Honolulu City  
Council (collectively, the "Council"), by and through their undersigned attorneys, move  
this Honorable Court for an Order dismissing with prejudice the Complaint filed October  
3, 2005.

Plaintiffs RIGHT TO KNOW COMMITTEE, LEAGUE OF WOMEN VOTERS OF  
HAWAII; SOCIETY OF PROFESSIONAL JOURNALISTS, HAWAII CHAPTER;  
UNIVERSITY OF HAWAII CHAPTER OF THE SOCIETY OF PROFESSIONAL  
JOURNALISTS; BIG ISLAND PRESS CLUB, INC.; HAWAII POLITICAL REFORM  
PROJECT; CITIZEN VOICE, and HONOLULU COMMUNITY MEDIA COUNCIL  
(collectively, "Plaintiffs") allege that the Council violated Hawaii Revised Statutes

("HRS") Chapter 92, Part I (the "Sunshine Law"), by having an unspecified number of one-on-one communications in reorganizing the Council's internal committee structure. Plaintiffs seek to void and declare illegal the Council's Resolution No. 05-243, which was adopted on July 13, 2005, which set forth the current committee structure.

Both the dispute and prayer sought by Plaintiffs are moot, and this Court lacks subject matter jurisdiction over this matter. As set forth more fully in the attached memorandum, on July 22, 2005, the Council introduced a resolution to amend its internal rules to allow the Chair of the Council to appoint all committees, thereby eliminating all need for Council vote or a public meeting on committee structure in the future. This resolution was adopted on August 10, 2005. Pursuant to those new rules, on September 15, 2005, the Council Chair adopted the current Council committee structure, effective August 10, 2005. As such, Plaintiffs seek to void a Council resolution that is already effectively void, and the retention by this Court of jurisdiction over this matter serves no proper purpose and is not an efficient use of judicial resources.

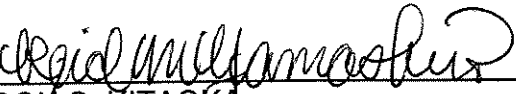
In the alternative, if this Court finds that subject matter jurisdiction exists, it should dismiss this matter for failure to state a claim based upon a plain reading of the applicable statute. The legislature, in enacting the Sunshine Law, expressly and understandably authorized unlimited communications in relations to matters of internal board organization, and a plain reading of HRS Section 92-2.5(c) (2005) requires dismissal of this action.

This Motion is brought pursuant to Rules 7, 12(b)(1), and 12(b)(6) of the Hawaii Rules of Civil Procedure. This Motion is supported by the attached Memorandum of

Law in Support of Motion, the Declarations of Don S. Kitaoka and Donovan M. Dela Cruz, Exhibits A-G, the Court's records and files contained herein, and any other matter that may be brought to the Court's attention at the hearing for this Motion.

DATED: Honolulu, Hawaii, October 24, 2005.

CARRIE K.S. OKINAGA  
Corporation Counsel

By   
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REID M. YAMASHIRO  
DEREK T. MAYESHIRO  
JOHN S. MACKEY  
Deputies Corporation Counsel  
Attorneys for Defendants

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RIGHT TO KNOW COMMITTEE, a )  
Hawai'i non-profit corporation; LEAGUE )  
OF WOMEN VOTERS OF HAWAII, a )  
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Hawai'i non-profit corporation; CITIZEN )  
VOICE, a Hawai'i non-profit corporation; )  
and HONOLULU COMMUNITY MEDIA )  
COUNCIL, a Hawai'i non-profit )  
corporation, )

Plaintiffs, )

vs. )

CITY COUNCIL, CITY AND COUNTY OF )  
HONOLULU; DONOVAN M. DELA CRUZ, )  
TODD K. APO, BARBARA MARSHALL, )  
CHARLES K. DJOU, ANN H. )  
KOBAYASHI, ROD TAM, ROMY M. )  
CACHOLA, GARY H. OKINO, and )  
NESTOR R. GARCIA, in their official )  
capacities as members of the Honolulu )  
City Council, )

Defendants. )

CIVIL NO. 05-1-1760-10 EEH  
(Declaratory Judgment)

MEMORANDUM IN SUPPORT OF  
MOTION

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## MEMORANDUM IN SUPPORT OF MOTION

### I. INTRODUCTION

This case arises out of allegations by Plaintiffs RIGHT TO KNOW COMMITTEE, LEAGUE OF WOMEN VOTERS OF HAWAII; SOCIETY OF PROFESSIONAL JOURNALISTS, HAWAII CHAPTER; UNIVERSITY OF HAWAII CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS; BIG ISLAND PRESS CLUB, INC.; HAWAII POLITICAL REFORM PROJECT; CITIZEN VOICE, and HONOLULU COMMUNITY MEDIA COUNCIL (collectively, "Plaintiffs") that the Council violated Hawaii Revised Statutes ("HRS") Chapter 92, Part I (the "Sunshine Law"), by having an unspecified number of one-on-one communications in reorganizing the Council's internal committee structure. Plaintiffs seek to void and declare illegal the Council's Resolution No. 05-243, which was adopted on July 13, 2005, which set forth the current committee structure.

Defendants CITY COUNCIL, CITY AND COUNTY OF HONOLULU; and DONOVAN M. DELA CRUZ, TODD K. APO, BARBARA MARSHALL, CHARLES K. DJOU, ANN H. KOBAYASHI, ROD TAM, ROMY M. CACHOLA, GARY H. OKINO, and NESTOR R. GARCIA, in their official capacities as members of the Honolulu City Council (collectively, the "Council") respectfully request dismissal of this action in its entirety.

Both the dispute and prayer sought by Plaintiffs in this lawsuit are moot, and this Court lacks subject matter jurisdiction over this matter. As set forth more fully herein, the allegedly offending Resolution 05-243 has already been effectively voided, and this lawsuit should be dismissed for lack of subject matter jurisdiction.

In the alternative, if this Court finds that subject matter jurisdiction exists, it should dismiss this matter for failure to state a claim based upon a plain reading of the applicable statute. The legislature, in enacting the Sunshine Law, expressly and understandably authorized unlimited communications in relation to matters of internal board organization, and a plain reading of HRS Section 92-2.5(c) (2005) requires dismissal of this action.

## II. STATEMENT OF FACTS

For the purpose of this Motion only, the factual allegations set forth herein and contained in the Complaint are deemed as true. The Council reserves the right to contest and/or deny any allegation in the Complaint and assert any and all applicable defenses, including affirmative defenses, if this Motion is not granted.

In their Complaint, Plaintiffs allege that the Council violated open meeting requirements of the Sunshine Law. Specifically, the Complaint contains the following factual allegations:

On July 7, 2005, Councilmembers Donovan Dela Cruz, Ann Kobayashi, Rod Tam, Barbara Marshall, Romy M. Cachola, Todd K. Apo, and Charles K. Djou jointly introduced Resolution No. 05-243 relating to the reorganization of the Council's standing committees. Complaint, p. 5, ¶ 32. This Resolution appointed the chairs, vice-chairs, and members of the Council's standing committees. See Complaint, Exhibit 1.

On July 13, 2005, the Council held its scheduled meeting wherein it voted 8-1 in favor of adopting Resolution 05-243. Complaint, p. 6, ¶ 37. The vote on Resolution 05-243 was taken without prior discussion of the substance of the Resolution at the Special Meeting. *Id.*

Prior to the adoption of Resolution 05-243 on July 13, 2005, five or more Councilmembers participated in a series of private, one-on-one conversations regarding, among other matters, the proposed reorganization of the Council's standing committees; the membership of the standing committees under the proposed reorganization; their support or opposition to the proposed reorganization; and their willingness to introduce a resolution to implement the proposed reorganization. Complaint, p. 8, ¶ 45.

As a result of the serial conversations described above, seven Councilmembers reached an agreement, prior to the Special Meeting of July 13, 2005, to vote in favor of a resolution implementing the reorganization, which ultimately became Resolution 05-243. Complaint, p. 8, ¶ 48.

Plaintiffs allege that the serial one-on-one discussions regarding the reorganization of the Council's standing committees violated the Open Meeting Requirements of the Sunshine Law. Complaint, p. 8, ¶ 49.

These factual allegations are incomplete.

Plaintiffs omit the fact the Council is no longer required to conduct open meetings to discuss the organization or reorganization of standing committees. On July 22, 2005, Council Chair Donovan Dela Cruz introduced Resolution 05-260 that would serve to amend the Council Rules by authorizing the Chair of the City Council to appoint all committees (Exhibit A, ¶ a.(g)), and to simultaneously remove such authority from the Executive Matters Committee (Exhibit A, ¶ b.1).

Following an Executive Matters Committee meeting on July 28, 2005, Resolution 05-260 evolved into Resolution 05-260 CD1 by limiting the Chair's authority to appoint

only standing committees. (Exhibit B.) Resolution 05-260 CD1 was adopted on August 10, 2005.

The purpose of Resolution 05-260 CD1 was to "take the reorganization of standing committees outside the purview of the sunshine law." (Exhibit C, p. 2.) The Council reasoned that reorganization of standing committees was and is an internal matter that requires private discussions among councilmembers. *Id.* Furthermore, the Director of the Office of Information Practices apparently agrees with the position that modifying the Council Rules through Resolution will allow private discussions among Councilmembers without violating the Sunshine Law. *Id.*

In a letter dated September 15, 2005, Council Chair Dela Cruz, utilizing his new authority, reorganized the standing committees and its leadership, effective as of August 10, 2005, as set forth in Resolution 05-243. (Exhibit D.) The current organization of the standing committees exists through Chair Dela Cruz's appointment, rather than through Resolution 05-243.

Furthermore, Plaintiffs' Complaint omits reference to statutory provisions authorizing serial communications under the Sunshine Law. H.R.S. Section 92-2.5(c) specifically allows unlimited discussions among councilmembers numbering less than a quorum to discuss the selection of board officers.

### III. DISCUSSION

#### A. APPLICABLE STANDARDS.

1. Standard For Motion To Dismiss For Lack Of Subject Matter Jurisdiction.

Rule 12(b)(1) of the Hawaii Rules of Civil Procedure provide in pertinent part:

b) Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, crossclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter.

In addition, Rule 12(h)(3) states, "Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter, the court shall dismiss the action."

A trial court's decision to dismiss a proceeding for lack of subject matter jurisdiction is reviewable *de novo* because it is a question of law under the right/wrong standard. *Aames Funding Corp. v. Mores*, 107 Hawai'i 95, 98, 110 P.3d 1042, 1045 (2005), quoting *Lester v. Rapp*, 85 Hawai'i 238, 241, 942 P.2d 502, 505 (1997); *Carl Corp. v. State of Hawaii*, 93 Hawai'i 155, 171, 997 P.2d 567, 583 (2000); *Casumpang v. ILWU, Local 142*, 94 Hawai'i 330, 337, 13 P.3d 1235, 1242 (2000). An appellate court will base its review on the contents of the complaint, the allegations of which are deemed as true and considered in the light most favorable to the plaintiff. *Aames Funding Corp.*, 107 Hawai'i at 98, 110 P.3d at 1045. The dismissal for lack of subject matter jurisdiction is proper if it appears beyond doubt that the plaintiff cannot prove facts in support of his claims that entitled him to relief. *Id.*

In considering this issue, the trial court is not limited to the pleadings, but may rely on any evidence, such as affidavits and testimony to resolve factual disputes concerning the existence of jurisdiction. *Id.*; see also, *Norris v. Hawaiian Airlines, Inc.*, 74 Haw. 235, 239-40, 842 P.2d 634, 637 (1992). Based upon the above standard, the City has attached various exhibits and declarations authenticating the same to allow the Court to properly consider the jurisdictional issue.

2. Standard For Motion To Dismiss For Failure To State A Claim.

Rule 12(b)(6) of the Hawaii Rules of Civil Procedure states that a claim may be dismissed for failure to state a claim for which relief may be granted. "A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his or her claim that would entitle him or her to relief." *In re Estate of Rogers*, 103 Hawai'i 275, 280, 81 P.3d 1190, 1195 (2003) (citations omitted).

A plaintiff's complaint must be viewed "in a light most favorable to him or her in order to determine whether the allegations contained therein could warrant relief under any alternative theory." *Id.* (Citation omitted).

B. THIS COURT LACKS SUBJECT MATTER JURISDICTION OVER THIS CASE BECAUSE THE ISSUE IS NOW MOOT.

For this court to have subject matter jurisdiction, there must be a case in controversy. HRS Section 632-1 (1993) states "[i]n cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right . . . Controversies involving the interpretation of . . . statutes . . . may be so determined[.]" (Emphasis added.)

The Hawaii Supreme Court has warned that the duty of the trial court "is to decide actual controversies by a judgment which can be carried into effect, and not to give opinions upon moot questions or abstract propositions, or to declare principles or rules of law which cannot affect the matter in issue in the case before it." *Wong v. Board of Regents, University of Hawaii*, 62 Haw. 391, 934-95, 616 P.2d 201, 204 (1980) (citations omitted). In fact, to survive a claim of mootness, the action must remain alive

throughout the course of litigation to the moment of final appellate disposition. *Id.* at 394, 616 P.2d at 203.

In *In re the Interest of Doe Children*, 105 Hawaii 38, 93 P.3d 1145 (2004), the Hawaii Supreme Court stated:

It is established in Hawaii that a case is moot where the question to be determined is abstract and does not rest on existing facts or rights. Thus, the mootness doctrine is properly invoked where events have so affected the relations between the parties that the two conditions for justiciability relevant on appeal—adverse interest and effective remedy—have been compromised.

*Id.* at 56, 93 P.3d at 1163 (citation omitted; internal brackets omitted.)

The main purpose of the mootness doctrine is to assure that the adversary system, once set into motion, remains properly fueled. *Wong*, 62 Haw. at 394, 616 P.2d at 203. "It is well-established that courts will not consume time deciding abstract propositions of law or moot cases, and have no jurisdiction to do so." *Lingle v. Hawai'i Gov't Employees Ass'n*, 107 Hawai'i 178, 187, 111 P.3d 587, 596 (2005) (citations omitted) (quotation marks and brackets omitted).

Plaintiffs request that this court declare Resolution 05-243 void pursuant to HRS Section 92-11 (1993). ~~Complaint, p. 8, ¶ 50, p. 9, ¶ 56.~~ However, the voiding of Resolution 05-243 will have no effect. The current organization of the Council's standing committees will stand. Under the new Council rules, Council Chair Dela Cruz organized the standing committees exactly as identified in Resolution 05-243, and Plaintiffs have alleged no bases (because there are none) to void Council Chair Dela Cruz's appointments to the standing committees. The adverse interest and the effective remedy between Plaintiffs and the Council have been "compromised" through the

amendment of the Council's Rules and Council Chair Dela Cruz's reorganization. Thus, the matter before this Court is moot.

Plaintiffs may claim that the issue in this case falls into the limited exception to the mootness doctrine, which states that if the issue is in the public interest and is capable of repetition, but evades review, the courts will consider the matter. *Doe Children*, 105 Hawaii at 56-57, 93 P.3d at 1163-64. In considering whether a public interest is involved, the court will consider the following: (1) the public or private nature of the question presented, (2) the desirability of an authoritative determination for the future guidance of public officers, and (3) the likelihood of future recurrence of the question. *Id.* 105 Hawaii at 57, 93 P.3d at 1164.

In this case, the facts do not fit within the parameters of this exception. First, while government issues are public, the leadership of committees is not necessarily a public matter. There are no provisions in the City Charter or Revised Ordinances or any other law that set forth any substantive qualification for a councilmember to be chair of a particular committee. It is a decision that may be based on the purest of political whims. The legislature did not intend the reasons for selection of such officers to be aired in public, stating "private discussions are necessary concerning the selection of board officers." Hse. Stand. Comm. Rep. No. 789-96, in 1996 House Journal, at 1338. (Exhibit E.) Clearly, the legislature understood that for purposes of stability and efficiency, the Council should be allowed to organize its leadership in private communications; this will be discussed further in the following section. Finally, on any given issue, each councilmember has one vote, and constituents are represented



through their councilmember's vote, not their councilmember's position in or on standing committees.

Second, an authoritative determination is not necessary to guide the councilmembers. The Director of the Office of Information Practices is tasked with the responsibility of administering the provisions of the Sunshine Law. HRS § 92-1.5 (Supp. 2004). He has agreed that if the Council Rules were amended through Resolution 05-206 CD 1, such private discussions among councilmembers would not violate the Sunshine Law. (Exhibit C, p. 2.) Accordingly, this Court's guidance is unnecessary on this issue.

Third, the issue of whether serial one-on-one communications to discuss selection of standing committee chairs is proper under the Sunshine Law will not arise again. With the change in the Council Rules, the issue was removed from the purview of the Sunshine Law. Consequently, it will not resurface. Thus, the first prong of the mootness exception is not satisfied.

Nor is the second prong satisfied. As discussed above, the question before this Court is not capable of repetition following the adoption of Resolution 05-260 CD1.

In light of the foregoing, the issue before this Court is moot and therefore, this matter should be dismissed for lack of subject matter jurisdiction.

C. THIS ACTION MUST BE DISMISSED BECAUSE THE SUNSHINE LAW PERMITS SERIAL ONE-ON-ONE COMMUNICATIONS IN RELATION TO THE SELECTION OF OFFICERS.

Assuming this Court finds that jurisdiction is proper, this matter should be dismissed because the Council did not violate the Sunshine Law. A "board" is defined as:

any agency, board, commission, authority, or committee of the State or its political subdivisions 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.

HRS § 92-2(1) (1993).

A "meeting" is defined as "the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power." HRS § 92-2(3).

"Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5[.]" HRS § 92-3 (1993).

HRS Section 92-2.5 is entitled, "Permitted interactions of members," and governs interactions of board members which are defined not to constitute "meetings." HRS § 92-2.5(f). Specifically, HRS Section 92-2.5(c) provides:

Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting. (Emphasis added.)

In construing a statute, the foremost obligation is to "ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself." *State v. Keawe*, 107 Hawai'i 1, 4, 108 P.3d 304, 307 (2005) (citations omitted).

Plaintiffs cite HRS Section 92-1(3) (1993) for the proposition that "[t]he provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings." This section clearly applies to HRS Section 92-5 (Supp.

2004), entitled "Exceptions", which pertains to an executive meeting, which is a meeting of a board that is closed to the public. The critical distinction to be made between HRS Section 92-5 and HRS Section 92-2.5 is that executive meetings covered by HRS Section 92-5 are an "exception" to the Sunshine Law, that is, they are "meetings" that would otherwise be required to follow Sunshine Law procedures but for the exception of HRS Section 92-5. The discussions covered by HRS Section 92-2.5, on the other hand, are an "exclusion" to the Sunshine Law, that is, they are not "meetings" at all for the purposes of the Sunshine Law and, as defined, are completely outside the purview of the Sunshine Law. HRS Section 92-1(3) does not specifically reference "permitted interactions of members," and there is no specified rule of construction (strict or liberal) in the Sunshine Law applicable to permitted interactions under HRS Section 92-2.5.

Examining the plain language of HRS Section 92-2.5(c), it allows discussions in private between two or more but less than a quorum of members of a board regarding the selection of the board's officers without limitation. Again, these discussions are not to be considered as "meetings" under the Sunshine Law, and are beyond the reach of the Sunshine Law. HRS § 92-2.5(f).

In this case, the reorganization of the Council's standing committees is a selection of the board's officers. Each standing committee chairperson chairs the meetings, sets the agenda, and conducts votes of their standing committee.

It is alleged that the Councilmembers conducted serial, one-on-one conversations regarding the reorganization of the standing committees. If these conversations were one-on-one, at most two Councilmembers were involved in a discussion at a time. This satisfies the requirement in HRS Section 92-2.5(c) that if

there is a discussion, it may be between two or more but less than a quorum of board members. So each discussion was between two Councilmembers, which is less than a quorum, and each individual discussion was allowed under HRS Section 92-2.5(c). There is no allegation that discussions were conducted with more than a quorum of Councilmembers present.

There is nothing in the plain language that prohibits these one-on-one conversations from being serial, that is, after leaving one conversation, a Councilmember could engage another Councilmember in a discussion regarding the reorganization of standing committees. In fact, the discussions regarding the reorganization of standing committees can be held "without limitation." The only requirement is that when the discussion takes place, it must be with less than a quorum of members of the board.

Finally, nothing in HRS Section 92-2.5(c) prohibits the Councilmembers from agreeing on a position. Again, the discussions regarding the reorganization of standing committees can be held "without limitation," and these discussions are completely outside the realm of the Sunshine Law.

Legislative history also supports this plain language interpretation of HRS Section 92-2.5(c). When initially enacting HRS Section 92-2.5 (1996), the legislature noted that permitted interactions were needed for interactions to occur between members of a board to promote efficiency that might otherwise be violations of the Sunshine Law:

The sunshine law presently prohibits any discussion of board matters outside of a duly noticed public meeting. Your Committee believes that the intent of each person who is appointed to a board is to comply with the letter and spirit of the sunshine law. Your Committee is also aware that there are instances when it is appropriate for interactions to occur

between members of a board . . . and that these discussions or meetings, per se, do not undermine the essence of open government.

Sen. Stand. Comm. Rep. No. 2641, in 1996 Senate Journal, at 1229 (emphases added). (Exhibit F)

It is the finding of your Committee that it is necessary for greater efficiency that a board member seek out and discuss matters in various circumstances which may be in violation of chapter 92, the Sunshine Law.

Hse. Stand. Comm. Rep. No. 789-96, in 1996 House Journal, at 1338 (emphasis added). (Exhibit E.)

This legislative history shows that the legislature recognized that issues such as the internal organization of a board and its committees are different than other business, and shows that the legislature wanted to provide boards with the widest possible latitude to deal with a board's own internal structure.

The legislative history also does not indicate that the legislature intended to prohibit serial conversations concerning the selection of a board's officers.

Your Committee on Conference has amended this bill to include provisions that:

- (1) Allow two or more members of a board to discuss the selection of the board's officers in private without limitation or subsequent reporting provided that the discussion is held with fewer than quorum being present.

Conf. Comm. Rep. No. 26, in 1996 House Journal, at 968 (emphasis added). (Exhibit G.)

This shows that while the legislature wanted to limit a discussion to a number less than a quorum, it did not place any limitations on subsequent conversations, as long as those subsequent conversations also included a number less than a quorum. Nothing in the legislative history of the 1996 or 2005 amendments to the statute

indicates an intent by the legislature to limit discussion of the selection of a board's officers to only one occurrence per board member. The interaction and communication enhances the board member's ability to discuss the selection of their officers in a reasonable and efficient manner. Limiting the discussions permitted under HRS Section 92-2.5(c) so that a board member can discuss reorganization with only one other board member or with a number of board members totaling less than a quorum of the board does not comport with the legislature's intent to allow board members greater latitude to select its officers and allows boards to operate reasonably and efficiently.

Moreover, should HRS Section 92-2.5(c) be interpreted to prohibit serial communications, or to preclude agreement among members, it would violate rules of statutory construction that requires courts to reject an interpretation of a statute that renders any part of the statutory language a nullity. *Coon v. City and County of Honolulu*, 98 Hawai'i 233, 250, 47 P.3d 348, 365 (2002).

[C]ourts are bound, if rational and practicable, to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute.

*State v. Kalani*, 108 Hawai'i 279, 283-84, 118 P.3d 1222, 1226-27 (2005).

HRS Section 92-2.5(c) allows two or more but less than a quorum of board members to meet to discuss selection of board officers, without limitation. Placing limits on such communications, beyond what is required in the statute (the quorum requirement), would place limitation on such discussions and render the phrase "without limitation" meaningless.

In addition, in HRS Section 92-2.5(f), the legislature specifically noted that permitted interactions were not to be considered meetings for the purposes of the

Sunshine Law. This means that the discussions regarding the selection of officers is not a meeting and is not subject to the restrictions of the Sunshine Law, further bolstering the interpretation that such discussions can occur without limitation.

Accordingly, the Council's actions of conducting serial one-on-one communications regarding the reorganization and reaching an agreement are allowed under HRS Section 92-2.5(c).

Plaintiffs argue that HRS Section 92-5 applies to the discussions regarding reorganization in this case. HRS Section 92-5 provides that "~~[n]o chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.~~"

This statement is contained in the ~~exception section governing executive meetings closed to the public, and arguably only applies to executive meetings closed~~ to the public. Furthermore, HRS Section 92-2.5(c) is a permitted interaction, not a "meeting" of the board so it is not an exception, and applies to the specific situation where a board discusses the selection of its officers such as in this case. Therefore, HRS Section 92-2.5 (c) is a specific statute, while HRS Section 92-5 is a general statute. When faced with a plainly irreconcilable conflict between a general and a specific statute concerning the same subject matter, courts invariably favor the specific statute. *Kinkaid v. Board of Review of the City and County of Honolulu*, 106 Hawai'i 318, 323, 104 P.3d 905, 910 (2004). Here, as noted in the legislative history, the legislature recognized that the discussions under HRS Section 92-2.5(c) would otherwise have constituted a violation of the Sunshine Law, but created the permitted

interactions to allow boards to discuss the selection of officers outside of the Sunshine Law. Accordingly, HRS Section 92-5 is not applicable in this case.


IV. CONCLUSION

Based upon the foregoing facts and authorities, the Council respectfully requests that this Motion to Dismiss be granted.

DATED: Honolulu, Hawaii, October 24, 2005

Respectfully submitted,

CARRIE K.S. OKINAGA  
Corporation Counsel

By   
DON S. KITAOKA  
REID M. YAMASHIRO  
DEREK T. MAYESHIRO  
JOHN S. MACKEY  
Deputies Corporation Counsel  
Attorneys for Defendants



IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RIGHT TO KNOW COMMITTEE, a Hawai'i )  
non-profit corporation; LEAGUE OF )  
WOMEN VOTERS OF HAWAII, a Hawai'i )  
non-profit corporation; SOCIETY OF )  
PROFESSIONAL JOURNALISTS, HAWAII )  
CHAPTER, an Indiana not-for-profit )  
corporation; UNIVERSITY OF HAWAII )  
CHAPTER OF THE SOCIETY OF )  
PROFESSIONAL JOURNALISTS, an Indiana )  
not-for-profit corporation; BIG ISLAND )  
PRESS CLUB, INC., a Hawai'i non-profit )  
corporation; HAWAII POLITICAL REFORM )  
PROJECT, dba Hawaii Pro-Democracy )  
Initiative, a Hawai'i non-profit corporation; )  
CITIZEN VOICE, a Hawai'i non-profit )  
corporation; and HONOLULU COMMUNITY )  
MEDIA COUNCIL, a Hawai'i non-profit )  
corporation, )

Plaintiffs, )

vs. )

CITY COUNCIL, CITY AND COUNTY OF )  
HONOLULU; DONOVAN M. DELA CRUZ, )  
TODD K. APO, BARBARA MARSHALL, )  
CHARLES K. DJOU, ANN H. KOBAYASHI, )  
ROD TAM, ROMY M. CACHOLA, )  
GARY H. OKINO, and NESTOR R. )  
GARCIA, in their official capacities as )  
members of the Honolulu City Council, )

Defendant. )

CIVIL NO. 05-1-1760-10 EEH  
(Declaratory Judgment)

DECLARATION OF DONOVAN M. DELA  
CRUZ

DECLARATION OF DONOVAN M. DELA CRUZ

I, DONOVAN M. DELA CRUZ, do hereby declare and say the following:

1. I am the Council Chair for the City Council of the City and County of Honolulu ("City Council").
2. Attached as Exhibit "D" is a true and correct copy of a letter dated September 15, 2005, and addressed to the other Councilmembers of the City Council that appointed the leadership and membership of the standing committees.

I, DONOVAN M. DELA CRUZ, do declare under penalty of law that the above is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii,

OCT 24 2005

  
DONOVAN M. DELA CRUZ

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RIGHT TO KNOW COMMITTEE, a Hawai'i )	CIVIL NO. 05-1-1760-10 EEH
non-profit corporation; LEAGUE OF )	(Declaratory Judgment)
WOMEN VOTERS OF HAWAII, a Hawai'i )	
non-profit corporation; SOCIETY OF )	DECLARATION OF DON S. KITAOKA
PROFESSIONAL JOURNALISTS, HAWAII )	
CHAPTER, an Indiana not-for-profit )	
corporation; UNIVERSITY OF HAWAII )	
CHAPTER OF THE SOCIETY OF )	
PROFESSIONAL JOURNALISTS, an )	
Indiana not-for-profit corporation; BIG )	
ISLAND PRESS CLUB, INC., a Hawai'i non-) )	
profit corporation; HAWAII POLITICAL )	
REFORM PROJECT, dba Hawaii Pro- )	
Democracy Initiative, a Hawai'i non-profit )	
corporation; CITIZEN VOICE, a Hawai'i non-) )	
profit corporation; and HONOLULU )	
COMMUNITY MEDIA COUNCIL, a )	
Hawai'i non-profit corporation, )	
)	
Plaintiffs, )	
)	
vs. )	
)	
CITY COUNCIL, CITY AND COUNTY OF )	
HONOLULU; DONOVAN M. DELA CRUZ, )	
TODD K. APO, BARBARA MARSHALL, )	
CHARLES K. DJOU, ANN H. KOBAYASHI, )	
ROD TAM, ROMY M. CACHOLA, )	
GARY H. OKINO, and NESTOR R. )	
GARCIA, in their official capacities as )	
members of the Honolulu City Council, )	
)	
Defendant. )	
)	

DECLARATION OF DON S. KITAOKA

I, DON S. KITAOKA, do hereby declare and say the following:

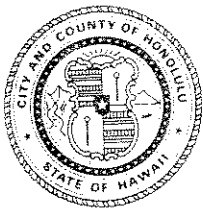
1. I am an attorney in good standing licensed to practice law in the State of Hawaii.

2. I am one of the attorneys representing the Defendants in this case.
3. Attached as Exhibit A is a true and correct certified copy of Resolution 05-260 of the City Council, City and County of Honolulu.
4. Attached as Exhibit B is a true and correct certified copy of Resolution 05-260 CD1 of the City Council, City and County of Honolulu.
5. Attached as Exhibit C is a true and correct certified copy of Committee Report No. 361 from the Committee on Executive Matters and Legal Affairs, City Council, City and County of Honolulu.
6. Attached as Exhibit E is a true and correct copy of House Standing Committee Report No. 789-96, in 1996 House Journal, at 1338.
7. Attached as Exhibit F is a true and correct copy of Senate Committee Report No. 2641, in 1996 Senate Journal, at 1229.
8. Attached as Exhibit G is a true and correct copy of Conference Committee Report No. 26, in 1996 House Journal, at 968.

I, DON S. KITAOKA, do declare under penalty of law that the above is true and correct to the best of my knowledge.

DATED: Honolulu, Hawaii, October 24, 2005

  
DON S. KITAOKA



**OFFICE OF THE CITY CLERK**  
**CITY AND COUNTY OF HONOLULU**  
HONOLULU, HAWAII 96813 / TELEPHONE 523-4291

DENISE C. DE COSTA  
City Clerk

## CERTIFICATE

I hereby certify that attached hereto is a true and correct copy of Resolution 05-260 of the City and County of Honolulu, the original of which is on file and of record in this Office.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City and County of Honolulu to be affixed this day, October 19, 2005.

A handwritten signature in cursive script, reading "Denise C. De Costa".

DENISE C. DE COSTA  
City Clerk

**EXHIBIT A**



## **RESOLUTION**

---

**TO AMEND THE RULES OF THE COUNCIL RELATING TO THE DUTIES OF THE CHAIR.**

WHEREAS, the council wishes to amend its rules to provide that it shall be an administrative duty of the chair to appoint the council's committees and dispense with the requirement that council standing committees be determined by resolution; now, therefore;

BE IT RESOLVED by the Council of the City and County of Honolulu that the following Council Rules shall be amended as follows:

- a. Paragraph 2 of Rule No. 4 of the Council Rules relating to the Officers And Their Duties shall be amended to read as follows:
  - (a) To open all meetings of the council at the appointed hour by taking the chair and calling the council to order.
  - (b) To call for the approval of the minutes.
  - (c) To maintain order and proper decorum.
  - (d) To announce the business before the council in the order prescribed by these rules.
  - (e) To receive and submit all matters properly brought before the council, to call for votes upon the same, and to announce the results.
  - (f) To receive all communications and present them promptly to the council.
  - (g) To appoint all committees[, unless otherwise directed by the council].
  - (h) To authenticate by signature all acts of the council as may be required by law.
  - (i) To make known all rules of the council when so requested, and to decide all questions of order, subject to an appeal to the council.



## RESOLUTION

---

- (j) To promptly refer all bills, resolutions, and other matters brought before the council to the appropriate committee or committees, subject to an appeal by any committee chair, pursuant to procedures established by the chair. A list of all referrals and any subsequent changes in referrals shall be filed with the clerk as public record.
  - (k) Except as otherwise provided by these rules, to preside at all official executive sessions of the council.
  - (l) To prepare the agenda for meetings of the council; provided that any bill, resolution or other matter that is referred to a standing committee shall not thereafter be placed on the council agenda by the presiding officer unless: (1) the bill, resolution or other matter is referred to the council floor by committee report, in accordance with Rule 11; (2) the bill, resolution or other matter is time-sensitive and non-controversial, and both the council chair and the chair of the committee or chairs of the committees to which the matter has been referred concur in the placement of the matter on the council agenda; or (3) the placement of the bill, resolution or other matter on the council agenda is approved by a majority of the entire membership of the council by a memo signed by all members of such majority and directing the city clerk to place the bill, resolution or other matter on the council agenda, subject to the six-day notice requirement under section 92-7, HRS.
  - (m) To perform such other duties as may be required by law or such as may properly pertain to such office.
- b. Paragraph 1 of Rule No. 8 of the Council Rules relating to Standing Committees shall read as follows:
- 1. There shall be a committee on executive matters. [The council shall establish additional standing committees and shall determine the organization and membership of the committee on executive matters and the other standing committees by resolution.]

BE IT FURTHER RESOLVED that rule language to be deleted is bracketed; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 05-260

**RESOLUTION**

---

BE IT FINALLY RESOLVED that this Resolution shall take effect upon its approval.

INTRODUCED BY:

*Danah DeLuz* *BR*

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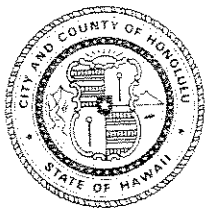
DATE OF INTRODUCTION:

JUL 22 2005  
Honolulu, Hawaii

(OCS/071505/ct)

Councilmembers





**OFFICE OF THE CITY CLERK**  
**CITY AND COUNTY OF HONOLULU**  
HONOLULU, HAWAII 96813 / TELEPHONE 523-4291

DENISE C. DE COSTA  
City Clerk

## CERTIFICATE

I hereby certify that attached hereto is a true and correct copy of adopted Resolution 05-260, CD1 of the City and County of Honolulu, the original of which is on file and of record in this Office.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City and County of Honolulu to be affixed this day, October 19, 2005.

A handwritten signature in black ink, reading "Denise C. De Costa".

DENISE C. DE COSTA  
City Clerk

**EXHIBIT B**



## RESOLUTION

---

TO AMEND THE RULES OF THE COUNCIL RELATING TO THE DUTIES OF THE CHAIR.

WHEREAS, the council wishes to amend its rules to provide that it shall be an administrative duty of the chair to appoint the council's committees and dispense with the requirement that council standing committees be determined by resolution; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the following Council Rules shall be amended as follows:

- a. Paragraph 2 of Rule No. 4 of the Council Rules relating to the Officers And Their Duties shall be amended to read as follows:

- "(a) To open all meetings of the council at the appointed hour by taking the chair and calling the council to order.
- (b) To call for the approval of the minutes.
- (c) To maintain order and proper decorum.
- (d) To announce the business before the council in the order prescribed by these rules.
- (e) To receive and submit all matters properly brought before the council, to call for votes upon the same, and to announce the results.
- (f) To receive all communications and present them promptly to the council.
- (g) To appoint all standing committees[, unless otherwise directed by the council].
- (h) To authenticate by signature all acts of the council as may be required by law.
- (i) To make known all rules of the council when so requested, and to decide all questions of order, subject to an appeal to the council.



## RESOLUTION

---

- (j) To promptly refer all bills, resolutions, and other matters brought before the council to the appropriate committee or committees, subject to an appeal by any committee chair, pursuant to procedures established by the chair. A list of all referrals and any subsequent changes in referrals shall be filed with the clerk as public record.
  - (k) Except as otherwise provided by these rules, to preside at all official executive sessions of the council.
  - (l) To prepare the agenda for meetings of the council; provided that any bill, resolution or other matter that is referred to a standing committee shall not thereafter be placed on the council agenda by the presiding officer unless: (1) the bill, resolution or other matter is referred to the council floor by committee report, in accordance with Rule 11; (2) the bill, resolution or other matter is time-sensitive and non-controversial, and both the council chair and the chair of the committee or chairs of the committees to which the matter has been referred concur in the placement of the matter on the council agenda; or (3) the placement of the bill, resolution or other matter on the council agenda is approved by a majority of the entire membership of the council by a memo signed by all members of such majority and directing the city clerk to place the bill, resolution or other matter on the council agenda, subject to the six-day notice requirement under section 92-7, HRS.
  - (m) To perform such other duties as may be required by law or such as may properly pertain to such office."
- b. Paragraph 1 of Rule No. 8 of the Council Rules relating to Standing Committees shall read as follows:
- "1. There shall be a committee on executive matters. [The council shall establish additional standing committees and shall determine the organization and membership of the committee on executive matters and the other standing committees by resolution.]"

BE IT FURTHER RESOLVED that rule language to be deleted is bracketed and new language is underscored; and



**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

No. 05-260, CD1

**RESOLUTION**

BE IT FINALLY RESOLVED that this Resolution shall take effect upon its approval.

INTRODUCED BY:

Donovan Dela Cruz (BR)

\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_

DATE OF INTRODUCTION:

July 22, 2005  
Honolulu, Hawaii

(OCS/072505/ct)

Councilmembers

AMENDMENTS TO RESOLUTION 05-260,  
RELATING TO COUNCIL RULES BY CD1.

The CD1 clarifies that the council chairs' authority is limited to the appointment of "standing" committees.

Under the language of the original version, the council chair's authority would have been in conflict with the committee chair's authority to appoint advisory committees as set forth in rule 9.

AMENDMENTS TO RESOLUTION 05-260, RELATING TO COUNCIL RULES BY CD1.  
(Only provisions amended are set forth).

"Redlined material" is added to the original version by the CD1.

TO AMEND THE RULES OF THE COUNCIL RELATING TO THE DUTIES OF THE  
CHAIR.

\* \* \*

BE IT RESOLVED by the Council of the City and County of Honolulu that the  
following Council Rules shall be amended as follows:

\* \* \*

- (g) To appoint all standing committees[, unless otherwise directed by  
the council].

\* \* \*

BE IT FURTHER RESOLVED that rule language to be deleted is  
bracketed and new language is underscored; and

\* \* \*

CITY COUNCIL  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII  
CERTIFICATE

RESOLUTION 05-260, CD1

Introduced: 7/22/05 By: DONOVAN DELA CRUZ (BY REQUEST)

Committee: EMLA


Title: RESOLUTION TO AMEND THE RULES OF THE COUNCIL RELATING TO THE DUTIES OF THE CHAIR.

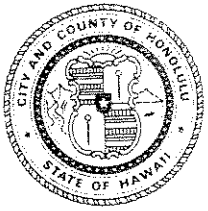
Links: [RES 05-260](#)  
[RES 05-260, CD1](#)

EMLA	7/28/05	CR-361 – Resolution reported out of committee for adoption as amended in CD1 form.									
Council	8/10/05	Resolution, as amended (CD1), and CR-361 adopted.									
		Apo .....	Y	Cachola.....	Y	Dela Cruz ...	Y	Djou .....	Y	Garcia.....	N
		Kobayashi.....	Y	Marshall.....	Y	Okino.....	E	Tam.....	Y		

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this RESOLUTION.

  
DENISE C. DE COSTA, CITY CLERK

  
DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER



**OFFICE OF THE CITY CLERK**  
**CITY AND COUNTY OF HONOLULU**  
HONOLULU, HAWAII 96813 / TELEPHONE 523-4291

DENISE C. DE COSTA  
City Clerk

## CERTIFICATE

I hereby certify that attached hereto is a true and correct copy of Committee Report No. 361 of the Executive Matters and Legal Affairs Committee of the City Council, City and County of Honolulu adopted August 10, 2005, the original of which is on file and of record in this Office.

In Witness Whereof, I have hereunto set my hand and caused the Seal of the City and County of Honolulu to be affixed this day, October 19, 2005.

A handwritten signature in black ink, reading "Denise C. De Costa".

DENISE C. DE COSTA  
City Clerk

**EXHIBIT C**



# **REPORT OF THE COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS**

Charles K. Djou, Chair; Barbara Marshall, Vice-Chair; Todd K. Apo, Romy M. Cachola,  
Donovan M. Dela Cruz, Nestor R. Garcia, Ann H. Kobayashi, Gary H. Okino, Rod Tam, Members

---

Committee Meeting Held  
July 28, 2005

Honorable Donovan M. Dela Cruz  
Chair, City Council  
City and County of Honolulu

Mr. Chair:

Your Committee on Executive Matters and Legal Affairs, to which was referred  
Resolution 05-260, entitled:

**"RESOLUTION TO AMEND THE RULES OF THE COUNCIL RELATING TO  
THE DUTIES OF THE CHAIR,"**

reports as follows:

The purpose of this Resolution is to amend the Council Rules to authorize the  
Council Chair to appoint "all committees." Under present Council Rules, standing  
committees are established and their members appointed by resolution adopted by a  
majority of the Council.

This Resolution is the result of an opinion by the State Office of Information  
Practices, dated July 12, 2005, indicating that the reorganization of Council standing  
committees must be discussed openly at a properly noticed meeting. The Office also  
indicates that one-on-one communications between a series of more than two  
Councilmembers on the reorganization violates the sunshine law. Furthermore, the  
Office feels that the signing by seven Councilmembers as co-introducers of the  
resolution proposing the reorganization constitutes a "polling" of Councilmembers that  
violates the sunshine law. The Office reaches those conclusions because standing  
committee chairs and members are appointed by a majority of the Council, making that  
action "council business" subject to deliberation and decision-making in open meetings  
under the sunshine law.

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON \_\_\_\_\_

COMMITTEE REPORT NO. **361**

# **REPORT OF THE COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS**

Charles K. Djou, Chair; Barbara Marshall, Vice-Chair; Todd K. Apo, Romy M. Cachola  
Donovan M. Dela Cruz, Nestor R. Garcia, Ann H. Kobayashi, Gary H. Okino, Rod Tam, Members

---

Committee Meeting Held  
July 28, 2005  
Page 2

The Council Chair, who introduced this Resolution, stated that it was recommended by the Corporation Counsel as a means to allow Councilmembers to discuss the appointment of standing committees in private. This Resolution does so by making the appointment of standing committees subject to administrative action by the Council Chair, and not floor action by the Council. By acting favorably on this Resolution, your Committee intends to take the reorganization of standing committees outside the purview of the sunshine law.

A Deputy Corporation Counsel appeared before your Committee and explained the issues involved with this Resolution. The Deputy indicated that a meeting was held with the Director of the Office of Information Practices to reach a compromise. According to the Deputy's understanding of the discussion at the meeting, the Director is satisfied that this Resolution will allow private discussions among Councilmembers of standing committee appointments.

Your Committee had an extensive discussion on this issue. Your Committee was unanimously critical of the Office of Information Practices' opinion. Your Committee basically felt that the sunshine law should be followed for business affecting the public, but that the reorganization of standing committees is an internal matter, necessarily requiring private discussion among various Councilmembers to be accomplished. Your Committee asked the Deputy Corporation Counsel whether the Office should be challenged on this issue. The Deputy responded that a challenge may be more appropriate against another opinion of the Office, the Council's chances of success for which are better.

Your Committee has made a clarifying amendment to this Resolution. The amendment provides that the Council Chair has the duty of appointing "all standing committees." The original version states that the Council Chair appoints "all

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**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON \_\_\_\_\_

COMMITTEE REPORT NO. **361**

## REPORT OF THE COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS

Charles K. Djou, Chair; Barbara Marshall, Vice-Chair; Todd K. Apo, Romy M. Cachola  
Donovan M. Dela Cruz, Nestor R. Garcia, Ann H. Kobayashi, Gary H. Okino, Rod Tam, Members

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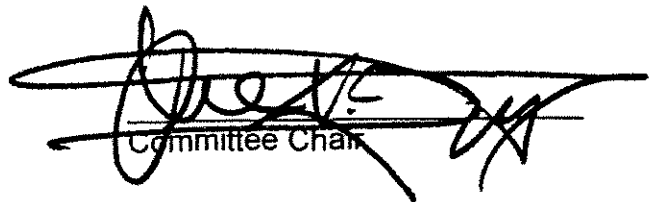
Committee Meeting Held  
July 28, 2005  
Page 3

committees." In addition to standing committees, the present Council Rules recognize three other types of committees: advisory committees, subcommittees, and the Committee of the Whole. The Council also establishes by resolution other ad hoc committees, generally named task forces, comprised of community members given the duty of studying single issues. Your Committee intends that the amendment make clear that the Council Chair's appointment authority applies only to standing committees. Your Committee intends that the appointment of other types of committees continue to be subject to the present Council Rules, practice, or policy.

Finally, your Committee emphasizes that it is a proponent of the sunshine law and that favorable action on this Resolution should not be regarded as opposition to the law. Your Committee notes that this Resolution is narrow, placing only the internal matter of reorganizing standing committees outside the open meeting provisions of the sunshine law.

Your Committee on Executive Matters and Legal Affairs, by unanimous agreement of members present (Ayes: Djou, Cachola, Dela Cruz, Garcia, Kobayashi, Marshall, Okino, and Tam – 8; Noes: None; Excused: Apo – 1) is in accord with the intent and purpose of Resolution 05-260, as amended herein, and recommends that it be considered for adoption in the form attached hereto as Resolution 05-260, CD1.

Respectfully submitted,



Committee Chair

---

**CITY COUNCIL**  
CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII

ADOPTED ON

AUG 10 2005

COMMITTEE REPORT NO. 361



## RESOLUTION

---

TO AMEND THE RULES OF THE COUNCIL RELATING TO THE DUTIES OF THE CHAIR.

WHEREAS, the council wishes to amend its rules to provide that it shall be an administrative duty of the chair to appoint the council's committees and dispense with the requirement that council standing committees be determined by resolution; now, therefore,

BE IT RESOLVED by the Council of the City and County of Honolulu that the following Council Rules shall be amended as follows:

- a. Paragraph 2 of Rule No. 4 of the Council Rules relating to the Officers And Their Duties shall be amended to read as follows:
  - "(a) To open all meetings of the council at the appointed hour by taking the chair and calling the council to order.
  - (b) To call for the approval of the minutes.
  - (c) To maintain order and proper decorum.
  - (d) To announce the business before the council in the order prescribed by these rules.
  - (e) To receive and submit all matters properly brought before the council, to call for votes upon the same, and to announce the results.
  - (f) To receive all communications and present them promptly to the council.
  - (g) To appoint all standing committees[, unless otherwise directed by the council].
  - (h) To authenticate by signature all acts of the council as may be required by law.
  - (i) To make known all rules of the council when so requested, and to decide all questions of order, subject to an appeal to the council.



## **RESOLUTION**

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- (j) To promptly refer all bills, resolutions, and other matters brought before the council to the appropriate committee or committees, subject to an appeal by any committee chair, pursuant to procedures established by the chair. A list of all referrals and any subsequent changes in referrals shall be filed with the clerk as public record.
  - (k) Except as otherwise provided by these rules, to preside at all official executive sessions of the council.
  - (l) To prepare the agenda for meetings of the council; provided that any bill, resolution or other matter that is referred to a standing committee shall not thereafter be placed on the council agenda by the presiding officer unless: (1) the bill, resolution or other matter is referred to the council floor by committee report, in accordance with Rule 11; (2) the bill, resolution or other matter is time-sensitive and non-controversial, and both the council chair and the chair of the committee or chairs of the committees to which the matter has been referred concur in the placement of the matter on the council agenda; or (3) the placement of the bill, resolution or other matter on the council agenda is approved by a majority of the entire membership of the council by a memo signed by all members of such majority and directing the city clerk to place the bill, resolution or other matter on the council agenda, subject to the six-day notice requirement under section 92-7, HRS.
  - (m) To perform such other duties as may be required by law or such as may properly pertain to such office."
- b. Paragraph 1 of Rule No. 8 of the Council Rules relating to Standing Committees shall read as follows:
- "1. There shall be a committee on executive matters. [The council shall establish additional standing committees and shall determine the organization and membership of the committee on executive matters and the other standing committees by resolution.]"

BE IT FURTHER RESOLVED that rule language to be deleted is bracketed and new language is underscored; and



## RESOLUTION

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BE IT FINALLY RESOLVED that this Resolution shall take effect upon its approval.

INTRODUCED BY:

Donovan Dela Cruz (BR)

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DATE OF INTRODUCTION:

July 22, 2005  
Honolulu, Hawaii

(OCS/072505/ct)

\_\_\_\_\_  
Councilmembers

AMENDMENTS TO RESOLUTION 05-260,  
RELATING TO COUNCIL RULES BY CD1.

The CD1 clarifies that the council chairs' authority is limited to the appointment of "standing" committees.

Under the language of the original version, the council chair's authority would have been in conflict with the committee chair's authority to appoint advisory committees as set forth in rule 9.

AMENDMENTS TO RESOLUTION 05-260, RELATING TO COUNCIL RULES BY CD1.  
(Only provisions amended are set forth).

"Redlined material" is added to the original version by the CD1.

TO AMEND THE RULES OF THE COUNCIL RELATING TO THE DUTIES OF THE  
CHAIR.

\* \* \*

BE IT RESOLVED by the Council of the City and County of Honolulu that the  
following Council Rules shall be amended as follows:

\* \* \*

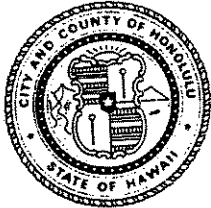
- (g) To appoint all standing committees[, unless otherwise directed by  
the council].

\* \* \*

BE IT FURTHER RESOLVED that rule language to be deleted is  
bracketed and new language is underscored; and

\* \* \*





# CITY COUNCIL

CITY AND COUNTY OF HONOLULU  
HONOLULU, HAWAII 96813-3065 / TELEPHONE 547-7000

DONOVAN M. DELA CRUZ  
COUNCIL CHAIR  
COUNCIL DISTRICT 2  
TELEPHONE: (808) 547-7002  
FAX: (808) 527-5737  
EMAIL: [dmdelacruz@honolulu.gov](mailto:dmdelacruz@honolulu.gov)

September 15, 2005

TO: Councilmembers

FROM: Council Chair Donovan M. Dela Cruz

SUBJECT: Council Standing Committees

A large, stylized handwritten signature, likely of Donovan M. Dela Cruz, is written over the "FROM" line and extends into the "SUBJECT" line.

Pursuant to my authority under Rule 4.2(g) of the Rules of the Council, I am appointing the following standing committees, with the following chairs, vice-chairs and members, all effective as of August 10, 2005:

## COMMITTEE ON BUDGET

Chair: Ann Kobayashi  
Vice Chair: Todd Apo  
Romy M. Cachola  
Barbara Marshall  
Rod Tam

## COMMITTEE ON EXECUTIVE MATTERS AND LEGAL AFFAIRS

Chair: Charles Djou  
Vice Chair: Barbara Marshall  
Todd Apo  
Romy M. Cachola  
Donovan Dela Cruz  
Nestor Garcia  
Ann Kobayashi  
Gary Okino  
Rod Tam

## COMMITTEE ON PARKS

Chair: Nestor Garcia  
Vice Chair: Gary Okino  
Charles Djou  
Barbara Marshall  
Rod Tam

EXHIBIT D

COMMITTEE ON PLANNING AND INTERGOVERNMENTAL AFFAIRS

Chair: Romy M. Cachola  
Vice Chair: Ann Kobayashi  
Charles Djou  
Nestor Garcia  
Barbara Marshall

COMMITTEE ON PUBLIC SAFETY

Chair: Gary Okino  
Vice Chair: Nestor Garcia  
Charles Djou  
Barbara Marshall  
Rod Tam

COMMITTEE ON PUBLIC WORKS AND ECONOMIC DEVELOPMENT

Chair: Rod Tam  
Vice Chair: Romy M. Cachola  
Todd Apo  
Ann Kobayashi  
Gary Okino

COMMITTEE ON TRANSPORTATION

Chair: Todd Apo  
Vice Chair: Charles Djou  
Romy M. Cachola  
Ann Kobayashi  
Gary Okino

COMMITTEE ON ZONING

Chair: Barbara Marshall  
Vice Chair: Rod Tam  
Todd Apo  
Romy M. Cachola  
Ann Kobayashi

This memorandum confirms and restates the actions taken by Resolution 05-243. If you have any questions or concerns, please feel free to contact me.

# HOUSE JOURNAL - STANDING COMMITTEE REPORTS

1338

SCRep. 789-96

Judiciary on H.B. No. 1866

The purpose of this bill is to clarify which boards or other State entities are subject to sunshine law requirements.

Your Committee received supporting testimony from the Office of the Attorney General and the Honolulu Board of Water Supply. Common Cause Hawaii opposed the measure. A concerned citizen suggested amendments.

It is the finding of your Committee that it is necessary for greater efficiency that a board member seek out and discuss matters in various circumstances which may be in violation of chapter 92, the Sunshine Law. Additional interaction outside open meetings can increase effectiveness if certain safeguards regarding subsequent reporting are required.

In addition private discussions are necessary concerning the selection of board officers, interactions between certain government officials with board members acting in other capacities, and communication of administrative matters with the department to which the board is assigned.

Your Committee has deleted the provisions dealing with the definition of a board and substituted the following provisions to increase board efficiency while remaining mindful of the sometimes competing interests of open government:

- (1) Permitting board members to privately discuss matters if a written summary is included on the agenda of the next meeting;
- (2) Assigning board members to investigate a defined matter and report in writing with notice to the public at a subsequent meeting;
- (3) Allowing discussions with the Governor and State officials who are board members of matters not related to the board's exercising adjudicatory function;
- (4) Allowing discussions regarding the selection of board officers;
- (5) Allowing discussions with the head of the department to which the board is assigned regarding administrative matters; and
- (6) Creating procedures for reporting on matters, noticing the public, and setting permitted matters on a subsequent agenda.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1866, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1866, H.D. 1, and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Menor.

~~SCRep. 790-96 Judiciary on H.B. No. 2802~~

The purpose of this bill is to:

- (1) Abolish joint and several liability with respect to all joint tortfeasors; and
- (2) Provide that when a government entity or any other person or entity, whether public or private, is a joint tortfeasor, that person or entity is liable for no more than the percentage share of damages attributable to that person or entity.

Your Committee received testimony in support of this bill from representatives of the Chamber of Commerce of Hawaii, the Hawaii Civil Justice Coalition, the Hawaii Congress on Small Business, the Maui Hotel Association, the National Federation of Independent Business, numerous other organizations, and a private citizen. Testimony in opposition to this bill was received from representatives of the Hawaii Women Lawyers and the Consumer Lawyers of Hawaii.

Your Committee feels that, as a matter of fairness, joint and several liability must be abolished. Joint tortfeasors should not be liable for more damages than their degree of fault merits. Abolishing joint and several liability will also eliminate the current practice of seeking "deep pockets" to sue, in the event that other defendants are judgment proof.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2802 and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by all members of the Committee except Representative Menor.  
(Representatives Hamaoka and Saiki voted no.)

SCRep. 791-96

Judiciary on H.B. No. 3151

The purpose of this bill is to eliminate the proof of financial responsibility requirement for people convicted of driving without a valid no-fault policy for the first time within a five-year period.

Your Committee received testimony in support of this bill from the State Insurance Commissioner, the Public Defender, and a representative of the City and County of the Honolulu Department of Finance. Testimony in opposition to this bill was received from a representative of the Hawaii Insurers Council.

EXHIBIT E

- (2) Subject to a departmental finding that grandfathered sources are causing or contributing to air quality or health problems, amends air pollution control law to establish a ten-year pilot program to improve the environmental quality of the Campbell Industrial Park area by requiring the reduction of air pollutant emissions from grandfathered sources, and requiring grandfathered sources to assess the need for the upgrade of their emission control equipment to meet 1997 best achievable control technology standards at the time of permit renewal, to be phased in over a ten-year period and allow the sources to amortize the costs of compliance over that period; and
- (3) Amends the hazardous waste statute and the used oil transport, recycling, and disposal statute by consolidating used oil and used oil fuel regulation under a new part of the hazardous waste statute; repeals used oil statute; and amends section 128D-6, Hawaii Revised Statutes, to be consistent with hazardous waste statute.

Your Committee agrees with the testimony of the Director of Health that the implementation of the pilot program should await the findings and conclusions of the Department's ongoing study of the ambient air quality of the Campbell Industrial Park area. Your Committee is sensitive to the concerns of economic hardship that could be experienced by parties affected by this bill. However, your Committee feels that its obligation to protect the general public from the obvious health hazards of accidental releases from major sources and from the degradation of air quality outweigh such economic concerns.

As affirmed by the record of votes of the members of your Committee on Ecology and Environmental Protection that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 388, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as H.B. No. 388, H.D. 1, S.D. 2.

Signed by the Chairman on behalf of the Committee.  
Ayes, 3. Noes, none. Excused, 2 (Chumbley, Ikeda).

**SCRep. 2639 (Joint) Agriculture, Labor, and Employment and Ways and Means on H.B. No. 3520**

The purpose of this bill is to make an emergency appropriation for the payment of unemployment insurance benefits under Chapter 383, Hawaii Revised Statutes, to former state employees for all departments in the Executive branch, the Judiciary, and the Legislature.

Your Committees find that the entire amount that was appropriated through Act 218, Session Laws of Hawaii 1995, for the 1995-1996 fiscal year has been expended. The sum of \$4.5 million is requested to provide for these benefits. Due to the lack of sufficient funding, the financing of benefits is currently being funded through private employer tax moneys from the Unemployment Insurance Trust Fund (Fund), which is improper and adversely impacts the solvency of the Fund.

Your Committees find that an emergency appropriation is needed in the sum of \$4.5 million to provide the unemployment benefits to former state employees.

Your Committees have amended the bill by inserting language to clarify the need for the additional appropriation and by making several technical, nonsubstantive amendments for the purpose of conforming the bill to recommended drafting procedures.

Your Committees note that this emergency appropriation should not be viewed by executive departments as a remedy to the situation but as a symptom of a serious problem that requires immediate attention. Executive departments need to be more accountable for unemployment insurance costs. Additionally, the Department of Human Resources Development should develop either a program or policy to monitor and curtail unemployment insurance spending.

As affirmed by the records of votes of the members of your Committees on Agriculture, Labor, and Employment and Ways and Means that are attached to this report, your Committees are in accord with the intent and purpose of H.B. No. 3520, as amended herein, and recommend that it pass Second Reading in the form attached hereto as H.B. No. 3520, S.D. 1, and be placed on the calendar for Third Reading.

Signed by the Chairmen on behalf of the Committees.  
Ayes, 7. Noes, none. Excused, 5 (Bunda, Fernandes Salling, Fukunaga, Liu, Anderson).

**SCRep. 2640 Agriculture, Labor, and Employment on H.B. No. 696**

The purpose of this bill is to amend the definition of "employee" under the wage and hour law to include seamen.

Your Committee has amended the bill by inserting qualifying language for "seaman". Although your Committee is aware of the concerns about the implementation of this bill, your Committee is moving the bill forward with the understanding that the concerns will be remedied in conference. Your Committee has also changed the effective date to June 30, 1997.

As affirmed by the record of votes of the members of your Committee on Agriculture, Labor, and Employment that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 696, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 696, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Signed by the Chairman on behalf of the Committee.  
Ayes, 3. Noes, none. Excused, none.

**SCRep. 2641 Judiciary on H.B. No. 1866**

**EXHIBIT F**

The purpose of this bill is to amend the sunshine law to specify permitted interaction of board members and to establish a process that permits an emergency meeting of a board to address situations caused by unanticipated events.

Your Committee heard testimony in support of this bill from the Attorney General, the Board of Regents of the University of Hawaii, the Department of Commerce and Consumer Affairs, the Board of Land and Natural Resources, the Department of Human Resources Development, the Hawaii Hurricane Relief Fund, and individuals who serve as members of State boards.

Your Committee heard testimony in opposition to this bill from the Honolulu Community-Media Council, the League of Women Voters, Common Cause Hawaii, the Society of Professional Journalists and Honolulu Information Service.

The sunshine law presently prohibits any discussion of board matters outside of a duly noticed public meeting. Your Committee believes that the intent of each person who is appointed to a board is to comply with the letter and spirit of the sunshine law. Your Committee is also aware that there are instances when it is appropriate for interactions to occur between members of a board or between members of a board and the governor or the head of a department, or, when unanticipated events necessitate the prompt convening of a board meeting and that these discussions or meetings, per se, do not undermine the essence of open government.

Upon further consideration, your Committee amended this bill to change the number of board members who may gather information among themselves privately from three to two and by adding a definition of "unanticipated event".

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1866, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1866, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Signed by the Chairman on behalf of the Committee.  
Ayes, 5. Noes, none. Excused, 2 (Chumbley, McCartney).

~~SCRep. 2642 Judiciary on H.B. No. 2869~~

The purpose of this bill is to permit the service of process under the Uniform Parentage Act, by registered or certified mail, return receipt requested, when the parties live in different circuits within this State. Service will only be effectuated if the return receipt is signed by the addressee.

Your Committee received testimony from representatives of the Attorney General and the Office of the Corporation Counsel for the City and County of Honolulu, the County of Kauai, and the County of Hawaii.

Your Committee finds that allowing service of process by certified or registered mail in cases under the Uniform Parentage Act, when parties live in different circuits within the State, is a reasonable and efficient effectuation of service as long as the return receipt is signed by the addressee. This means of service is utilized when parties to a case under the Uniform Parentage Act live outside the State of Hawaii. Therefore, service of process as presented in this bill is more than reasonable.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2869, H.D. 1, and recommends that it pass Second Reading and be placed on the calendar for Third Reading.

Signed by the Chairman on behalf of the Committee.  
Ayes, 5. Noes, none. Excused, 2 (McCartney, Anderson).

~~SCRep. 2643 Judiciary on H.B. No. 2956~~

The purpose of this bill is to grant immunity from civil liability to volunteers acting in good faith and within the scope of the volunteers' functions.

Your Committee acknowledges the invaluable contribution made by volunteers of nonprofit organizations. Nevertheless, your Committee finds that, although a perception lingers that use of volunteers increases the threat of lawsuits, a study by the Legislative Reference Bureau concluded that this does not appear to be the reality experienced by Hawaii's nonprofits. (Volunteerism -- A Risky Business? Legislative Reference Bureau, 1996.) The Bureau also found little basis for the assumption that nonprofit organizations find it difficult or expensive to obtain liability insurance.

Your Committee further finds, however, that certain volunteers serving on certain quasi-governmental boards or councils may not be protected under state or county laws.

Accordingly, upon further consideration, your Committee has amended this bill by deleting its existing provisions and inserting language to protect members of any county neighborhood commission or board or student-centered school board or school community-based management council from liability for civil damages for decision taken at official meetings conducted in accordance with applicable laws, rules, or procedures.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 2956, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 2956, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

~~(3) Excluding Saturday from the computation of the time period in which any act in this part is to be done.~~

Your Committee on Conference has amended this bill by:

- (1) Extending to six days the period the arrestee has to request the director to schedule an administrative hearing to review the administrative revocation; and
- (2) Permitting the issuance of a conditional driving permit under certain conditions if the arrestee has had no prior alcohol enforcement contacts during the preceding five years.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 599, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 599, S.D. 1, C.D. 1.

Representatives Tom, Herkes, White and Kawanakoa,  
Managers on the part of the House.

~~Senators Grauly, Fernandes Salling, Chumbley, Matsunaga and Anderson,  
Managers on the part of the Senate.~~

**Conf. Com. Rep. 26 on H.B. No. 1866**

The purpose of this bill is to specify those instances and occasions in which members of a board may discuss certain board matters or conduct an emergency public meeting in a manner that does not undermine the essence of open government.

Your Committee on Conference has amended this bill to include provisions that:

- (1) Allow two or more members of a board to discuss the selection of the board's officers in private without limitation or subsequent reporting provided that the discussion is held with fewer than quorum being present;
- (2) Allow discussions between the Governor and one or more members of the board rather than two or more members of the board;
- (3) Add that those to be notified in the emergency meeting situation include those who requested notification "on a regular basis";
- (4) Amend the definition of "unanticipated event" by listing those events which are applicable and deleting specific examples of such events;
- (5) Have the Attorney General submit a report in 1997 only, instead of in 1997 and 1998; and
- (6) Make technical, nonsubstantive changes for the purposes of style and clarity.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 1866, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 1866, H.D. 1, S.D. 1, C.D. 1.

Representatives Tom, Cachola, Herkes, White and Kawanakoa,  
Managers on the part of the House.

Senators Grauly, Matsunaga, Matsuura, McCartney and Tam,  
Managers on the part of the Senate.

**Conf. Com. Rep. 27 on H.B. No. 2603**

The purpose of this bill is to clarify the qualifications of prospective jurors and ensure that a prospective juror may not be automatically excluded from jury service based solely upon a hearing, vision, or physical impairment.

Your Committee finds that the intent of this measure is to ensure that a juror's communication ability is at the level necessary to perform the duties of a juror and fairly hear and understand the proceedings.

Your Committee has amended the bill by:

- (1) Deleting the provision which states that a prospective juror may not be automatically excluded from jury service based solely upon a hearing, vision, or physical impairment; and
- (2) Making a technical, nonsubstantive amendment to correct a drafting error.

Your Committee on Conference is in accord with the intent and purpose of H.B. No. 2603, H.D. 1, S.D. 1, as amended herein, and recommends that it pass Final Reading in the form attached hereto as H.B. No. 2603, H.D. 1, S.D. 1, C.D. 1.

Representatives Tom, Hamakawa, White and Yamane,  
Managers on the part of the House.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

RIGHT TO KNOW COMMITTEE, a	)	CIVIL NO. 05-1-1760-10 EEH
Hawai'i non-profit corporation; LEAGUE	)	(Declaratory Judgment)
OF WOMEN VOTERS OF HAWAI'I, a	)	
Hawai'i non-profit corporation; SOCIETY	)	NOTICE OF HEARING AND
OF PROFESSIONAL JOURNALISTS,	)	CERTIFICATE OF SERVICE
HAWAII CHAPTER, an Indiana not-for-	)	
profit corporation; UNIVERSITY OF	)	
HAWAII CHAPTER OF THE SOCIETY	)	
OF PROFESSIONAL JOURNALISTS, an	)	
Indiana not-for-profit corporation; BIG	)	
ISLAND PRESS CLUB, INC., a Hawai'i	)	
non-profit corporation; HAWAII	)	
POLITICAL REFORM PROJECT, dba	)	
Hawaii Pro-Democracy Initiative, a	)	
Hawai'i non-profit corporation; CITIZEN	)	
VOICE, a Hawai'i non-profit corporation;	)	
and HONOLULU COMMUNITY MEDIA	)	
COUNCIL, a Hawai'i non-profit	)	
corporation,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
CITY COUNCIL, CITY AND COUNTY OF	)	
HONOLULU; DONOVAN M. DELA CRUZ,	)	
TODD K. APO, BARBARA MARSHALL,	)	
CHARLES K. DJOU, ANN H.	)	
KOBAYASHI, ROD TAM, ROMY M.	)	
CACHOLA, GARY H. OKINO, and	)	
NESTOR R. GARCIA, in their official	)	
capacities as members of the Honolulu	)	
City Council,	)	
	)	
Defendants.	)	

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NOTICE OF HEARING

TO: JEFFREY S. PORTNOY, ESQ.  
ELIJAH YIP, ESQ.  
1000 Bishop Street, Suite 1200  
Honolulu, Hawaii 96813-4212  
Attorneys for Plaintiffs

NOTICE IS HEREBY GIVEN that the above-identified Motion to Dismiss shall come on for hearing before the Honorable Eden Elizabeth Hifo, Judge of the above-entitled Court, in her courtroom in the Kaahumanu Hale, 777 Punchbowl Street, Honolulu, Hawaii, on DECEMBER 16, 2005, at 8:45 A.m., or as soon thereafter as counsel can be heard.

DATED: Honolulu, Hawaii, October 24, 2005.

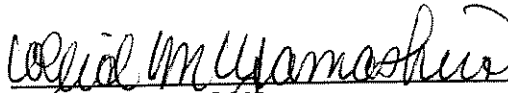


DON S. KITAOKA  
REID M. YAMASHIRO  
DEREK T. MAYESHIRO  
JOHN S. MACKEY  
Deputies Corporation Counsel  
Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing motion will be served on the above-identified party at their respective address by hand delivery, on October 24, 2005.

DATED: Honolulu, Hawaii, October 24, 2005.



DON S. KITAOKA  
REID M. YAMASHIRO  
DEREK T. MAYESHIRO  
JOHN S. MACKEY  
Deputies Corporation Counsel  
Attorneys for Defendants