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## **Controversial 'Vexatious Requestor' Bill - That Protects Government Agencies from Releasing Information About Obama's Birth Certificate - Headed for Governor's Desk**

By Malia Zimmerman, 4/28/2010 3:08:40 PM

The so-called "vexatious requestor bill," which enables local government agencies to deem those repeatedly asking for government records as "vexatious" so the agencies don't legally have to respond, passed the Hawaii State Legislature yesterday with just 11 of the 76-member legislature voting in opposition.

SB 2937 CD1, introduced by Democrat lawmakers on the Republican state administration's behalf to prevent the Department of Health, the Department of Attorney General, the Office of Information Practices and Department of Human Services from being legally obligated to respond to the public's requests for Obama's birth certificate and other related presidential birth record information, has received a flurry of national attention.

Today, the Chicago Tribune, in a write-up entitled, "Don't ask, don't give," reports: "A Hawaii bill awaiting Gov. Linda Lingle's signature would create a loophole in the state's public records law allowing agencies to ignore repeated requests for President Barack Obama's birth certificate. So for those keeping track: In Hawaii, you might not get Obama's birth certificate when you ask for it repeated times. Not to be confused with Arizona, where Obama must carry his birth certificate with him at all times."

While the column pokes fun at the legislation pending the governor's signature, local journalists, open government advocates and some lawmakers are concerned about the law's impact.

Nancy Cook Lauer, who on behalf of the Society of Professional Journalists, Hawaii Chapter, testified in opposition to the measure, says while SPJ is sympathetic to the problems the government has experienced with the so-called "birthers" seeking public records from the administration, at the same time it is concerned about the establishment of a category of "vexatious requesters."

"We feel this bill is too broad and creates a dangerous precedent that could stymie those exercising their constitutional right to information from their government," she said.

She notes that "the bill lacks definitions and gives OIP and agencies license to interpret legislative intent without guidelines."

Outlining the concerns, Lauer says: "A citizen who acts in completely good faith could be considered a vexatious requestor, and thus punished with a minimum of due process; There is no judicial or legislative recourse available. Two administrative agencies decide who is a vexatious requestor. Where are the checks and balances; The bill would not stop birthers from making requests. They can just have someone else make the same request. It's doubtful any state agency could prove that the latest requestor was associated with the previous one.

Spokesperson for the Hawaii State Department of Health, Janice Okubo, maintains the law is needed. She says 5 to 10 hours a week, she and her fellow state workers answer repeated demands from people outside of Hawaii seeking copies of President Barack Obama's birth certificate.

Official documentation, she points out, that the health department has on file but is not authorized under Hawaii law to release to anyone except the president himself or someone in his immediate family.

The health department has a canned response letter and informational Web page to distribute to "birthers" who want proof that Obama was born in Hawaii and not out of the country. Okubo also can refer callers to Obama's own Web site, where he posted what he says is his birth certificate.

Okubo's official health department response does not include a copy of Obama's actual birth certificate or confirmation that what Obama posted on his Web site is an authentic birth certificate because that is private information. She also cannot confirm whether Obama's birth certificate was filed the day he was born because that is confidential, but she says that Kapiolani Medical Center has confirmed his birth there on the hospital Web

site and that it would not be unusual in 1961 before electronic records, that the filing would be delayed up to three days at the Department of Health. But her response does not satisfy everyone. The health department gets follow-up requests as does the state Office of Information Practices, the attorney general and the Department of Human Services.

With that vexatious designation, the local government could legally ignore public information requests from anyone they believe has requested information too often or asked too many questions.

In the House, 10 lawmakers opposed the legislation including Democratic Representatives Lyla Berg, Tom Brower, Faye Hanohano, Marilyn Lee, Hermina Morita, Karl Rhoads, K. Mark Takai and GOP Representatives Gene Ward, Barbara Marumoto and Lynn Finnegan voting no.

Sen. Sam Slom, R-Hawaii Kai, was the only Hawaii Senator of 25 to vote no. Slom says he has several problems with the legislation, including the fact that it is too broad, too vague and gives too much authority to bureaucrats who are getting paid to provide information to the public.

Okubo counters that she isn't opposed to answering questions or providing information to journalists or citizens who have "reasonable" requests. But there are three or four people who keep asking for information and don't stop, even when the department gives them most everything they request, she says.

The health department's plan doesn't sit well with Joseph Farah, Editor and Chief Executive Officer of WorldNetDaily (<http://www.wnd.com/>), a publication that has dug deeply into the furry over Obama's yet unproduced birth certificate.

His take: "When government responds to an avalanche of public concern over issues like the constitutional eligibility of the president by clamming up and refusing to address them, we've got a real problem in this country. Perhaps Hawaii officials haven't heard that in the U.S. we're supposed to have a government of the people, by the people and for the people. A logical response to widespread public clamor to see a public record as innocent and critical as the president's birth certificate should have been answered long ago with the release of the document. Nothing would stop the phone calls and the letters faster than transparency and public accountability."

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