

LATE

February 9, 2017

The Honorable Donna Mercado Kim, Chair
The Honorable Russell E. Ruderman, Vice Chair
Senate Committee on Government Operations
Hawai'i State Senate
Hawai'i State Capitol
Honolulu, HI 96813

RE: Testimony on SB 312 – Relating to Open Government

Chair Kim, Vice Chair Ruderman, and Members of the Committee:

My name is Micah Kāne and I serve as the chair of the board of Transform Hawai'i Government (THG), a coalition of organizations and individuals who believe in improving government for every citizen for every service on every island. THG works to ensure that the benefits of the State of Hawai'i's business transformation and information technology modernization initiative ("the transformation") are fully realized. Our members, who are from all corners of the state, are united in the belief that there are opportunities for everyone to support better state government.

We recognize the state Legislature for its pivotal role in this transformation and we support transformation in its many forms – from improvements to the state's information technology infrastructure including more robust cybersecurity; to improvements in the state's business processes including improving access to services, making services more user-friendly, speeding up transactions when residents do business with the state, making state government more transparent, and providing up-to-date and accurate data for better decision-making.

Therefore, we are writing in support of the intent of SB 312, relating to open government. This measure would allow the electronic mailing of meeting notices. It requires the posting of the notice on the State's or appropriate county's electronic calendar and clarifies potential posting disputes. We believe that, provided adequate resources are available for implementation, this measure is an important step toward government that is more open, transparent and responsive to citizens which aligns with our goals for the transformation.

We look forward to helping to promote streamlining, integrating and delivering government services that exceed the expectations of the public and the needs of Hawai'i's communities. And we seek opportunities to work together to achieve our state's transformation goals.

Mahalo for this opportunity to share our support for the transformation.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 9, 2017, 3:05 p.m.
State Capitol, Conference Room 224

Re: Testimony on S.B. No. 312
Relating to Open Government

Thank you for the opportunity to submit testimony on this bill. The **Office of Information Practices (“OIP”)** supports bill sections 2 and 3, which would provide for electronic filing of notice of meetings under the Sunshine Law, part I of chapter 92F, HRS. **OIP takes no position on bill section 1**, which would require boards to file a board packet in the board office and disclose it upon request, as balancing the public benefit of this disclosure against the administrative burden to boards is a policy question for the Legislature. **OIP similarly takes no position on bill section 4**, which would require boards to post minutes online, **but recommends that if such a requirement is added to the Sunshine Law, the deadline for posting minutes should be extended from 30 days to 40 days after the meeting because of the additional time that will be needed for online posting.**

With respect to bill section 1, OIP recognizes that the requirement to **provide board packets** will serve the Sunshine Law’s policy of opening up governmental processes to public scrutiny and participation. Among other things, this new requirement would allow for more meaningful public testimony by giving

interested members of the public more of the information that is actually before a board at the time of its meeting. At the same time, the requirement would create a new and potentially substantial administrative burden for many boards, as they will need to ensure that what could be hundreds of pages of board materials, including some provided by third parties, are **reviewed and redacted under chapter 92F**, the Uniform Information Practices Act (“UIPA”), prior to public distribution, which boards have not needed to do for the board packets they may be accustomed to sending now to board members. Boards have testified that they do not have the **staff to do the work** in the relevant timeframe. **If boards fail to meet their new obligations, the procedural failures may become the basis for potential liability and substantial litigation seeking to overturn the boards’ action.**

OIP fully supports the electronic notice provisions in bill sections 2 and 3. 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 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>. Bill sections 2 and 3 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.

The proposed requirement in bill section 4 that **board minutes be publicly posted online** rather than merely "available" to the public within 30 days after the meeting is something not required by current law. While online minutes are obviously much easier for members of the public to access, OIP notes that this requirement would **take time to implement** given that many boards do not have websites and would need to work with the State or the relevant county to figure out where their minutes should be posted, and how they can do so in a timely way. In addition, since many boards will need to go through a departmental IT person or another third party to have minutes posted online, and also take steps to ensure that such minutes are **made ADA accessible before posting online**, boards' effective deadline for preparing meeting minutes will be earlier than it is under current law because of the necessary delay between the date minutes are prepared and the date they are posted online. **This change will effectively shorten the deadline for boards to have their minutes prepared, and OIP would therefore recommend that to allow boards the same amount of time they currently have to prepare minutes, the deadline for posting minutes online**

should be “within forty days after the meeting” rather than “within thirty days after the meeting.” OIP would further recommend an effective date no earlier than January 2018 to allow boards time to prepare.

In summary, OIP:

(1) recommends the Legislature should decide on policy grounds whether the administrative burden created by the board packet requirement in bill section 1 is outweighed by the public benefit;

(2) recommends the Legislature likewise decide on policy grounds whether the burden on boards created by the online testimony requirement in bill section 4 is outweighed by the public benefit, **and if moving ahead with this requirement, change the minutes deadline to 40 days after a meeting and delay section 4’s effective date; and**

(3) recommends passing out the electronic notice provisions in bill sections 2 and 3. Thank you for considering OIP’s testimony.