

DAVID Y. IGE  
Governor

JOSH GREEN  
Lt. Governor



State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

PHYLLIS SHIMABUKURO-GEISER  
Chairperson, Board of Agriculture

MORRIS M. ATTA  
Deputy to the Chairperson

**TESTIMONY OF PHYLLIS SHIMABUKURO-GEISER  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE HOUSE COMMITTEE ON GOVERNMENT REFORM**

**MARCH 30, 2022**

**11:00 A.M.**

**CONFERENCE ROOM 309 & VIA VIDEOCONFERENCE**

**HOUSE CONCURRENT RESOLUTION NO. 146 / HOUSE RESOLUTION NO. 146  
REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A  
WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY  
STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL  
AGENCY RECORDS.**

Chairperson McKelvey and Members of the Committees:

Thank you for the opportunity to testify on House Concurrent Resolution No. 146 and House Resolution No. 146, which request the Office of Information Practices (OIP) to convene a working group to develop a consensus on language for a new Uniform Information Practices Act, chapter 92F, HRS (UIPA), develop an exception for deliberative and pre-decisional records, and to report the group's findings and recommendations to the Legislature. The Department of Agriculture ("Department") supports this resolution, defers to OIP regarding the formation of a working group, and offers a comment.

The Department recognizes the need to balance an agency's ability to reach sound and fair decisions through candid expression of ideas with the public's interest in disclosure of government decision making and records for transparency. The proposed working group would be an effective forum for deliberating about and devising a new exception for deliberative and pre-decisional records that would reflect a reasonable balance of viewpoints of the various competing interests. While any form of exception to UIPA would represent a limitation of public access to agencies' internal deliberative



records, developing a reasonable exception would enable agencies to function effectively by having frank internal discussions and making sound decisions.

Statement Before The  
**HOUSE COMMITTEE ON GOVERNMENT REFORM**  
Wednesday, March 30, 2022  
11:00 AM  
Via Videoconference and Conference Room 309

in consideration of  
**HCR 146 / HR 146**

**REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A WORKING GROUP TO DEVELOP A  
RECOMMENDATION FOR A STATUTORY STANDARD FOR THE TREATMENT OF DELIBERATIVE AND  
PREDECISIONAL AGENCY RECORDS.**

Chair McKELVEY, Vice Chair WILDBERGER, and Members of the House Government Reform Committee

Common Cause Hawaii supports HCR 146 / HR 146, requesting the office of information practices to convene a working group to develop a recommendation for a statutory standard for the treatment of deliberative and predecisional agency records.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening our representative democracy through transparency and accountability reforms efforts that increase civic engagement and public participation in our democratic processes.

Common Cause Hawaii appreciates the convening of “interested stakeholders to consider whether there is consensus on the appropriate balance between transparency and deliberative process for effective agency decision-making in Hawaii, and to recommend a new statutory standard that balances the various agency and public interests”. See HCR 146 at page 2, lines 13-18; HR 146 at page 2, lines 10-15.

Further, Common Cause Hawaii would welcome the opportunity to be part of “a working group [convened by Office of Information Practices] to develop a consensus on language for a new UIPA exception for agency records that are deliberative and pre—decisional which reasonably balances the public's interest in disclosure against the potential harm to the agency's ability to fully consider and make sound and informed decisions”. See HCR 146 at page 2, lines 24-28; HR 146 at page 2, lines 19-24.

As a nonprofit interested in increasing government transparency and accountability, Common Cause Hawaii hopes to add value to a working group established by HCR 146 / HR 146.

Thank you for the opportunity to testify in support of HCR 146 / HR 146. If you have any questions, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



HOUSE COMMITTEE ON GOVERNMENT REFORM

Wednesday, March 30, 2022, 11 am, State Capitol Room 309 & Videoconference  
HCR 146 & HR 146

REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A WORKING GROUP TO  
DEVELOP A RECOMMENDATION FOR A STATUTORY STANDARD FOR THE TREATMENT OF  
DELIBERATIVE AND PREDECISIONAL AGENCY RECORDS

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair McKelvey and Committee Members:

The League of Women Voters of Hawaii would appreciate the opportunity to participate in an OIP working group to make recommendations concerning public access to deliberative and pre-decisional government records. Our perspective is that early, informed, public involvement in government deliberations usually leads to better outcomes and more consensus than post-decision press releases to inform the public of top-down "Decide, Announce, Defend" government decisions.

Thank you for the opportunity to comment.

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701  
Honolulu, HI 96813

Office: (808) 531-4000  
Fax: (808) 380-3580  
info@civilbeatlawcenter.org

House Committee on Government Reform  
Honorable Angus L.K. McKelvey, Chair  
Honorable Tina Wildberger, Vice Chair

**RE: Testimony Commenting on H.R. 146, Requesting the Office of Information  
Practices to Convene a Working Group to Develop a Recommendation for a Statutory  
Standard for the Treatment of Deliberative and Predecisional Agency Records**

Hearing: March 30, 2022 at 11:00 a.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote governmental transparency. Thank you for the opportunity to submit testimony **commenting on H.R. 146**.

The Law Center would appreciate the opportunity to work collaboratively with government agencies “with the goal of developing a consensus” on public access to deliberative government records. Enacting the deliberative process privilege would be a disaster for Hawai‘i because that doctrine is excessively secretive and prone to abuse by government agencies. To the extent that there are legitimate concerns about disclosure of deliberative records, however, the Law Center is willing to explore solutions targeted at those concerns while respecting the public’s right to know how its government operates, including deliberations.

Thank you again for the opportunity to provide comments on H.R. 146.



March 30, 2022

11 am.

VIA VIDEOCONFERENCE

Conference Room 309

**To: House Committee on Government Reform**

**Rep. Angus L.K. McKelvey, Chair**

**Rep. Tina Wildberger, Vice Chair**

**From: Grassroot Institute of Hawaii**

**Joe Kent, Executive Vice President**

RE: HCR146/HR146 — REQUESTING THE OFFICE OF INFORMATION PRACTICES TO CONVENE A WORKING GROUP TO DEVELOP A RECOMMENDATION FOR A STATUTORY STANDARD FOR THE TREATMENT OF DELIBERATIVE AND PREDECISIONAL AGENCY RECORDS

***Comments Only***

Dear Chair and Committee Members:

The Grassroot Institute of Hawaii would like to offer its comments on [HCR146](#) and [HR146](#), which propose the creation of a working group to develop the language of a “deliberative process” exemption from Hawaii’s open-records law, the Uniform Information Practices Act.

We have grave reservations about any effort to establish a deliberative-process exemption to the UIPA. Our concern is that such an exemption would be little more than a loophole by which state agencies could evade records requests.

This would frustrate the intent of the state’s transparency laws, which are meant to ensure accountability and discourage corruption by making government actions and deliberations available to the public.

As a research and government watchdog organization, the Grassroot Institute is well-acquainted with the mechanisms employed by government agencies to avoid disclosure. Based on that experience, we can attest to the fact that the exception would give agencies leeway to withhold

nearly anything under the claim of “deliberative process.” Moreover, it would encourage agencies to conduct key government functions in a way that could shield them from disclosure.

Though the working group is meant to find some compromise between the duty to disclose and the agencies’ desire to withhold documents they deem “predecisional,” the inherent conflict between those interests as well as the ambiguity of the “deliberative process” guarantees more challenges and disputes. After all, most of the work done by government agencies is deliberative in nature and everything but a final decision or report can be classified as “predecisional.”

From the point of view of a government watchdog organization, a deliberative-process exemption would guarantee that requests to certain agencies will turn into endless battles over what, if anything, must be disclosed to the public.

It is not hard to imagine that some state agencies already notorious for their lack of openness will abuse the deliberative-process exemption to avoid fulfilling UIPA requests.

If government agencies are concerned about privacy or disclosures that obstruct their ability to carry out their duties, there already are exceptions in the law that would address such issues. There is nothing remarkable about the deliberative-exemption process in itself that warrants special treatment.

Given the need to restore public trust in Hawaii’s government, we believe that more transparency, not less, is the best route forward.

The Legislature is currently seeking ways to improve its own transparency and accountability to the people of Hawaii. This is no time to exempt government agencies from that same responsibility.

Under the circumstances, it would be a mistake to create a UIPA exception that would allow government agencies to hide their decision-making processes from the public.

Thank you for the opportunity to submit our comments.

Sincerely,

Joe Kent  
Executive Vice President  
Grassroot Institute of Hawaii



March 30, 2022

Rep. Angus McKelvey  
House Government Reform Committee  
State Capitol  
Honolulu, HI 96813

Chair McKelvey and Committee Members:

Re: HR 146/HCR 146

We support these two measures and ask you to recommend that the Civil Beat Law Center be represented in the working group.

The issue of deliberative process is far too complex to work out in one bill during a legislative session.

Thank you for your time and attention,

Stirling Morita  
President  
Hawaii Chapter of the Society of Professional Journalists