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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-NINTH STATE LEGISLATURE
Regular Session of 2017

Wednesday, March 1, 2017
9:15 a.m.

WRITTEN TESTIMONY

**TESTIMONY ON SENATE BILL NO. 312, S.D. 1, RELATING TO OPEN
GOVERNMENT.**

TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Professional and Vocational Licensing Division (“PVLD”) of the Department and Consumer Affairs (“Department”) appreciates the opportunity to testify on Senate Bill No. 312, S.D. 1, Relating to Open Government. My name is Celia Suzuki, Licensing Administrator of the PVLD/DCCA. The PVLD offers the following comments in opposition to SECTION 1 of the bill.

The purpose of the measure is to: 1) require board packets to be filed in the board’s office for public inspection and provide notice that the board packet is available

to persons requesting notification of meetings and provide reasonably prompt access to the board packet to any person upon request, and if possible, accommodate requests for electronic access to the board packet; 2) require that oral testimony by interested persons at open meetings shall be allowed for each agenda item separately and at the time the item is first brought up for discussion; 3) require posting of the agenda notice on an electronic calendar on a website maintained by the State or the appropriate county; 4) require electronic postings of emergency meeting agendas, excluding the six calendar day requirement; and 5) clarify posting of meeting minutes; provided that a written summary shall accompany any minutes that are posted in a digital or analog recording format.

The PVLD opposes SECTION 1 of the bill. For the Committee's information, there are twenty-five (25) boards and commissions administratively attached to the Department. Most of the boards meet monthly, while others meet every other month or quarterly. The PVLD boards and commissions review hundreds of license and permit applications monthly and must ensure that all applicants meet the statutorily established requirements for licensure. We offer the following concerns:

- Compliance with Hawaii Revised Statutes chapter 92F will require board staff to essentially create two separate board packets; one for the general public and one for board members. This alone will add to the already taxing workload as public packets will require redaction of confidential information.

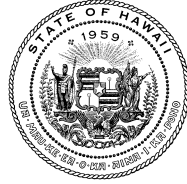
- Most of the information contained in board packets is confidential, and if sensitive information is posted or reviewed in error, the Boards, the Division/Department, and the State are subject to major liability to which they are currently not.

The PVLD acknowledges that the intent of the bill is to encourage public participation in government; however, the workload demands on staff will place a major strain on personnel.

Thank you for the opportunity to submit testimony in opposition to SECTION 1 of Senate Bill No. 312, S.D. 1.

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DEPUTY DIRECTOR

To: The Honorable Gilbert S.C. Keith-Agaran, Chair
and Members of the Senate Committee on Judiciary and Labor

Date: Wednesday, March 1, 2017
Time: 9:15 A.M.
Place: Conference Room 016, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: S.B. 312, S.D. 1, Relating to Open Government

The Department of Taxation (Department) appreciates the intent of S.B. 312, S.D. 1, and provides the following comments for your consideration.

Section 1 of S.B. 312, S.D. 1, requires that at the time any documents are distributed to board members, the documents are also made available to the public via electronic or a hard copy to all persons requesting the information.

Section 2 of S.B. 312, S.D. 1, requires all boards to allow oral testimony for each agenda item separately and at the time the item is first brought up for discussion at the meeting.

Sections 3 and 4 of S.B. 312, S.D. 1, requires the meeting notice to be posted on the electronic calendar on the State's website (State's electronic calendar) or the appropriate county's website, in addition to filing a notice with the Office of the Lieutenant Governor or the appropriate county clerk's office, no less than six days before the meeting. Failure to meet both filing requirements of the meeting notice will result in cancellation of the meeting.

Section 5 of S.B. 312, S.D. 1, requires that the minutes of board meeting be posted on the board's website maintained by the State or appropriate county. It requires a written summary to accompany any minutes that are posted in a digital or analog recording format. It allows minutes to be posted in draft form to meet the 30 days requirement. S.D. 1, is effective on January 1, 2018.

First, the Department notes that it provides administrative support to the Council on Revenues (COR) and the Tax Review Commission (TRC). The Department has concerns regarding the requirement set forth in Sections 3 and 4 that modifies section 92-7(b) and (c), and section 92-8 (a) and (b), Hawaii Revised Statutes, because the State's electronic calendar requires manual entry of the agendas. Manual entry of the agendas has led to non-substantive

and typographical errors in the past. It seems that this new requirement to post agendas to the State's master calendar could lead to cancellation of meetings based on an error as small as a typo or a missing word.

The COR and TRC are voluntary boards, which at times has made scheduling and rescheduling meetings challenging. By statute, the COR must meet and report to the Governor and Legislature during six prescribed meeting months. The Department has concerns that a minor error to the posting of the COR's agenda would require a meeting to be cancelled and rescheduled, possibly impacting their ability to meet during a month prescribed by statute. If the Committee wishes to advance this measure, the Department requests that posting the notice to the State's electronic calendar for both the COR and the TRC, be an option, rather than a requirement.

Second, Section 2 requires the allowance of oral testimony for each agenda item. The Department suggests that the Boards and Commissions retain flexibility as to when to accept oral testimony during the hearing. Given the various sizes of Boards and Commissions statewide, as well as the content and length of some of the Boards and Commissions, the Department believes it would be more efficient to defer to each Board and Commission as to when to accept oral testimony.

Lastly, the Department notes that is able to meet the requirements set forth in Sections 1 and 5 of this measure. However, there have been instances when board members brought documents to meetings that were not previously provided to the Department. In these cases, the Department will make copies for the attendees in a timely manner; if the Department is aware that a board member may bring other documents to the board meeting, the Department has asked that the board member bring enough copies of the materials for all attendees.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the Senate Committee on
JUDICIARY and LABOR**

**Wednesday, March 1, 2017
9:15 AM
State Capitol, Conference Room 016**

**In consideration of
SENATE BILL 312, SENATE DRAFT 1
RELATING TO OPEN GOVERNMENT**

Senate Bill 312 Senate Draft 1 proposes to increase transparency in government by including and encouraging electronic access to board packets, clarifying electronic notification requirements and requiring the electronic posting of board minutes. SD1 also requires that a written summary accompany any minutes that are electronically posted in a digital or analog recording format. **The Department of Land and Natural Resources (Department) electronically posts its board packets, agenda and minutes and offers the following comments.**

The Department has sixteen attached boards, commissions and committees. Most meet monthly and several have extensive board packets attached to their meetings. The Department has found that electronic posting is the most efficient and cost effective way to allow broad public access to meeting materials, agendas and meeting minutes. For example, agendas and board submittals for the Board of Land and Natural Resources (Board) are available on the Department's website at <http://dlnr.hawaii.gov/meetings/blnr-meetings-2017/>. Hard copies are also posted for public viewing at the Department's main office and district land offices.

However, the Department is concerned that language in SECTION 1 could require the Board to provide hard copies of the board packets upon request. The Department has estimated that the cost of copying and mailing the average board packet is roughly \$135,000 per year (see table below). For agenda items with broad public interest, it may not be possible for the Department to provide hard copies of the board packet prior to the meeting. Therefore, such a requirement could severely hamper the Board's ability to conduct its business.

The Department notes that it is working toward meeting the Americans with Disabilities Act requirements for electronic posting. The Department also notes that it supports the Office of Information Practice's suggestion that a task force be formed to address executive agency concerns.

The Department offers the following amendment on line 10, page 1:

At the time the board packet is distributed to the board members, the board shall file the board packet in the board's office for public inspection and provide notice to persons requesting notification pursuant to section 92-7(e) that the board packets are available. When the board packets are filed in the board's office, the board shall provide reasonably prompt **electronic** access to the board packet to any person on request. To the maximum extent feasible, the board shall accommodate requests for electronic access to the board packet.

Table showing estimated costs to mail packets to the 47 people who currently request hard copies of the Board's agenda:

Pages	Packets	Meetings	Copy costs	Postage costs	Total cost
250	47	22	0.5		\$ 129,250.00
	47	22		\$6	\$ 6,204.00
Total					\$ 135,454.00

In addition, the Department is concerned that the requirement of a written summary of the minutes would be burdensome, and subject to questions of interpretation. The minutes already take a significant amount of time to produce, and are provided so that each member of the public can read them directly to follow what happened.

Thank you for the opportunity to comment on this measure.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: March 1, 2017, 9:15 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 312, S.D. 1
Relating to Open Government

Thank you for the opportunity to submit testimony on this bill. The **Office of Information Practices (“OIP”)** supports **bill sections 3 and 4**, which would provide for electronic filing of notice of meetings under the **Sunshine Law**, part I of chapter 92F, HRS, with proposed amendments. With respect to **bill section 1**, which would require boards to file a board packet in the board office and disclose it upon request, **OIP would recommend that this Committee consider creating a working group of affected parties to work out the practical concerns raised by boards** during the interim so that legislation accounting for those concerns can be introduced the next session. **OIP takes no position on bill section 5**, 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, and recommends other clarifying amendments.** With respect to **bill section 2**, which would apparently require boards to take testimony public testimony immediately before board discussion of

each agenda item, **OIP has concerns as to whether the timing of public testimony should be set by statute rather than left to the discretion of boards.**

Board Packets:

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. Boards' agendas are required to describe all matters to be considered with enough specificity to allow members of the public to decide whether to attend a meeting and testify, but it seems likely that the level of information found in board packets will typically be considerably more specific than what would be contained in an agenda description.

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. Some boards, such as the Board of Land and Natural Resources and Board of Education, are already in the habit of voluntarily posting board packets prior to meetings. Other boards, however, have testified that they **do not have the staff to do the work** in the relevant timeframe. Under the bill, **if boards fail to meet their new obligations or inadvertently release**

confidential information, the procedural failures may become the basis for potential liability and/or substantial litigation seeking to overturn the boards' action.

In light of these concerns, **OIP recommends that this Committee create a working group, including board representatives and other affected parties, to work out practical solutions during the interim** so that board packet legislation adequately resolving administrative concerns can be introduced in the 2018 session.

Timing of Testimony

The Sunshine Law currently does not specify when during a meeting a board must hear public testimony, and **OIP has opined that a board may take public testimony at any time before the board begins its discussion, so that it will have heard from the public before conducting its deliberations and decisionmaking.** OIP Op. Ltr. No. 06-01. Hearing public testimony only after the board's own discussion would not be consistent with the law, as testimony by definition must be heard prior to a decision. Like legislative hearings, the Sunshine Law does not require boards to engage in a debate with testifiers or allow testifiers to rebut others' testimony. Consequently, OIP has long advised boards that they **may hear all testimony at the beginning of the meeting, so long as each testifier is given a reasonable amount of time to speak on each item that he or she would like to testify on.** This process gives boards the flexibility to manage their meetings efficiently and allows people who may have to go to work to present testimony at the scheduled start of a meeting, without having to wait until an indefinite time, possibly hours later, to testify.

Bill section 2, however, would require testimony to be taken on each agenda item immediately before the board's discussion of the item by fixing the time for hearing public testimony at "the time the item is first brought up for discussion at the meeting." While it is ultimately a policy call for the Legislature to decide whether the timing of public testimony in board meetings should be fixed by statute, OIP is concerned that this proposal will take away flexibility for boards to manage their meetings efficiently, would make it difficult for boards to accommodate testifiers who prefer not to remain for what could be hours long meetings, and may ultimately discourage people from testifying at meetings.

Electronic Notice:

OIP supports the electronic notice provisions in bill sections 3 and 4. The Sunshine Law's notice scheme is still essentially the same as it was when the law was first passed in 1975, as 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 3 and 4 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. 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.

Boards testifying on other versions of this bill have expressed concern that adding a new official filing method, while still keeping the old one, increases the opportunities for filing errors that could require cancellation of a meeting. To address those concerns, while allowing people accustomed to checking paper notices to continue to do so, **OIP recommends amendments to this section that would have electronic notice replace paper notice as the official filing method, rather than being an additional official method. The proposed amendments would still require boards to provide a copy of the notice to the Office of the Lieutenant Governor (OLG) or County Clerk, who would post the notices in a central location as is currently done, but a failure in this process would not require cancellation of the meeting.** The language of the amendments is also open-ended enough to allow the OLG or County Clerk to eventually post notices in a central location on a monitor showing the electronic calendar, rather than posting notices in paper format. OIP recommends an effective date of July 1, 2018 for the electronic notice provisions, in order to give the OLG, county clerks, and boards time to adjust to the new requirements.

For people who do not have access to computers or prefer a written notice, the bill retains the Sunshine Law's requirement to **mail meeting notices to persons upon request. Electronic notices** could also be provided by having requesters simply sign up for automatic notifications from the state or county electronic calendar whenever meeting notices are posted by boards they are interested in. Additionally, it would be possible to electronically link to other

matters that may be on a meeting notice, such as drafts of rules being considered for adoption or revision by a board.

OIP supports the bill, with amendments, to provide people with more timely and cost-effective notice of meetings.

Minutes Online:

Bill section 5 contains (1) a proposed requirement that **board minutes be publicly posted online** rather than merely “available” to the public within 30 days after the meeting, which is something not required by current law; (2) a requirement that a “**written summary** shall accompany any minutes that are posted in a digital or analog recording format;” and (3) a proviso that minutes may be posted in **draft** form.

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 current 30-day deadline for boards to have their minutes prepared. To allow boards the same amount of time they currently have to prepare minutes, OIP recommends that 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 July 1, 2018 to allow boards time to prepare for these statutory changes.

With respect to the bill’s changes to the requirement for minutes, OIP notes that minutes are already required by the Sunshine Law to be in “written” form and that they “shall give a true reflection of the matters discussed at the meeting and the views of the participants.” Section 92-9, HRS. OIP has interpreted the Sunshine Law as requiring boards, upon request, to provide draft minutes, even if the board has not approved them.

The bill is confusing because is applicable to “minutes . . . in a digital or analog recording format,” which would not actually qualify them as minutes because they would not meet the statutory requirement of being “written.” It is also not clear whether the “written summary,” which shall accompany the digital or analog recording, will meet the standards for the minutes currently required by the Sunshine Law. The proviso that minutes may be posted in draft form is also confusing, as the Sunshine Law does not require boards to approve minutes or otherwise take action to make them final, and indeed makes no distinction between draft and final minutes. It is therefore unclear whether the permission for boards to post “draft” minutes to meet the deadline is intended to allow boards to post minutes that are incomplete or include errors inconsistent with the requirements of section 92-9, HRS. If the bill intends to allow posting of incomplete minutes, it is also unclear whether a board is required to post legally adequate minutes at some later date. OIP would recommend that the language relating to minutes in a recording format and minutes posted in draft form be deleted, to avoid confusion.

In conclusion, a proposed SD1 with OIP's suggested amendments is attached, which may be summarized as follows:

(1) amend bill section 1 to instead **create a working group** to find solutions to the potential administrative burden created by a board packet disclosure requirement, so that legislation creating such a requirement can be introduced in 2018;

(2) **pass out the electronic notice provisions in bill sections 3 and 4 with amendments, effective July 1, 2018 to give the OLG, County Clerks, and boards time to adjust; and**

(3) if inclined to pass out the online minutes proposal in bill section 5, **allow boards 40 days after a meeting to post the minutes online and delay section 5's effective date to July 1, 2018 to give the boards time to adjust to the new requirements, and delete language relating to minutes in a "recording format" and draft minutes.**

The proposed SD1 language does not include bill section 2, statutorily fixing the timing of public testimony, and removing the board's discretion to do so. Thus, if this Committee is inclined to adopt that provision, it should be inserted after section 1 and the remaining sections renumbered.

Thank you for considering OIP's testimony.

SECTION 1. (a) There shall be convened by the president of the senate, a board packet working group to develop board packet disclosure requirements that will meet the public's interest in greater disclosure of board meetings.

(b) The working group shall consist of the following members:

- (1) The chair of the senate committee on government operations;
- (2) The chair of the senate committee on judiciary and labor;
- (3) The director of the office of information practices, or the director's designee;
- (4) A representative of the professional and vocational licensing division of the department of commerce and consumer affairs, appointed by the director of commerce and consumer affairs;
- (5) A representative of the department of land and natural resources, appointed by the chairperson of the board of land and natural resources;
- (6) Four members, each representing one of the four counties, appointed by the mayor of the respective county; and
- (7) One member of the public, appointed by the president of the senate in consultation with the chair of the senate committees on government operations and on judiciary and labor.

(c) The working group shall not be required to vote on actions taken, shall not be subject to quorum requirements, and shall not be subject to part I of chapter 92, Hawaii Revised Statutes.

(d) The working group shall research current board packet disclosure requirements, including any concerns or issues raised by the general public regarding compliance with these requirements, and develop proposals for board packet disclosure

requirements. Proposals for board packet disclosure requirements shall take into consideration:

- (1) Public interest in the disclosure of board packets containing meeting materials and information regarding topics being given consideration at board meetings;
- (2) Information that may be withheld from inclusion in the board packets, including matters to be discussed in executive session;
- (3) Limitations of administrative burdens that would have a negative impact on the effectiveness and efficiency of the board and board meetings;
- (4) The necessity and cost of hiring additional staff to meet staffing needs for the provision of board packets;
- (5) Any other costs associated with the provision of board packets, including copying costs and administrative costs;
- (6) Any funding needs to implement the proposals; and
- (7) Any other considerations the working group deems to be relevant.

(e) The working group, with the assistance of the legislative reference bureau, shall submit a report of its findings and recommendations, including any proposed legislation, to the legislature no later than twenty days prior to the convening of the regular session of 2018.

(f) The members of the working group shall serve without compensation but shall be reimbursed for expenses, including travel expenses, necessary for the performance of their duties.

(g) No member of the working group shall be subject to chapter 84, Hawaii Revised Statutes, solely because of the member's participation in the working group.

(h) The working group shall be dissolved on June 30, 2018.

SECTION 2. Section 92-7, Hawaii Revised Statutes, is amended to read as follows:

"§92-7 Notice. (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda [~~which~~] that lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

(b) [~~The~~] No less than six calendar days prior to the meeting, the board shall [file the notice in the office of the lieutenant governor or the appropriate county clerk's office,] post the notice on an electronic calendar on a website maintained by the State or the appropriate county and in the board's office for public inspection[~~, at least six calendar days before the meeting~~]. The notice shall also be posted at the site of the meeting whenever feasible. The board shall provide a copy of the notice to the office of the lieutenant governor or the appropriate county clerk's office at the time the notice is posted, and the office of the lieutenant governor or the appropriate county clerk's office shall post paper or electronic copies of all meeting notices in a central location in a public building, provided that a failure to do by the board or the office of the lieutenant governor or the appropriate county clerk's office shall not require cancellation of the meeting.

(c) If the written public notice is [~~filed in the office of the lieutenant governor or the appropriate county clerk's office~~] electronically posted on an electronic calendar less than six calendar days before the meeting, [the lieutenant governor or the appropriate county clerk shall immediately notify the chairperson of the board, or the director of the department within which the board is established or placed, of the tardy filing of the meeting notice. The] the meeting shall be canceled as a matter of law[, the] and shall not be

held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting[, and no meeting shall be held.]. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time stamp upon request.

(d) No board shall change the agenda [~~, once filed,~~] less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

(e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to such persons by the means chosen by such persons at their last recorded postal or electronic mail address no later than the time the agenda is [~~filed~~] required to be electronically posted under subsection (b)."

SECTION 3. Section 92-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are [~~filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office;~~] electronically posted pursuant to section 92-

7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply; and

- (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

- (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
- (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
- (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are [~~filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office;~~] electronically posted pursuant to section 92-7(b); provided that the six calendar day requirement for filing and electronic posting shall not apply;
- (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and
- (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7."

SECTION 4. Section 92-9, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

"(b) The minutes shall be made available to the public [~~records and shall be available~~] by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within [~~thirty~~] forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(c) All or any part of a meeting of a board may be recorded by any person in attendance by [~~means of a tape recorder or~~] any [~~other~~] means of [~~some~~] reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting."

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect on July 1, 2018, except that section 1 shall take effect upon approval.

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

RE: Testimony Supporting S.B. 312 S.D. 1, Relating to Open Government
Hearing: March 1, 2017 at 9:15 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 government transparency. Thank you for the opportunity to submit testimony **strongly supporting S.B. 312 S.D. 1**.

S.B. 312 S.D. 1 is critical legislation to bring our open meetings law into the 21st Century. During the interim since last legislative session, the Law Center has worked to understand the concerns of boards and commissions to modernizing the Sunshine Law. The Internet and e-mail are pervasive features of the public's everyday routine, but our open meetings law continues to have antiquated provisions about postal mail and "sonic" recordings. This bill balances the concerns previously raised by boards with the reality of our modern electronic life.

Section 1: Board Materials

Our society cannot expect the public to participate and testify at Sunshine board meetings, unless the board educates the public—as it does its board members—concerning the matters that will be discussed at open meetings. Requiring public access to board packets before the meeting is essential. The logistics of automatically disseminating this information, however, could prove difficult in some instances. To minimize the burden on boards and commissions, S.B. 312 S.D. 1 requires filing board packets in the board's office and making the packets *available on request as promptly as possible*.¹

Section 2: Testimony Per Agenda Item

This section would reverse a trend at Sunshine boards of taking all testimony at the beginning of a meeting, rather than when the issue comes up on the agenda.

¹ The prompt disclosure provision is necessary to shorten the existing 10 business day response time under the State of Hawai'i Office of Information Practices regulations concerning public records, so that materials would be accessible *before* the meeting.

Section 3 and Section 4: Notices on the Internet and by E-mail and Notice of Emergency Meetings

These sections ensure that interested persons receive timely notice of meetings using modern technology. Most, if not all, boards post meeting notices on an appropriate State or county website; for more than 5 years, it has been a requirement for all State boards through Executive Memorandum No. 11-11. And many boards already have e-mail distribution lists for meeting notices because it is cheaper and more efficient than postal mailings.

Section 3 also provides boards more flexibility to amend agendas if filed more than six days before a meeting. Current law discourages boards and commissions from filing an agenda before the Sunshine 6-day deadline because once filed, the agenda cannot be amended absent extreme circumstances. Earlier notice of open meetings serves the public, and boards should be able to freely amend agendas as long as the public knows everything that will be discussed at least six days ahead of the meeting.

Section 5: Minutes on the Internet and Permission to Record Meetings

Boards must have publicly accessible minutes *on request* within 30 days of a meeting. OIP Op. No. 02-06. S.B. 312 S.D. 1 requires that a board post that public record on the Internet, rather than wait for a request from the public. The actions of government boards should be timely accessible to interested members of the public without the need for a public records request; it is physically impossible to follow government operations by attending all board meetings in person.

Section 5 also eliminates the Sunshine Law's archaic reference authorizing the public only to make "sonic reproductions" of an open meeting.

* * *

We note that S.B. 1277 also would amend HRS § 92-9. **To avoid inadvertent inconsistencies, it would be helpful if the amendments to S.B. 312 mirrored the amendments proposed in S.B. 1277.**

Thank you again for the opportunity to testify.



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

03/01/2017 at 9:15 AM in Room 016
SB312 SD1 – Relating to Open Government

TESTIMONY — SUPPORT
Corie Tanida, Executive Director, Common Cause Hawaii

Dear Chair Keith-Agaran, Vice Chair Rhoads, and members of the committee:

Common Cause Hawaii supports SB312 SD1 which would allow the public to access board packets, clarifies public notification requirements of board meetings, and adds emergency meetings to public meeting notice requirements.

We believe that an educated, engaged citizenry is crucial to a thriving democracy. By making information more accessible to the public, we can take a step toward fostering greater public dialog between policy makers and the public on pressing issues that affect Hawaii.

Thank you for the opportunity to offer testimony **supporting SB312 SD1**.



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Senate Committee on Judiciary and Labor
Wednesday, March 1, 2017, 9:15 AM, Conference Room 016
SB 312, SD 1 Relating to Open Government

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 supports SB 312, SD 1 which improves public notice of board meetings, public access to documents to be discussed at board meetings, and public access to board meeting minutes.

SB 312, SD 1 will help to resolve chronic public complaints about boards which:

1. fail to provide timely electronic notice of board meetings.
2. require the public to present testimony on all agenda items before the public has opportunity to review board submittals to be discussed.
3. delay public disclosure of board submittals until after completion of board meetings at which the submittals are discussed.
4. procrastinate preparation and/or disclosure of board minutes beyond 30 days.

We recommend that you amend SB 312, SD 1, Section 5 to use wording consistent with SB 1277, SD 2.

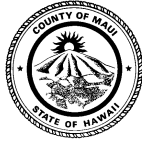
Thank you for the opportunity to submit testimony.

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

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February 27, 2017

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
Senate Committee on Judiciary and Labor

FROM: Mike White
Council Chair 

SUBJECT: **HEARING OF MARCH 1, 2017; TESTIMONY OFFERING COMMENTS ON SB 312, SD 1 RELATING TO OPEN GOVERNMENT**

Thank you for the opportunity to testify and offer comments on this measure. The purpose of this measure is to authorize the electronic mailing of meeting notices and provide other requirements for the posting and availability of agenda packets to the public.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

In the bill, Section 2.92-3 is amended to read:

“The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item[.]; provided that oral testimony shall be allowed for each agenda item separately and at the time the item is first brought up for discussion at the meeting. The boards may provide for reasonable administration of oral testimony by rule.”

While I appreciate the intent of the measure, the **added language under this section is not needed** and will cause unnecessary restriction to boards, such as county councils, in the conduct of their business.

For the Maui County Council, testimony on any or all agenda items is permitted at the start of each meeting with time allotted separately for each item. This offers convenience as testifiers avoid waiting through the board’s discussions. The amendment may cause an unintended consequence of discouraging public participation and testimony due to time restraints.

On the Maui County Council’s February 17, 2017 agenda, 44 separate items were posted for discussion. If this requirement was to be implemented, the council would be required to stop and ask for testimony before all 44 items.

It is best to leave the administration of oral testimony entirely to the board, who has authority and knowledge of anticipated number of testifiers and length of time needed to cover all agenda items. If necessary, boards already have the option to take testimony item by item. However, forcing such a restriction would cause frustration and unnecessary hardship.

Mahalo for your consideration.