

STAND. COM. REP. NO.

2093

Honolulu, Hawaii

FEB 08 2018

RE: S.B. No. 2167  
S.D. 1

Honorable Ronald D. Kouchi  
President of the Senate  
Twenty-Ninth State Legislature  
Regular Session of 2018  
State of Hawaii

Sir:

Your Committee on Public Safety, Intergovernmental, and  
Military Affairs, to which was referred S.B. No. 2167 entitled:

"A BILL FOR AN ACT RELATING TO GOVERNMENT RECORDS,"

begs leave to report as follows:

The purpose and intent 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  
or additional discussion on the matter is made or sought.

Your Committee received testimony in support of this measure  
from the Mayor, County of Hawaii; Hawaii State Association of  
Counties; Maui County Councilmember Robert Carroll; Kaua'i County  
Councilmember Derek S.K. Kawakami; Maui County Councilmember Yuki  
Lei Sugimura; and one individual. Your Committee received  
testimony in opposition to this measure from Common Cause Hawaii.  
Your Committee received comments on this measure from the Office  
of Information Practices and The Civil Beat Law Center for the  
Public Interest.

Your Committee finds that efficiency in public agencies is  
beneficial to the public welfare. One way to increase efficiency  
in the work and decision making of the State's public boards is to  
allow members of boards to share government records that would  
otherwise require disclosure under the law with other board  
members. Allowing this type of information sharing, as this



measure does, would save time and lead to better and faster decision making. However, it is important to maintain transparency in government. Therefore, this measure prohibits the sharing of government records that would otherwise need to be disclosed between board members if any related commitment to a vote is made or sought, or if there is any additional discussion between board members beyond a description of the government record being shared.

However, your Committee understands the concerns raised in testimony that this measure does not create sufficient limitations on specific government records and thus has the potential for much broader application and potential abuse. For instance, under this measure, a memorandum or electronic mail written by one board member listing his or her thoughts on an issue would qualify as a government record. This could create a loophole permitting members to privately or serially discuss an issue through memoranda or electronic mail, thereby thwarting transparency.

Your Committee has amended this measure by:

- (1) Replacing its language with language from S.B. No. 478, S.D. 1, H.D. 1 (2017), which allows a member of a county council to provide other members any government record that is open to public inspection under chapter 92F, Hawaii Revised Statutes; provided that:
  - (A) The record was created by a person other than a member or employee of the county council;
  - (B) No additional discussion is added to the record other than a neutral statement to identify the record and the related matter of official business;
  - (C) No commitment relating to a vote on the matter is made or sought;
  - (D) The transmission of government records between county council members occurs during business hours;
  - (E) On the same day the government record is transmitted to other county council members, the



transmittal document and government record shall be filed for public inspection in the county council office;

- (F) The public shall have access to the transmittal document and government records at least twenty-four hours before the county council meets to discuss matters relating to the government records; and
  - (G) The transmittal document and government record filed in the county council office shall, upon request, be electronically transmitted to the requester; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Public Safety, Intergovernmental, and Military Affairs that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2167, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2167, S.D. 1, and be referred to your Committee on Judiciary.


Respectfully submitted on  
behalf of the members of the  
Committee on Public Safety,  
Intergovernmental, and Military  
Affairs,

  
CLARENCE K. NISHIHARA, Chair



The Senate  
 Twenty-Ninth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Public Safety, Intergovernmental, and Military Affairs**  
**PSM**

Bill / Resolution No.:* <b>SB 2167</b>	Committee Referral: <b>PSM, JDC</b>	Date: <b>2/2/18</b>		
<input type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
NISHIHARA, Clarence K. (C)	✓			
WAKAI, Glenn (VC)	✓			
BAKER, Rosalyn H.	✓			
IHARA, Jr., Les	✓			
THIELEN, Laura H.				✓
<b>TOTAL</b>	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original             Yellow             Pink             Goldenrod File with Committee Report             Clerk's Office             Drafting Agency             Committee File Copy				

\*Only one measure per Record of Votes