

# **SB 235**

RELATING TO PUBLIC HEARINGS.

Requires state agencies to hold public hearings in the county, or counties, primarily impacted by the proposed adoption, amendment, or repeal of any administrative rule. Requires at least one public hearing with thirty days' notice on each island that a proposed rule will likely have a significant monetary impact on residents or communities of that island.



STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES

P. O. Box 339  
Honolulu, Hawaii 96809-0339

February 9, 2015

**MEMORANDUM**

TO: The Honorable Donovan M. Dela Cruz, Chair  
Senate Committee on Government Operations

The Honorable Gilbert S. C. Keith-Agaran, Chair  
Senate Committee on Judiciary and Labor

FROM: Rachael Wong, DrPH, Director

SUBJECT: **S.B. 235 – Relating to Public Hearings**

**Hearing: Tuesday, February 10, 2015; 9:00 a.m.  
Conference Room 016, State Capitol**

**PURPOSE:** The purpose of the measure is require state agencies to hold public hearings in the county or counties that may be primarily impacted by the proposed adoption, amendment, or repeal of any administrative rule; and require state agencies to hold at least one public hearing with thirty days' notice on each island that the proposed rule will likely have a significant monetary impact on residents or communities of the island.

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) offers **comments** on this measure. We appreciate the concept of this bill; however, we are concerned about the potential delay in adoption of administrative rules and cost implications generated by this proposal.

Because DHS provides multiple benefits and services throughout the state, potentially any proposed changes to administrative rules may likely impact all communities across the state.

How to distinguish which county or counties that will be "primarily" impacted or which island will experience a "significant monetary impact" as a result of a proposed administrative rule change would take additional analysis and likely delay the adoption and implementation of administrative rules. The DHS, and recipients of public benefits and services, may experience unnecessary delay that a lengthened administrative rule process may have on the implementation of a change in law that necessitated the administrative rule change.

To comply with this proposal, if required to conduct face to face administrative rule hearings in every community impacted, DHS would require additional administrative expenses to conduct the hearings. If administrative rule hearings were allowed to take place by video, telephonic or other electronic means, DHS would likewise require additional administrative expenses, including equipment and resources, to conduct those hearings as well.

If this bill must become law, the Legislature would have to appropriate funds for the additional administrative costs that conducting multiple hearings would incur.

Thank you for the opportunity to submit comments on this measure.

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
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To: Senate Committees on Government Operations  
and on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: February 10, 2015, at 9:00 a.m.  
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 235  
Relating to Public Hearings

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") has concerns regarding implementation of this bill, which would require state agencies to hold public hearings in the county, or counties, primarily impacted by the proposed adoption, amendment, or repeal of administrative rules. While allowing public hearings to be augmented by electronic transmission technology, the bill requires an in-person public hearing on each island where the proposed rule is likely to have a significant monetary impacts on residents or communities.

OIP is an agency required to adopt administrative rules, and as such must also amend those rules as necessary from time to time. For instance, OIP's administrative rules regarding the fees an agency may charge for processing public record requests were adopted over 15 years ago and are due to be updated within the next few years to reflect current agency personnel costs.

Because OIP's rules have a statewide impact for agencies and record requesters, OIP is concerned that this bill would require it to hold a public hearing

in every county whenever it adopts or amends rules. OIP is further concerned that because its rules regarding fees for processing record requests affect the cost of access to public records for residents of all islands, this bill would require it to hold a public hearing on every inhabited island when amending those rules.

As a practical matter, even when no public comments are received from other islands concerning a proposed rule change, a requirement to hold a hearing in every county/island may lead to substantial costs, governmental delays, and litigation to void agency rulemaking. Additionally, this bill's requirement to conduct in-person hearings would undercut efforts by the Legislature and Administration to enable and promote electronic transmission technologies, such as videoconferencing, throughout the state as a means to expand public participation. Simply having an in-person hearing in Hilo on the Big Island, for example, would be of limited value and convenience to people in Kona or Waimea, who could more readily participate through electronic means. Yet this proposal could make it financially difficult for agencies to amend or adopt rules when they do not have budgets sufficient to do so, and it may delay rule-making until funds can be secured to plan for and implement in-person hearings.

If this bill is advanced, then OIP suggests that a special fund be created or an ongoing appropriation be added to cover the agencies' additional costs for staff time, air and ground travel, baggage fees, facility and equipment rentals, security, public hearing notices, and other expenses necessary to plan and hold in-person hearings on each island. Alternatively, if this bill is amended to remove the requirement to hold an in-person hearing, funding could instead be directed to build and staff videoconference centers or capabilities throughout the state that could be used for not only administrative rule hearings but for many other purposes, including legislative hearings.

William P. Kenoi  
*Mayor*

Walter K.M. Lau  
*Managing Director*



BJ Leithead Todd  
*Director*

John A. Medeiros  
*Deputy Director*

**County of Hawai'i**  
**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT**  
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February 4, 2015

Senator Donovan M. Dela Cruz, Chair  
And Members  
Committee on Government Operations

Senator Gilbert S. C. Keith-Agaran, Chair  
And Members  
Committee on Judiciary and Labor

NOTICE OF HEARING

DATE: Tuesday, February 10, 2015  
TIME: 9:00 a.m.  
PLACE: Conference Room 16  
State Capitol  
415 South Beretania Street

RE: SB 235 Relating To Public Hearings

Testimony of Bobby Jean Leithead Todd in Support  
County of Hawai'i Director of Environmental Management

Aloha Chair Dela Cruz, Chair Keith-Agaran and Committee Members

The Department of Environmental Management **supports SB 235**. The bill acknowledges that when proposing rule changes that may have a significant financial impact on residents, it is important to give them an opportunity to have a public hearing before the public comment period closes.

This past year many residents were very concerned that while there was a statewide teleconference to allow public testimony on proposed rules changes governing cesspools, there had been no public hearing prior to the teleconference to explain the proposed changes to the public. After dozens of residents and a number of State Representatives advocated strongly for the public hearings, the Department of Health scheduled five (5) hearings throughout the state and extended the comment period.

The potential fiscal impact to individual residents ranged anywhere from \$5,000 to \$30,000 with an estimated average of \$15,000 and a statewide impact of close to a billion dollars as the initial rule changes could have impacted a total of 90,000 cesspools.

This bill would mandate that the public hearings be scheduled automatically, thus ensuring that residents, particularly neighbor island residents would have an opportunity to become informed and provide input.

Sincerely,

BJ Leithead Todd

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [GVO Testimony](#)  
**Cc:** [rley@co.hawaii.hi.us](mailto:rley@co.hawaii.hi.us)  
**Subject:** \*Submitted testimony for SB235 on Feb 10, 2015 09:00AM\*  
**Date:** Thursday, February 05, 2015 2:32:50 PM

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**SB235**

Submitted on: 2/5/2015

Testimony for GVO/JDL on Feb 10, 2015 09:00AM in Conference Room 016

Submitted By	Organization	Testifier Position	Present at Hearing
Duane Kanuha	County of Hawaii Planning Department	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
SENATE COMMITTEE ON JUDICIARY AND LABOR  
Tuesday, February 10, 2015, 9:00 a.m. Conference Room 016

SB 235 RELATING TO PUBLIC HEARINGS  
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Dela Cruz, Chair Keith-Agaran, and Committee Members:

**The League of Women Voters of Hawaii opposes SB 235.** This bill requires public hearings in the county or counties primarily impacted by the proposed adoption, amendment, or repeal of any administrative rule and at least one public hearing on each island when a proposed rule will likely have a significant monetary impact on residents or communities of that island.

State agency rules cannot establish policy or procedures that violate federal law, federal rules, or state law. Federal laws and rules can be changed without any public hearings in Hawaii. State laws can be changed after only two public hearings on Oahu. It would be time consuming and unproductive to require a public hearing in every county and possibly a public hearing on all seven populated islands to amend state agency rules to comply with changes in federal law, federal rules, or state law. Moreover, the bill's failure to define "significant monetary impact" will inevitably result in confusion and litigation.

Thank you for the opportunity to submit testimony.

February 10, 2015

**The Honorable Donovan Dela Cruz, Chair**  
Senate Committee on Government Operations

**The Honorable Gilbert Keith-Agaran, Chair**  
Senate Committee on Judiciary and Labor  
State Capitol, Room 16  
Honolulu, Hawaii 96813

**RE: S.B. 235, Relating to Public Hearings**

**HEARING: Tuesday, February 10, 2015, at 9:00 a.m.**

Aloha Chair Dela Cruz, Chair Keith-Agaran and Members of the Joint Committees:

I am Myoung Oh, Government Affairs Director, here to testify on behalf of the Hawai'i Association of REALTORS® ("HAR"), the voice of real estate in Hawai'i, and its 8,400 members. HAR **supports the intent** of S.B. 235, which requires state agencies to hold public hearings in the county, or counties, primarily impacted by the proposed adoption, amendment, or repeal of any administrative rule. The measure also requires at least one public hearing with thirty days' notice on each island that a proposed rule will likely have a significant monetary impact on residents or communities of that island.

The Department of Health (DOH) proposed changes to Hawai'i Administrative Rules, Chapter 11-62, relating to Wastewater Systems. Under the proposed rules, an estimated cesspool residential property count of 50,000 on Hawai'i, 14,000 on Kaua'i, 12,000 on Maui, 11,000 on Oahu, and 1,400 on Molokai would be affected. Additionally, the costs to convert each cesspool system could range from \$10,000, to \$30,000.

On October 2, 2014, a public hearing was held on Oahu with videoconferencing to the outer islands. However, there were many concerns voiced by residents on all islands, especially many who would be impacted by the proposed rules. The public comment period was extended to October 17<sup>th</sup>. Meetings were then held between October 6<sup>th</sup> -16, with little notice, on the neighbor islands. These meetings did not provide an opportunity for meaningful community input.

HAR opposes a "fast-track" approach for any rules approvals, and believes that state agencies would benefit from a collaborative effort with affected stakeholders. Input from the public helps to ensure that no unintended consequences occur, and allows rules to be thoroughly vetted. HAR believes that this proposal would help to ensure that proper notice is given to the public and that affected parties on all islands have input where they are significantly impacted.

Mahalo for the opportunity to testify.