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To: House Committee on Judiciary

From: Cathy L. Takase, Acting Director

Hearing: February 1, 2011, 2:00 p.m.
State Capitol, Room 325

Re: Testimony on H.B. 640
Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony on H.B. No. 640.

This bill would require boards subject to the Sunshine Law to publicly report any action taken in an executive meeting after reconvening in an open meeting.

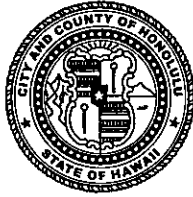
The Sunshine Law does allow a board to vote in a closed meeting, aka an executive session, when necessary to avoid frustrating the purpose for which the meeting was closed to the public, but if the board does end up voting to take an action that vote will ultimately be of public record. OIP believes that this requirement would benefit the public's interest in access by immediately informing those attending the meeting of actions taken by a board, without harming the board's ability to keep confidential the substance of its closed session discussions or the fact that it may have considered some actions that it ultimately chose not to take.

Thank you for the opportunity to testify.

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PETER B. CARLISLE
MAYOR



February 1, 2011

The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary
Twenty-Sixth Legislature
Regular Session of 2011
State of Hawaii

RE: Testimony of Mayor Peter Carlisle on H.B. 640, Relating to Public Agency Meetings

Chair Keith-Agaran and members of the House Committee on Judiciary, Mayor Peter Carlisle submits the following comments on H.B. 640.

The purpose of this bill is to amend Hawaii's open meeting law to require boards to report any action taken by the board in executive session.

My concerns about this bill revolve around what "action" a board must report. The term action is vague and could result in confusion and/or make it difficult for boards to comply with the provisions of Hawaii's open meeting law.

This is because if construed broadly, the term "action" could be interpreted as meaning that the board must report generally what it did during the executive session. HRS 92-4 requires boards to announce the reason for entering into an executive session. Furthermore, HRS 92-5 outlines the instances in which a board may enter into an executive session (e.g. to consult with the board's attorney). Accordingly, the additional language could result in boards having to duplicate what it already did prior to entering into the executive session (e.g., the board consulted with its attorney).

However, if the term "action" is interpreted more narrowly as requiring boards to announce specifically what was discussed during the executive session, then the additional requirement would undermine the intent and purpose of entering into executive session. The added language as proposed in the bill would essentially usurp the intent behind allowing boards to enter into executive session and undermine the exceptions to the open meeting law as outlined in HRS 92-5.

Finally, it should be noted that if the term "action" is interpreted as meaning any decision that is made by the board, then this bill could create further confusion and potentially cause boards to violate other laws or court orders. This is because except as provided in HRS 92-

5(a)(8), any decision made by a board should be done during a meeting open to the public. HRS 92-5(a)(8) provides that the board may enter in to executive session “to deliberate, or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.” Accordingly, the current language of the open meetings law provides for a narrow and limited instance when a board may actually make a decision during an executive session. However, requiring a board to report what decision it made after an executive session that was closed pursuant to HRS 92-5(a)(8) could result in the board violating other state or federal law, or a court order.

I realize that this bill is intended to improve the transparency in the actions and deliberations of boards, however I am concerned that because it is unclear what has to be reported that this bill, that enactment of this bill will lead to confusion and uncertainty.

Thank you for this opportunity to testify before you.



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January 29, 2011

TO: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads
Members of the House Committee on Judiciary

FROM: Americans for Democratic Action/Hawaii
Barbara Polk, Legislative Chair

TESTIMONY IN SUPPORT OF HB 640 RELATED TO PUBLIC AGENCY MEETINGS

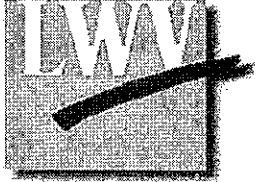
Americans for Democratic Action/Hawaii are in support of requiring that actions taken by public boards in executive (closed) meetings be reported to the public. It is very frustrating to sit in a meeting, have the group go into executive session, then come out with no comment whatsoever! In the name of transparency, the public has the right to know of decisions made, even when aspects of the discussion may be appropriately hidden.

We assume that this statute refers to both boards and commissions. If not, we ask that you make appropriate amendments to include commissions.

We also request that you amend the bill to add the words "and recorded in the minutes of the meeting" as follows:

Any action taken by a board in an executive meeting shall be recorded in the minutes of the meeting and reported to the public when the meeting reconvenes in the open meeting at which the executive meeting was held.

With these changes, we ask you to support HB 640.



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON H.B. 640 RELATING TO PUBLIC AGENCY MEETINGS

Committee on Judiciary

Date: Tuesday, February 1, 2011

Time: 2:00 p.m

Place: Conference Room 325

Testifier: Jean Aoki, LWV Legislative Committee

Chair Keith-Agaran, Vice Chair Rhoads, members of the Committee on Judiciary,

The League of Women Voters of Hawaii strongly supports HB 640 relating to public agency meetings which provides that any action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held.

Especially for boards that seem to conduct so much of their meetings in executive session excluding those like the Ethics Commission which deals with alleged cases of misconduct and illegal activities, the public would like to know what, if any, actions were taken outside of the open meeting. When situations are such that the public is willing to wait for the executive sessions to end to be apprised of any actions or even lack of actions, surely, this can be explained very simply instead of coming out and adjourning so abruptly as is done at times.

We feel the passage of HB 640 and its implementation would increase the public's understanding of the boards' objectives and interpretations of the problems and solutions before them.

Thank you for hearing this bill.

HB640 (status) 2/1/2011 2PM Jud. Committee

Richard Spacer [rspacer@yahoo.com]

Sent: Monday, January 31, 2011 3:46 PM

To: JUDtestimony

Dear Judiciary Committee:

I SUPPORT this bill. Please pass it.

Thank you.

Richard Spacer

Private citizen

Kauai