

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 20, 2015, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No.475, S.D. 1
Relating to Open Government

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports this bill, which would provide for electronic posting of meeting notices under the Sunshine Law, part I of chapter 92, HRS, as well as e-mail notice to persons on a board’s mailing list. OIP recommends that the effective date be amended to take effect on July 1, 2015.

The Sunshine Law’s notice scheme is still essentially the same as it was when the law was first passed in 1975; it does not reference or take advantage of newer technologies such as the internet or e-mail. Pursuant to Governor Abercrombie’s Executive Memo 11-11, however, state agencies have been posting their meeting agendas on the State Calendar, which can be found at <http://calendar.ehawaii.gov/calendar/html/event>.

This bill would amend the Sunshine Law to add electronic notice as a requirement for giving notice of a board meeting, without taking away any of the forms of notice that currently exist. In other words, boards would still be required to file or post notice in all the ways they presently do, but would also be required to post electronic notice on the appropriate state or county online calendar. The bill

does not set technical standards for the file format in which an online notice is posted, thus appropriately leaving that issue to the state or county website administrators to provide for, based on the most current technical standards.

This bill would also add e-mail notice as an additional option for those people who ask to receive e-mailed copies of a board's notices and agendas, without taking away the option of receiving notices and agenda by postal mail, which is the only option the current law provides.

Additionally, this bill includes provisions clarifying how the question of whether notice was timely posted online may be resolved in the event of a dispute, and adds electronic posting and notice into the notice provisions for holding an emergency meeting.

In conclusion, this bill would thus bring the Sunshine Law into the 21st century without leaving behind anyone still relying on the paper filings and mailed notification provided for by the current law. **OIP supports this bill and respectfully recommends that this Committee pass it out, with the effective date changed from January 7, 2059, to "July 1, 2015."**

Thank you for the opportunity to testify.

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 Judiciary
Honorable Karl Rhoads, Chair
Honorable Joy A. San Buenaventura, Vice Chair

RE: Testimony Supporting S.B. 475 S.D. 1, Relating to Open Government
Hearing: March 20, 2015 at 2:00 p.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 government transparency. Thank you for the opportunity to submit testimony on S.B. 475 S.D. 1. The Law Center strongly supports this bill.

S.B. 475 gently nudges open meetings a little more into the 21st Century. This year marks the 40th anniversary of Hawaii's Sunshine Law. In that time, the Internet and electronic communication have become a permanent facet of life for many people in the State of Hawai'i. This bill recognizes the Internet as an option – in addition to traditional written communication – to disseminate information about open meetings and thus further empower the people of Hawai'i to learn about and participate in their government.

S.B. 475 provides individuals the option to (1) obtain board agendas on the Internet; and (2) request a copy of board agendas sent by e-mail. This bill codifies the existing practice of many, if not most, boards.¹

The Law Center respectfully requests that the Committee go further in updating the Sunshine Law for the modern era. Please consider amending S.B. 475 to include language proposed by, among other bills, H.B. 1260:

1. **E-mail Board Packets.** Meeting agendas frequently lack the detail for interested individuals to understand the complex issues that will be discussed by a board. Before a meeting, members of the public who wish to

¹ In light of concerns raised in the Senate committee hearing, the Law Center notes that providing the public additional options for electronic access to Sunshine materials does not discriminate against individuals with disabilities. The traditional methods for access will continue, and the State and county governments have a obligation under the federal Americans with Disabilities Act to ensure that any new options for electronic access are available to individuals with disabilities. *E.g.*, U.S. Dep't of Justice, Accessibility of State and Local Government Websites to People with Disabilities (June 2003), available at <http://www.ada.gov/websites2.htm>.

learn more should have the option to review the publicly accessible portion of the board packet used to educate board members. How can we expect the public to participate in government when individuals cannot obtain critical information until after a decision is made?

2. **Internet Minutes.** Meeting minutes keep the public informed of the rationale for board actions. The Sunshine Law already provides that minutes are publicly accessible after 30 days.² HRS § 92-9(b). There is no reason that such information should not be disseminated as widely as possible by posting on the Internet.
3. **Allow Any Form of Recording a Meeting.** The Sunshine Law only permits the public to record board meetings “by means of a tape recorder or any other means of sonic reproduction.” HRS § 92-9(c) (emphasis added). While the 1975 Legislature’s focus on audio recording made sense for technology at the time, there is no reason to single out one form of recording an open meeting.
4. **Encourage Enforcement.** The existing Sunshine enforcement mechanisms discourage the public from challenging boards. As with other public interest laws (e.g., Uniform Information Practices Act, Whistleblowers’ Protection Act), the Sunshine Law should award attorney’s fees only to prevailing complainants. The existing attorney’s fees provision could be used to punish individuals for raising good faith concerns about potential Sunshine violations by making them pay the government’s attorney’s fees. The public need a forum for enforcing the Sunshine Law without the threat of paying for the government’s attorneys.³

Thank you again for the opportunity to testify.

² The Office of Information Practices has interpreted existing law to require disclosure of minutes after 30 days regardless whether the board has approved the minutes. OIP Op. No. 02-06 at 16. Moreover, any recordings or transcripts of board meetings are disclosable public records before the 30 days elapses. *Id.* at 9-10.

³ Although OIP has authority to interpret the Sunshine Law, it is not a forum for enforcement. *E.g.*, OIP Op. No. 01-06 at 9 (“[A]lthough the OIP has the duty to ‘receiv[e] and resolv[e] complaints’ under the Sunshine Law, there is no indication in the Sunshine Law . . . that the OIP has the power to void a decision made in willful violation of the Sunshine Law.” (footnote and citations omitted)). Moreover, OIP’s authority to simply resolve complaints has been questioned in litigation pending in circuit court for over a year. *See County of Maui v. State of Hawaii Office of Information Practices*, Civ. No. 13-1-1079(2).

PETER L. FRITZ
200 NORTH VINEYARD BOULEVARD, #430
HONOLULU, HAWAII 96817
TELEPHONE (SPRINT IP RELAY): (808) 568-0077
E-MAIL: PLFLEGIS@FRITZHQ.COM

THE SENATE
THE TWENTY-EIGHTH LEGISLATURE
REGULAR SESSION OF 2015

COMMITTEE ON COMMITTEE ON JUDICIARY
Testimony on S.B. 475 S.D. 1
Hearing: March 20, 2015

(RELATING TO OPEN GOVERNMENT)

Chair Rhodes, Vice Chair San Buenaventura, and members of the Committee. My name is Peter Fritz. I am an attorney and an individual with a disability. I am offering comments.

This bill allows electronic mailing of meeting notices, required posting on the state or appropriate County's electronic calendar, and clarifies potential posting disputes.

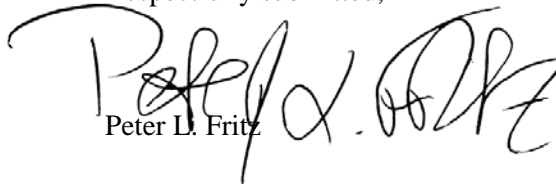
This bill permits an agency to send a notice of a meeting by electronic mail. This bill does not provide that the means of delivery should be at the discretion of the person making the request. Individuals with vision impairments may use assistive technology such as a Kurzweil reader to convert the printing on the page to speech. Such individuals may not have access to the Internet with software that converts the text on a webpage to speech. State agencies are not fully familiar with the requirements to provide accessible emails and I offer my own experience of receiving emails from OIP with attachments and could not be read by individuals with disabilities because the attachment was inaccessible.

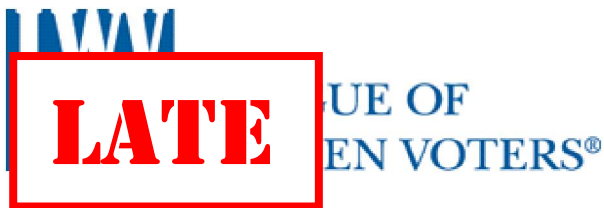
It is respectfully submitted that the manner in which notices are to delivered must be the choice of the requestor. The language on page 4, paragraph (e) should be modified to read as follows "mail or electronically mail a copy of the notice to such persons by the means chosen by such persons. . . ."

In addition, it is not possible for an individual to obtain a copy of the electronic file stamp for the filing of an agenda. the paragraph concerning resolution of a dispute over the filing date of a notice posted electronically should be rewritten to read as follows:

"If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The agency shall provide a copy of the time stamp upon request."

Respectfully submitted,


Peter L. Fritz



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

HOUSE COMMITTEE ON JUDICIARY
Hearing Scheduled 2 pm Friday March 20, 2015, House Conference Room 325
SB 475, SD 1, RELATING TO OPEN GOVERNMENT
TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Karl Rhodes, Vice-Chair Joy A. San Buenaventura, and Committee Members:

The League of Women Voters of Hawaii supports SB 475, SD 1. The bill allows electronic mailing of board meeting notices, requires timely posting of board meeting notices on the appropriate state or county electronic calendar, and requires public notice of emergency board meetings. All of these proposals will improve implementation of Hawaii's Sunshine Law.

The League would also strongly support amendment of SB 475, SD 1, to resolve chronic public complaints about boards which:

1. procrastinate preparation or approval of board minutes.
2. delay public disclosure of board submittals until after completion of board meetings at which the submittals are discussed.
3. hold closed executive sessions for discussions or decisions which should have taken place at public board meetings.

Brian Black, the Executive Director for the Civil Beat Law Center for the Public Interest, has drafted a proposed SB 475, SD 1, HD 1, which addresses these concerns. We request that the House Committee on Judiciary schedule another public hearing for public review and discussion of this proposed HD 1.

Thank you for the opportunity to submit testimony.



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lww-hawaii.com | 808.531.7448 | voters@lwwhawaii.com

HOUSE COMMITTEE ON JUDICIARY
Hearing Scheduled 2 pm Friday March 20, 2015, House Conference Room 325
SB 475, SD 1, RELATING TO OPEN GOVERNMENT
TESTIMONY
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Karl Rhodes, Vice-Chair Joy A. San Buenaventura, and Committee Members:

The League of Women Voters of Hawaii supports SB 475, SD 1. The bill allows electronic mailing of board meeting notices, requires timely posting of board meeting notices on the appropriate state or county electronic calendar, and requires public notice of emergency board meetings. All of these proposals will improve implementation of Hawaii's Sunshine Law.

The League would also strongly support amendment of SB 475, SD 1, to resolve chronic public complaints about boards which:

1. procrastinate preparation or approval of board minutes.
2. delay public disclosure of board submittals until after completion of board meetings at which the submittals are discussed.
3. hold closed executive sessions for discussions or decisions which should have taken place at public board meetings.

Brian Black, the Executive Director for the Civil Beat Law Center for the Public Interest, has drafted a proposed SB 475, SD 1, HD 1, which addresses these concerns. We request that the House Committee on Judiciary schedule another public hearing for public review and discussion of this proposed HD 1.

Thank you for the opportunity to submit testimony.