

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary & Labor  
Honorable Gilbert S.C. Keith-Agaran, Chair  
Honorable Maile S.L. Shimabukuro, Vice Chair

**RE: Testimony Supporting S.B. 475, Relating to Open Government**  
Hearing: February 5, 2015 at 9:00 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 government transparency. Thank you for the opportunity to submit testimony on S.B. 475. 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.<sup>1</sup>

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, S.B. 1322:

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 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

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<sup>1</sup> To the extent boards may express a concern about e-mail limitations for the file-size of larger agendas (and accompanying exhibits), the Law Center would suggest that the committee report explain that the electronic "copy of the notice" need not be attached to an e-mail and may be transmitted by e-mailing individuals a clickable direct link to the agenda on the Internet.

- 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.<sup>2</sup> 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 Actions.** The existing Sunshine enforcement mechanisms discourage the public from challenging boards. The only penalty for violating the Sunshine Law is voiding the board’s final action. But a member of the public must bring a lawsuit within 90 days, which is too short a period to involve OIP – who lack authority to enforce the void penalty. If a complainant does bring suit, he or she frequently lacks critical information because the purported violation occurred in a closed session.<sup>3</sup> And if the court’s *in camera* review reveals no Sunshine violation, the complainant is on the hook for the board’s attorney fees. The Sunshine Law should encourage people with valid concerns to raise them by providing a forum for meaningful review without the threat of paying for the government’s attorneys.

Thank you again for the opportunity to testify.

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<sup>2</sup> 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.

<sup>3</sup> For example, the Honolulu Rapid Transit Authority recently held an executive session for the sole declared reason to permit board members to “huddle up . . . and have a pretty candid discussion.” While that statement on its face indicates that the subsequent closed meeting violated the Sunshine Law, the answer depends on what transpired in the executive session.



House Judiciary Committee  
Chair Gilbert Keith-Agaran, Vice Chair Maile Shimabukuro

Thursday 02/05/2015 at 9:00 AM in Room 016  
SB475 Relating to Open Government

TESTIMONY OF SUPPORT  
Carmille Lim, Executive Director, Common Cause Hawaii

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Dear Chair Keith-Agaran, Vice Chair Shimabukuro and members of the Senate Judiciary and Labor Committee:

**Common Cause Hawaii supports SB475**, which would we see as a “housekeeping” bill.

SB475 would modernize some of our existing processes, and bring agencies to the 21<sup>st</sup> century by:

- allowing public meeting notices to be sent electronically
- requiring meeting notices to be posted on an electronic calendar
- requiring public meeting notices for emergency meetings

In an age where business is largely reliant on technology and communicating electronically, we believe that SB475 will move our sunshine law – and effective government/citizen collaboration – forward.

Thank you for the opportunity to testify in support of SB475.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [cathyg@animalrightshawaii.org](mailto:cathyg@animalrightshawaii.org)  
**Subject:** \*Submitted testimony for SB475 on Feb 5, 2015 09:00AM\*  
**Date:** Wednesday, February 04, 2015 11:10:23 AM

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**SB475**

Submitted on: 2/4/2015

Testimony for JDL on Feb 5, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Cathy Goeggel	Animal Rights Hawai'i	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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SENATE COMMITTEE ON JUDICIARY AND LABOR  
Hearing Scheduled 9 am Thursday, February 5, 2015, Conference Room 016  
SB 475 RELATING TO OPEN GOVERNMENT  
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Keith-Agaran, Vice-Chair Shimabukuo, and Committee Members:

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

Thank you for the opportunity to submit testimony.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [stirling@clearwire.net](mailto:stirling@clearwire.net)  
**Subject:** \*Submitted testimony for SB475 on Feb 5, 2015 09:00AM\*  
**Date:** Wednesday, February 04, 2015 8:28:43 PM

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**SB475**

Submitted on: 2/4/2015

Testimony for JDL on Feb 5, 2015 09:00AM in Conference Room 016

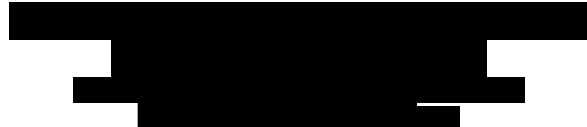
<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Stirling Morita	Hawaii Chapter Society of Professional Journalists	Support	No

**Comments:**

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PETER L. FRITZ



THE SENATE  
THE TWENTY-EIGHTH LEGISLATURE  
REGULAR SESSION OF 2015

COMMITTEE ON COMMITTEE ON JUDICIARY AND LABOR

Testimony on S.B. 475  
Hearing: February 5, 2015

(RELATING TO OPEN GOVERNMENT

Chair Keith-Agaran, Vice Chair Shimabukuro, 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.

I offer the following comments:

In order to hold government accountable for its actions, citizens must know what those actions are. To that end, they must insist that government act openly and transparently to the greatest extent possible.

This bill reduces transparency for individuals who have disabilities and the class of people that do not have Internet access such many elderly individuals.

It is respectfully submit that this bill may discriminate against individuals with disabilities, in violation of Section 508 of the Rehabilitation Act of 1973, Chapter 368, Hawaii Revised Statutes and the Americans with Disabilities Act. It may also discriminate against an entire class of people who lack of Internet access such as the elderly. Notices sent by electronic mail often inaccessible to disabled because the electronic materials in the email do not meet the standards required by Title II of the Americans with Disabilities Act.

The following are some examples of concerns:

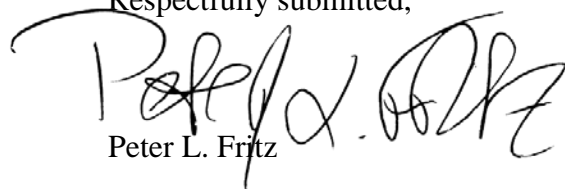
On page 4, paragraph (e) states that with respect to persons who request notification of meetings, that the agency shall "mail or electronically mail a copy of the notice to such persons . . ." The decision on whether the copy of the notice should be mailed or electronically mailed must be the decision of the person making the request. It is more likely than not that asking the individual why they wanted to receive the notice by mail would violate Title II of the Americans with Disabilities Act because it would require the individual to identify their a disability. This provision needs to be amended by having it state that the choice of delivery of the notice is made by the individual making the request.

On page 3, beginning at line 8, this bill states that any dispute concerning whether a notice was timely posted on an electronic calendar, a printout of the time stamped agenda shall be evidence of the electronic posting date. Agendas time stamps do not appear on agendas posted on the state calendar. In addition, I am aware of a situation relating to a meeting of the Tax Review Commission that was scheduled to take place on a certain date and there was a question about whether the notice had been filed with the Lieutenant Governor. The Department of Taxation sent a copy of a facsimile record indicating that they had sent the notice to the Lieutenant Governor. However, the Lieutenant Governor had no record of receiving the facsimile and the meeting had to be canceled. The best notice of compliance with the filing requirements is the file stamp placed on the agenda by the Lieutenant Governor. It cannot be hacked, spoofed, or otherwise modified. This should be the standard that governs timely filing.

This committee should also consider placing a definition of "day" in paragraph (b) on page 2 beginning at line 3. The purpose of the open records law and to make government transparent. However, according to an OIP opinion, notices may be filed five days and 1 minute before the meeting because of the way that opinion defines "day". No less than six calendar days before the meeting should mean no less than six full 24 hour days prior to the meeting. Government transparency would be improved by adopting such a definition.

Considering the number of bills that have been introduced this year to make changes to information practices, the Office of Information Practices need to assure this committee that the changes that are being made by this measure will not be further modified by other bills.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter L. Fritz", written in a cursive style. The signature is positioned above the printed name "Peter L. Fritz".

Peter L. Fritz



**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [REDACTED]  
**Subject:** Submitted testimony for SB475 on Feb 5, 2015 09:00AM  
**Date:** Monday, February 02, 2015 11:53:43 AM

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**SB475**

Submitted on: 2/2/2015

Testimony for JDL on Feb 5, 2015 09:00AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Glenn Shiroma	Individual	Support	No

Comments: Please add the following, Agency to post meeting agenda and minutes on their own website. Example, the Board of Agriculture does not post the agendas and minutes at <http://hdoa.hawaii.gov/chairpersons-office/hawai%ca%bbi-board-of-agriculture/board-of-agriculture-meetings/>

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