

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: March 16, 2017, 2:50 p.m.
State Capitol, Conference Room 224

Re: Testimony on H.B. No. 308, H.D. 1
Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony on this bill, which would amend the Sunshine Law, Part 1 of Chapter 92, HRS, to allow a board member to transmit to another board member a government record that is open to public inspection under the Uniform Information Practices Act (UIPA), chapter 92F, HRS, so long as they did not “express a position” in doing so and the exchanged record was “promptly” filed in the board’s office. The Office of Information Practices (“OIP”) **has concerns about the bill in its present form, but could support it in an amended form. OIP’s recommended amendments are attached.**

The category of government records open to public inspection is a broad one, and is not limited to records created by other agencies. Thus, it could include documents authored by the board members themselves. While the bill does state that they cannot “express a position” on board business in the record or the transmittal, it **leaves open the possibility of board members exchanging e-mails discussing board business on the theory that they were simply providing information or comments about the issue to other board members**, not actually stating a position. After exchanging records the board

members would be required to “promptly” file the exchanged e-mails or other records in the board’s office, where the public could see it, but there would be **no limitation on the number of other board members that an e-mail or other record could be transmitted to, or the number of times the members could go back and forth** in the exchange. In addition, **because “promptly” is not defined, it is not clear how long a board has to make e-mails or other records exchanged by board members publicly available.**

OIP worked with other interested parties to create the attached bill proposal that would meet the concerns expressed by testifiers about the possibility of board members carrying on an e-mail discussion and about the timing of public access. The proposal restricts the records that can be exchanged to those authored by third parties and sets a standard for when records must be filed for public inspection. In addition, since not all boards have a board office in which such records could readily be filed, and the impetus for this bill appears to be from the county councils, the proposal limits the bill to the county councils (which have the administrative support to make the records available for public inspection as would be required). The council would be required to file the record in its office for public inspection on the same day the transmittal took place, at least 24 hours before discussing any relevant issues at a meeting, and provide electronic copies upon request. To avoid a situation where that condition was impossible to comply with (such as a transmittal happening in the evening after office hours), the proposal would also require that the transmission of records between members take place only during business hours.

If OIP’s recommended amendments are made, then (1) the information transmitted under this permitted interaction would be limited to a document created by a third party and a statement of what the document is and what issue

before the board it pertains to, and (2) a copy of the exchange would be available to the public on that same day, and at least 24 hours before any discussion of relevant matters at a meeting. If OIP's amendments recommended above are made, OIP would support the proposal to allow transmission to "other members of the board" without setting a limitation on the number.

OIP urges this committee to adopt the proposal that was developed with the input of other testifiers and would provide the county councils with additional flexibility while protecting against potential abuses, and would further provide advance public access to information being considered by the councils. Thank you for considering our proposed amendments.

OIP's proposed HB 308, SD1 language (3/16/17)

Replace the proposed new section 92-2.5(h), HRS, with the following, and add a provision to the bill's effective date so that the bill will sunset on June 30, 2019.

(h) A member of a county council may provide other members of the council any government record open to public inspection under chapter 92F, provided that:

- (1) The record was created by a person other than an officer or employee of the county council;
- (2) No additional discussion is added to the record other than a neutral statement in the transmittal that identifies the government record and the related matter of official business;
- (3) No commitment relating to a vote on the matter is made or sought;
- (4) The transmission of records between council members occurs during business hours;
- (5) On the same day the government record is transmitted to other members of the board, the transmittal document and government record shall be filed for public inspection in the council's office, where they shall be accessible to the public no less than 24 hours before any matter to which the records relate is discussed at a council meeting; and
- (6) The transmittal documents and government record filed in the council's office shall, upon request, be electronically mailed to requesters.

COUNTY COUNCIL
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Ross Kagawa, Vice Chair
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Mason K. Chock
Arryl Kaneshiro
Derek S.K. Kawakami
JoAnn A. Yukimura



OFFICE OF THE COUNTY CLERK

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March 13, 2017

TESTIMONY OF MEL RAPOZO
COUNCIL CHAIR, KAUAI COUNTY COUNCIL
ON
HB 308, HD1, RELATING TO PUBLIC AGENCY MEETINGS
Senate Committee on Government Operations
Thursday, March 16, 2017
2:50 p.m.
Conference Room 224

Dear Chair Kim and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 308, HD1, Relating to Public Agency Meetings, which is included in the 2017 Hawai'i State Association of Counties Legislative Package. My testimony is submitted in my individual capacity as Council Chair of the Kaua'i County Council and as Secretary of the Hawai'i State Association of Counties.

This measure would amend Hawai'i Revised Statutes (HRS) Section 92-2.5 to allow board members to distribute certain public documents among themselves, so long as the transmittal does not include a commitment to vote or a request for such a commitment. HB 308, HD1, requires the transmittal memorandum and government record being distributed to be promptly filed in the board's office, and to ensure that notice requirements are met to identify where copies of the government record may be obtained in person or on the Internet. This measure would also increase government transparency and efficiency and allow County Councilmembers equal footing with executive branch officials and special-interest groups who currently freely disseminate information and documents to councilmembers and the public.

For the reasons stated above, I urge the Senate Committee on Government Operations to support this measure. Should you have any questions, please feel free to contact me or Council Services Staff at (808) 241-4188.

Sincerely,

MEL RAPOZO
Council Chair, Kaua'i County Council

AMK:lc

From: mailinglist@capitol.hawaii.gov
Sent: Wednesday, March 15, 2017 1:37 PM
To: GVO Testimony
Cc: yukilei.sugimura@mauicounty.us
Subject: *Submitted testimony for HB308 on Mar 16, 2017 14:50PM*

HB308

Submitted on: 3/15/2017

Testimony for GVO on Mar 16, 2017 14:50PM in Conference Room 224

Submitted By	Organization	Testifier Position	Present at Hearing
Councilmember Yuki Lei Sugimura	Individual	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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Hawai`i State Association of Counties (HSAC)

Counties of Kaua`i, Maui, Hawai`i and City & County of Honolulu

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March 14, 2017

TO: The Honorable Donna Mercado Kim, Chair
Senate Committee on Government Operations

FROM: Stacy Crivello
HSAC President

SUBJECT: **HEARING OF MARCH 16, 2017; TESTIMONY IN SUPPORT OF HB 308, HD 1, RELATING TO PUBLIC AGENCY MEETINGS**

Thank you for the opportunity to testify on behalf of the Hawaii State Association of Counties in **support** of this measure. The purpose of this measure is to allow board members to transmit government records to other board members under specified conditions.

This measure is in the 2017 Hawaii State Association of Counties Legislative Package. Therefore, I submit this testimony on HSAC's behalf.

HSAC **supports** this measure for the following reasons:

1. This measure would amend HRS Section 92-2.5 to allow board members to distribute certain **public documents** among themselves, so long as the transmittal does not include a commitment to vote or a request for such a commitment.
2. I appreciate helpful amendments made to the bill to clarify the transmittal shall not include additional discussion other than a statement describing the government record and shall be filed in the board's office for public inspection.
3. This bill would increase government transparency and efficiency. This measure would put county councilmembers on equal footing with executive branch officials and special-interest groups, who under current law can freely disseminate information and documents to councilmembers and the public.

Mahalo for your consideration.

HSAC:FY2017:17Testimony:HB308_hd1a_mkz



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SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Thursday, March 16, 2017, 2:50 PM, Conference Room 224
HB 308, HD 1 Relating to Public Agency Meetings

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Kim and Committee Members:

The League of Women Voters opposes HB 308, HD 1 which would allow unlimited transmittal of government records between board members. Ambiguities created by HB 308, HD 1 would result in unacceptable “loopholes” in Hawaii’s Sunshine Law. Bill amendments proposed in OIP testimony would fully address our concerns.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Government Operations
Honorable Donna Mercado Kim, Chair
Honorable Russell E. Ruderman, Vice Chair

RE: Testimony Supporting H.B. 308 H.D. 1, Relating to Public Agency Meetings
Hearing: March 16, 2017 at 2:50 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 governmental transparency. Thank you for the opportunity to submit testimony. The Law Center **supports H.B. 308 H.D. 1.**

As amended this bill substantially advances both board efficiency and public transparency. This bill is similar to S.B. 478 S.D. 1. The Office of Information Practices solicited additional comments from stakeholders and, on February 24, offered the Senate Committee on Judiciary and Labor further proposed amendments to S.B. 478 after its last committee hearing. The Law Center supports those amendments.

Thank you again for the opportunity to testify.