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Director of Council Services  
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**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

February 6, 2017

TO: The Honorable Scott Nishimoto, Chair  
House Committee on Judiciary

FROM: Mike White  
Council Chair

A handwritten signature in black ink, appearing to read "Mike White", is written over the printed name and title.

SUBJECT: **HEARING OF FEBRUARY 7, 2017; TESTIMONY IN SUPPORT OF  
HB 308, RELATING TO PUBLIC AGENCY MEETINGS**

Thank you for the opportunity to testify in **support** this important measure.

The Maui County Council supports this bill and **concurs** with the testimony as provided by Hawaii State Association of Counties President Stacy Crivello.

I urge you to **support** this measure.

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, February 6, 2017 9:08 AM  
**To:** JUDtestimony  
**Cc:** yukilei.sugimura@mauicounty.us  
**Subject:** \*Submitted testimony for HB308 on Feb 7, 2017 14:00PM\*

**Categories:** Blue Category

**HB308**

Submitted on: 2/6/2017

Testimony for JUD on Feb 7, 2017 14:00PM in Conference Room 325

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Present at Hearing</b> |
|---------------------|---------------------|---------------------------|---------------------------|
| Yuki Lei Sugimura   | Maui County Council | 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


200 S. High Street, Wailuku, Hawaii 96793 (808) 270-7665

[www.hicounties.com](http://www.hicounties.com)



February 3, 2017

TO: The Honorable Scott Y. Nishimoto, Chair  
Senate Committee on Judiciary

FROM: Stacy Crivello  
HSAC President 

SUBJECT: **HEARING OF FEBRUARY 7, 2017; TESTIMONY IN SUPPORT OF HB 308, 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. As recommended by the Office of Information Practices in its testimony at the last legislative session, language was included to clarify the transmittal shall not include additional discussion other than a statement describing the government record.
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:HB308a\_mkz*

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701  
Honolulu, HI 96813

Office: (808) 531-4000  
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info@civilbeatlawcenter.org

House Committee on Judiciary  
Honorable Scott Y. Nishimoto, Chair  
Honorable Joy A. San Buenaventura, Vice Chair

**RE: Testimony Commenting on H.B. 308, Relating to Public Agency Meetings**  
Hearing: February 7, 2017 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 governmental transparency. Thank you for the opportunity to submit testimony. The Law Center **supports the intent of H.B. 308 if amendments are made to protect the public interest.** The Law Center's amendments are summarized in a proposed revision.

H.B. 308 would permit members of Sunshine boards and commissions to circulate public records among each other outside an open meeting. The Sunshine Law is intended "to protect the people's right to know." HRS § 92-1. It is State policy that "the formation and conduct of public policy – the discussions, deliberations, decisions, and action of governmental agencies – shall be conducted as openly as possible." *Id.*

Documents exchanged among board or commission members concerning official board business are part of the decision-making process. Thus, current law prohibits board members from exchanging documents outside an open meeting. With appropriate protections for timely public access to these written deliberations, however, the Legislature can *advance public accountability as well as efficiency* at the State's boards and commissions.

1. *Records circulated and transmittal memoranda must be made publicly available promptly.* This legislation must expressly provide mechanisms for timely public access to any documents exchanged among board members. The correspondence and attached documents should be filed, as circulated, in the board's office and published on the Internet contemporaneous to being sent to the other board members. Board members should not be permitted to exchange records unless the board or commission has identified on its meeting notices where such communications will be posted and made available to the public.

2. *Neither the transmittal memorandum nor records circulated may express a board member's position on any matter of board business.* Board members should not share their position on a matter of board business with all other board members before the public

has had an opportunity to provide input at an open meeting. Thus, the transmittal memorandum and the records circulated should not contain any statement by the board member regarding his or her position on a matter.

3. *Expand the scope of records that can be circulated.* The bill focuses on the records available under HRS § 92F-12. That section, however, is limited in scope (*e.g.*, administrative rules, environmental test results, payroll records). If the intent of the legislation is to improve board efficiency and communication for better decision-making, this proposal unnecessarily hampers that intent. ***So long as appropriate protections are in place for public access to monitor board communications***, the proposal should permit board members to exchange any records that are public under the Uniform Information Practices Act.

The following revision suggests one way to address the issues identified:

- (h) A member of a board may provide other members of the board any government record open to public inspection, provided that:
  - (1) The board member does not express a position relating to a matter of official board business in the government record or transmittal, except a neutral statement in the transmittal that identifies the government record and the related matter of official board business;
  - (2) No commitment relating to a vote on a matter of official board business is made or sought;
  - (3) When the government record is provided to other members of the board, the transmittal and government record are promptly filed in the board's office and posted on the Internet; and
  - (4) This subsection applies only if the board's last notice pursuant to section 92-7 identified where members of the public may obtain copies in person and on the Internet.

Thank you again for the opportunity to testify.

**COUNTY COUNCIL**

Mel Rapozo, Chair  
Ross Kagawa, Vice Chair  
Arthur Brun  
Mason K. Chock  
Arryl Kaneshiro  
Derek S.K. Kawakami  
JoAnn A. Yukimura



**OFFICE OF THE COUNTY CLERK**

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**Council Services Division**  
4396 Rice Street, Suite 209  
Lihu'e, Kaua'i, Hawai'i 96766

February 6, 2017

**TESTIMONY OF MEL RAPOZO  
COUNCIL CHAIR, KAUAI COUNTY COUNCIL  
ON  
HB 308, RELATING TO PUBLIC AGENCY MEETINGS  
House Committee on Judiciary  
Tuesday, February 7, 2017  
2:00 p.m.  
Conference Room 325**

Dear Chair Nishimoto and Members of the Committee:

Thank you for this opportunity to provide testimony in support of HB 308, Relating to Public Agency Meetings, which is included in the 2017 Hawai'i State Association of Counties (HSAC) 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 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. This measure would 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 House Committee on Judiciary 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:cy



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HOUSE COMMITTEE ON JUDICIARY

Tuesday, February 7, 2017, 2 PM, Conference Room 325  
HB 308, Relating to Public Agency Meetings

**TESTIMONY**

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

Chair Nishimoto and Committee Members:

**The League of Women Voters opposes HB 308.** The bill allows a member of a public board to transmit any "... government record for which disclosure is required by section 92F-12 ..." to other board members. Unfortunately, HB 308 would create an unacceptable loophole in Hawaii's Sunshine Law under which board members could use policy memos and email to privately, serially discuss and even make voting commitments on board matters outside of any board meeting.

If a board member authored and authorized public disclosure of a policy memo which expressed opinions, made voting commitments, or sought voting commitments about matters before the board, such a policy memo would constitute a "government record" for which disclosure is required under Section 92F-12(b)(1), Hawaii Revised Statutes. HB 308 would allow that policy memo to be transmitted without public notice to other board members outside of any board meeting.

Thank you for the opportunity to submit testimony.



House Judiciary Committee  
Chair Scott Nishimoto, Vice Chair San Buenaventura

02/07/2017 at 2:00 PM in Room 325  
HB308 – Relating to Public Agency Meetings

TESTIMONY — COMMENTS  
Corie Tanida, Executive Director, Common Cause Hawaii

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Dear Chair Nishimoto, Vice San Buenaventura, and members of the House Judiciary Committee:

**Common Cause Hawaii offers comments** on HB308 which would allow board members to transmit government records to other board members under specified conditions.

While we recognize board members' need to be able to share government records amongst each other, it is important that the public's interest be protected as well. Thus we suggest specifying that the records circulated amongst members and transmittal memoranda are public records.

Thank you for the opportunity to offer comments on HB308.