

STAND. COM. REP. NO.

618

Honolulu, Hawaii

MAR 02 2017

RE: S.B. No. 478

S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Twenty-Ninth State Legislature
Regular Session of 2017
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred
S.B. No. 478 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 allow a member of a board to provide other members of the board any government records for which disclosure is required by section 92F-12, Hawaii Revised Statutes, provided that no commitment relating to a vote on the matter is made or sought and no additional discussion other than a statement describing the record and the issue related to the government record is included in the transmittal.

Your Committee received testimony in support of this measure from the County Council of the County of Maui. Your Committee received testimony in opposition to this measure from the Office of Information Practices and League of Women Voters of Hawaii. Your Committee received comments on this measure from The Civil Beat Law Center for the Public Interest and Common Cause Hawaii.

Your Committee finds that the Hawaii Supreme Court held in *Kanahele v. Maui County Council*, 130 Haw. 228 (2013), that memoranda or transmittals circulated among members of a public board subject to the Sunshine Law were not permitted interactions under section 92-2.5, Hawaii Revised Statutes (HRS). As a result, public board members are prevented from transmitting government



records to each other related to board business. This measure includes such transmittals as a permitted interaction between public board members as long as the transmittals do not include a commitment to vote on a matter to be considered by the board or request for a commitment and no additional discussion other than a statement describing the record and the issue related to the government record is included in the transmittal.

Your Committee notes the concerns raised in written testimony submitted by the Office of Information Practices that the scope of government records that are allowed to be circulated may be too broad, and suggests limiting the scope of applicability to include government records under section 92F-12(a), HRS. Your Committee further notes the written comments submitted by The Civil Beat Law Center for the Public Interest that the scope of the government records that are allowed to be circulated between board members should be expanded to include all government records that are open to public inspection, provided that appropriate protections are in place for public access to monitor board communications.

Accordingly, your Committee has amended this measure by:

- (1) Adopting language suggested by The Civil Beat Law Center for the Public Interest that:
 - (A) Clarifies that the government records that may be provided by a member of a board to other members of the board are government records that are open to public inspection, rather than subject to section 92F-12, Hawaii Revised Statutes;
 - (B) Requires that the board member not express a position relating to a matter of official board business in the government record or transmittal, except for a neutral statement in the transmittal;
 - (C) Upon providing the government record to other members of the board, requires the transmittal and government record to be filed in the board's office; and
 - (D) Clarifies that these requirements regarding the circulation of a government record from a board



member to other members of the board apply only when the board's last notice identifies where the members of the public may obtain copies of the government record in person;

- (2) Inserting an effective date of January 7, 2059, to encourage further discussion; and
- (3) 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 Judiciary and Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 478, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 478, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary and
Labor,


GILBERT S.C. KEITH-AGARAN, Chair



The Senate
Twenty-Ninth Legislature
State of Hawai'i

Record of Votes
Committee on Judiciary and Labor
JDL

Bill / Resolution No.:* SB 478	Committee Referral: JDL	Date: 2/21/17		
<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
KEITH-AGARAN, Gilbert S.C. (C)	✓			
RHOADS, Karl (VC)	✓			
GABBARD, Mike				✓
KIM, Donna Mercado	✓			
THIELEN, Laura H.	✓			
TOTAL	4	0	0	1
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <div style="text-align:center;"><i>Karl Rhoads</i></div>				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

*Only one measure per Record of Votes