

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: February 16, 2017, 9:30 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 1034
Relating to Community Meetings

Thank you for the opportunity to submit testimony on this bill, which would allow all members of a county council to jointly attend community meetings or presentations. The Office of Information Practices (“OIP”) **opposes this bill. The new guest meeting provision signed into law in 2014, and made permanent in 2016, already allows all members of a county council to jointly attend community meetings while continuing to protect the public interest through limited meeting safeguards, which this proposal would essentially strip away and render moot.**

In 2014, county council members expressed concerns that the Sunshine Law did not provide them a workable method to attend community meetings or presentations that any number of council members might want to attend and at which a variety of board topics might be raised, and where it would not be practical to follow a set agenda or take public testimony. Consequently, the Legislature passed H.B. 2139, H.D. 1, S.D. 1, C.D. 1, which signed into law as Act 221, SLH 2014, and created a new type of limited meeting in section 92-3.1, HRS, that allows any number of county council members to attend a meeting open to the public as

the guest of a board or community group. Under this guest meeting provision, the council's notice of the limited meeting is not required to include an agenda, and unless the hosting community group is itself a Sunshine Law board, there is no requirement to take oral testimony at the meeting. **The Legislature included safeguards**, such as the requirement that no limited meeting of this sort be held outside Hawaii, that only one such meeting per community group per month be held, and that no decisions be made at the meeting. In addition, the videotaping requirement applicable to all limited meetings applies to guest meetings as well, unless waived by OIP. **The Legislature included a sunset date of June 30, 2016**, for the guest meeting provision.

In 2016, the Legislature passed S.B. 2121, S.D. 1, H.D. 1, C.D. 1, signed into law as Act 056, SLH 2016, which made the guest meeting provision permanent and required each council to report annually to the legislature on the effectiveness and application of the guest meeting provision, including any recommendations or proposed legislation. OIP is aware that the Hawaii County Council submitted the annual report required by Act 056, but has not seen reports from the other counties. So far as OIP is aware, the guest meeting provision has been only minimally used.

The permitted interaction proposed by this bill would effectively render the guest meeting safeguards moot by allowing any number of county council members to attend a community meeting without the oversight that the Legislature built into Act 221 in 2014.

Without information on county councils' actual experience using the guest meeting provision and recommendations that will improve the provision for both the councils and the public, OIP respectfully suggests that **the Legislature should not consider creating a broad new permitted interaction for full councils to discuss board business outside a Sunshine Law meeting.**



Feb. 16, 2017

Sen. Gil Keith-Agaran
Senate Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: Senate Bill 1034

Chairman Keith-Agaran and Committee Members:

We ask you to kill this bill.

For many years, the counties have come to the Legislature to find ways to meet with various groups outside the Sunshine Law. And various attempts have been enacted.

In 2014, lawmakers came up with yet-another amendment with some limitations designed to protect the public's rights. Now the counties are asking for another exemption – for a county council to hold “informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting.”

We fear that this measure could be used to circumvent the protections for transparency in 92-3.1(b) for limited meetings.

Passage of this bill would create confusion between provisions in 92-2.5(e) and 92-3.1(b):

92-2.5(e) A county council “may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting[;] open to the public; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

“At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.”

92-3.1(b) "A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:

" (1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;

"(2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;

"(3) No more than one limited meeting per month shall be held by a county council for any one board or community group;

"(4) No limited meetings shall be held outside the State; and

"(5) Limited meetings shall not be used to circumvent the purpose of part I, chapter 92."

Thank you for your attention,

A handwritten signature in black ink, appearing to read "Stirling Morita". The signature is written in a cursive style with a large initial "S".

Stirling Morita
President
Hawaii Chapter SPJ



February 14, 2017

Senate Committee on Judiciary and Labor

From: Nancy Cook Lauer, publisher, All Hawaii News

www.allhawaiinews.com

STRONG OPPOSITION to SB 1034, Relating to Community Meetings

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, opposes SB 1034, relating to community meetings, because it would weaken the state's Sunshine Law, governing public meetings, by allowing more than a quorum of County Council members to attend and participate in a community meeting, and discuss issues among themselves, without public notice, outside the coordination of the county clerk and without official county minutes taken.

Hawaii's Sunshine Law currently allows County Council members, but less than a quorum, to attend and participate in these meetings, as long as they subsequently report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

All Hawaii News believes the current law covers any concerns expressed by proponents that it will make it easier for council members to engage with their constituents and learn about community issues important to them.

This expressed concern doesn't overcome the burden embraced by the state Office of Information Practices website, that the law is intended to open up governmental processes to public scrutiny and participation by requiring government business to be conducted as transparently as possible while balancing personal privacy rights, in All Hawaii News' opinion.

Please hold in committee this attempt to weaken the state's vaunted Sunshine Law. Thank you.



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Senate Committee on Judiciary and Labor
Thursday, February 16, 2017, 9:30 AM, Conference Room 016
SB 1034, Relating to Community Meetings

TESTIMONY

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

Chair Keith-Agaran and Committee Members:

The League of Women Voters of Hawaii strongly opposes SB 1034. SB 1034 would exempt council quorums that attended any “informational meeting or presentation” from most Sunshine Law requirements which apply to council meetings.

The Sunshine Law currently requires that county councils conduct the public’s business in public. The law guarantees the public both advance notice and the opportunity to listen to all discussions and decisions by a county council quorum. SB 1034 would exempt council quorums that attended any “informational meeting or presentation” from most Sunshine Law requirements which apply to council meetings. Under SB 1034, when a council quorum attended an “informational meeting or presentation”, no advance public notice of council attendance would be required, no council minutes would be prepared, and the public would not have the right to submit oral testimony to the council. Under SB 1034, an “informational meeting or presentation” might not be open to the public and could include events which charge admission, events which take place on the mainland or a foreign country, multi-day events which include both educational and recreational activities, and private events organized by special interests to influence public opinion and council decisions. SB 1034 would even allow a council quorum to attend an “informational” event at Disneyland.

Under SB 1034, if a private special interest “entity” which wished to influence council decisions invited a county council to attend an “informational meeting or presentation” about pending council matters, SB 1034 would authorize a council quorum to attend and discuss those pending council matters with that private “entity” and with each other. Basically, the Sunshine Law would be “neutered”.

No new legislation is needed to allow a council quorum, or even all council members, to attend a meeting hosted by a community group. Since 2014, the Sunshine Law has authorized a county council quorum to hold a “limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, ...”, provided that the council provides advance public notice, the public can attend the meeting without paying an admission fee or traveling out-of-state, no council voting commitments are made, and council minutes are prepared. These reasonable provisos recognize that private interests seeking county land use approvals, private businesses seeking county contracts, and ad hoc “NIMBY” groups commonly form “community groups” which host “informational meetings and presentations” for the purpose of advocating for or against special interest projects. To date no county council has held a “limited meeting” as the guest of another board or community group.

Thank you for the opportunity to present testimony.



Senate Judiciary Committee
Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads

02/16/2017 at 9:30 AM in Room 016
SB1034 – Relating to Community Meetings

TESTIMONY — STRONGLY OPPOSE
Corie Tanida, Executive Director, Common Cause Hawaii

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

Common Cause strongly opposes SB1034. This bill creates a loophole in Hawaii's Sunshine Laws, which are meant to promote transparency and openness in our state. SB1034 would significantly expand the exemption for county council members to attend outside meetings.

Hawaii's Sunshine Laws act as a safeguard, and are in place to 1) prevent private discussions among council members and the organizations that represent issues which council members vote on and 2) prevent council members' decisions on "official" issues without public input and public notice.

In 2014, the Hawaii State Legislature already passed HB2139 (Act 221), which authorizes a limited meeting where any number of county council members may attend a board's or community group's meeting to discuss council business, if certain requirements are met. To date we are unaware of any councils taking advantage of this exemption, thus we do not see the need to expand it.

Act 221 already broadened Hawaii's Sunshine Laws. SB1034 will weaken our Sunshine Laws even further.

For this reason we urge you to **defer SB1034**.

Thank you for the opportunity to offer testimony **opposing SB1034**.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Judiciary and Labor
Honorable Gilbert S.C. Keith-Agaran, Chair
Honorable Karl Rhoads, Vice Chair

RE: Testimony Opposing S.B. 1034, Relating to Community Meetings
Hearing: February 16, 2017 at 9:30 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 governmental transparency. Thank you for the opportunity to submit testimony **strongly opposing S.B. 1034**. This bill should be deferred.

In 2014, the Legislature carefully balanced the ability of county councilmembers to attend community meetings against the “the potential for abuse of the public’s right to know and participate in the policy making process.” 2014 Haw. Sess. Laws Act 221. That balance was codified at HRS § 92-3.1(b). **Councilmembers, however, are not using that existing exemption.**

We now have almost 3 years of experience under Act 221. If that carefully balanced compromise legislation is not meeting the needs of county councils, the councils should be able to specify incidents in which the council members wished to attend an event, but were barred from doing so under Act 221. In November, the Law Center requested more information from the Hawaii State Association of Counties about any difficulties encountered by councilmembers and offered to assist in tailoring amendments to Act 221 to meet any specific difficulties. No information has been provided.

County councils do not need more exemptions to attend community meetings. If there are legitimate concerns, only narrow amendments to section 92-3.1(b) are appropriate. But the counties first need to come forward with an explanation for why existing law does not work.

Thank you again for the opportunity to testify.