

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 15, 2017, 2:00 p.m.  
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 478, S.D. 1  
Relating to Government Records

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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 well 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 emails 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 an email 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 SB 478, HD1 language (3/15/17)**

**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:

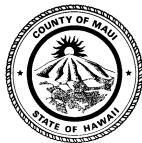
- (1) The record was created by a person other than an officer or employee of the county council;
- (2) No additional discussion is added to the record other than a neutral statement in the transmittal that identifies the government record and the related matter of official business;
- (3) No commitment 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.

Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello

Councilmembers  
Alika Atay  
Elle Cochran  
Don S. Guzman  
Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura




Director of Council Services  
Sandy K. Baz

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
www.MauiCounty.us

March 14, 2017

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

FROM: Mike White  
Council Chair 

SUBJECT: **HEARING OF MARCH 15, 2017; TESTIMONY IN SUPPORT OF SB 478 SD 1, RELATING TO GOVERNMENT RECORDS**

Thank you for the opportunity to testify in support of this important measure. The purpose of this bill is to amend the Sunshine Law to allow certain government records to be shared among public board members where no commitment relating to a vote on the matter is made or sought.

This measure is included in the 2017 Maui County Council Package. Therefore, I am providing this testimony on behalf of the Council.

I **support** this measure for the following reasons:

1. Under the Hawaii Supreme Court's 2013 decision in *Kanahele v. Maui County Council*, 130 Haw. 228 (2013), memoranda circulated among members of a "board" subject to the Sunshine Law may not be "permitted interactions" under Section 92-2.5, Hawaii Revised Statutes ("HRS"). Since the ruling, board members have been constrained from transmitting to each other public documents related to board business.
2. 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 on a matter to be considered by the board or a request for such a commitment. We also appreciate the clarification in the current amendment that public documents are open to the public for inspection.
3. This bill would increase government transparency and efficiency. Documents circulated among board members would also be filed in the board's office, be available for public disclosure and posting on the board's website. Receiving documents on the day of a meeting does not allow board members and the public ample time to review and prepare testimony.
4. 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.

For the foregoing reasons, I **support** this measure.

*ocs:proj:legis:17legis:17testimony:sb478\_sd1b*

# 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)



**LATE**

March 14, 2017

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

FROM: Stacy Crivello  
HSAC President

A handwritten signature in black ink, appearing to read "Stacy Crivello", is written over a circular seal of the State of Hawaii.

SUBJECT: **HEARING OF March 15, 2017; TESTIMONY IN SUPPORT OF SB 478 SD 1, RELATING TO GOVERNMENT RECORDS**

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 amend the Sunshine Law to allow certain government records to be shared among public board members where no commitment relating to a vote on the matter is made or sought.

This measure has the same intent as HB 308, HD 1, which is included 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 for the record to 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:SB478\_sd1a\_mkz*

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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

**RE: Testimony Supporting S.B. 478 S.D. 1, Relating to Government Records**  
Hearing: March 15, 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 S.B. 478 S.D. 1.**

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

Thank you again for the opportunity to testify.



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HOUSE COMMITTEE ON JUDICIARY

Wednesday, March 15, 2017, 2 PM, Conference Room 325  
SB 478, SD 1 Relating to Government Records

**TESTIMONY**

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

Chair Nishimoto and Committee Members:

**The League of Women Voters opposes SB 478, SD 1** to allow unlimited transmittal of government records between board members. SB 478, SD 1 still would create 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.



**LATE**

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, March 15, 2017 10:55 AM  
**To:** JUDtestimony  
**Cc:** yukilei.sugimura@mauicounty.us  
**Subject:** \*Submitted testimony for SB478 on Mar 15, 2017 14:00PM\*

**SB478**

Submitted on: 3/15/2017

Testimony for JUD on Mar 15, 2017 14:00PM in Conference Room 325

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
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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