

STAND. COM. REP. NO.

1107

Honolulu, Hawaii

APR 08 2011

RE: H.B. No. 640  
H.D. 1  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred  
H.B. No. 640, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC AGENCY MEETINGS,"

begs leave to report as follows:

The purpose and intent of this measure is to require any  
action taken by a board in an executive meeting that is closed to  
the public to be reported to the public when the board reconvenes  
at the open meeting in accordance with chapter 92, Hawaii Revised  
Statutes, commonly known as the "Sunshine Law".

Your Committee received testimony in support of this measure  
from the Office of Information Practices, The League of Women  
Voters of Hawaii, and the Americans for Democratic Action Hawai'i.  
Your Committee received testimony in opposition to this measure  
from the Department of the Attorney General, Office of the Mayor  
of the City and County of Honolulu, and one individual.

Your Committee finds that the Sunshine Law currently allows a  
board to hold an executive meeting that is closed to the public  
pursuant to a two-thirds vote of the board members present at the  
open meeting. That type of executive meeting is authorized when  
it is necessary to address certain privacy-related matters set out  
in section 92-5, Hawaii Revised Statutes. If the board votes to  
take an action during the executive meeting, that vote will become  
a public record, assuming that the purpose for which the executive  
meeting is held or the matters discussed are not circumvented or



compromised by the disclosure. This measure will benefit the public's interest in transparency of governmental processes by requiring a board to immediately inform those attending the open meeting of the actions taken by the board when the board reconvenes the open meeting.

Your Committee observes, however, that the term "action" may suggest that a board will be required to disclose matters or discussions held in the executive meeting or other information that may circumvent or compromise the purposes for which the executive meeting is held. For example, a broad interpretation of the term "action" could require disclosure of legal advice between a board and the Attorney General, including discussions protected by attorney-client privilege, or may also require disclosure of a board's initial impression of a job applicant's capabilities or a public officer's or employee's annual performance, which may violate those individuals' constitutional liberty interests and right to privacy.

Your Committee is cognizant of the necessity of balancing the competing goals of transparent and open government against the need for board members to have the opportunity to engage in frank discussions about matters that should remain confidential due to constitutional or operational constraints. Your Committee believes that while disclosure of board actions upon reconvening of the open meeting is important, the disclosure should only involve "final actions" or actual votes by the board, rather than the substance of board discussions held in the executive meetings. Moreover, information describing the final action should be subject to the privacy interests described in section 92-5, Hawaii Revised Statutes.

Your Committee has amended this measure by:

- (1) Substituting the term "final action" for the term "action", in relation to the type of board activity that must be disclosed;
- (2) Limiting the information describing the final action that is required to be disclosed by a board under this measure to information that is not inconsistent with the purpose for which the executive meeting was convened pursuant to section 92-5, Hawaii Revised Statutes, including matters affecting the privacy of individuals, and requiring boards to maintain the confidentiality of

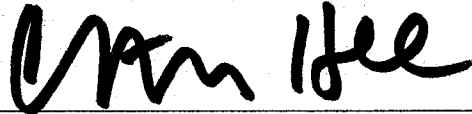


this information for as long as disclosure would defeat the purpose of convening the executive meeting; and

- (3) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 640, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 640, H.D. 1, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



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CLAYTON HEE, Chair



The Senate  
 Twenty-Sixth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>HB040, HD1</b>	Committee Referral: <b>JDL</b>	Date: <b>3/15/11</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)	✓			
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam				✓
<b>TOTAL</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>1</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature:				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes