

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 21, 2019, 10:00 a.m.  
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 748  
Relating to Board Members

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Thank you for the opportunity to submit testimony on this bill, which would explicitly permit two or more members of a board to jointly attend a State of the State, State of the City, State of the County, or State of the Judiciary address. **The Office of Information Practices (OIP) supports the intent of this measure, but suggests an amendment to clarify that this permission covers only discussions of board business that occur during and as part of the event, and that no commitment to vote shall be made or sought.**

When members of a county council or other board subject to part I of chapter 92, the Sunshine Law, attend a State of the State or State of the County or similar address together, they may find themselves listening together to proposals that will be coming before their board in the foreseeable future and thus are potentially board business. For instance, if the Board of Education were sitting together listening to the Governor propose a new plan for education that would require their approval, or if a County Council were sitting together listening to the Mayor propose building a new County facility that would require their approval, someone could potentially argue that in doing so they were part of a discussion of

board business in violation of the Sunshine Law, especially if the board members made comments to one another or even reacted in nonverbal ways such as by clapping. This proposal would make it clear that board members' joint attendance at largely ceremonial events such as these is permitted under the Sunshine Law even when it arguably involves discussion of board business.

**Given the highly public and ceremonial nature of such addresses, OIP believes it is appropriate for board members to be able to jointly attend them** and to exchange occasional remarks, clap when appropriate, and otherwise jointly participate in the event. For that reason, OIP supports the intent of this bill. However, **OIP recommends an amendment** to limit any discussion of board business to discussions during and as part of the event, and to make clear that no commitments to vote may be made or sought, similar to the restrictions found in other permitted interactions. **The following language, to replace bill page 5 lines 14-16, would accomplish this:**

**(i) Two or more members of a board may attend a state of the city, state of the county, state of the State, or state of the judiciary address; provided that no discussion of board business by board members occurs except during and as part of the event; and provided further that no commitment to vote is made or sought by board members.**

Thank you for the opportunity to testify.

THE CIVIL BEAT  
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Senate Committee on Judiciary  
Honorable Karl Rhoads, Chair  
Honorable Glenn Wakai, Vice Chair

**RE: Testimony Commenting on S.B. 748, Relating to Board Members**  
Hearing: February 21, 2019 at 10:00 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 governmental transparency. Thank you for the opportunity to submit **comments on S.B. 748**. This bill should be deferred or clarified.

The Sunshine Law regulates “meetings”. In other words, it imposes requirements when *board members are discussing board-related business*. On its face, this bill does not address board members discussing board business; it only concerns board members attending an event at which others (mayor, governor, or chief justice) will speak. The permitted interactions specified in HRS § 92-2.5 broadly concern permission for discussions *amongst board members*, not mere attendance at events.

The Law Center is not aware of OIP guidance that would prohibit board members from simply attending an event at which no board member will be speaking. The Sunshine Law currently does not prevent board members from being in proximity to each other outside a duly noticed meeting. If the Legislature starts to regulate what events board members may “attend”, then the Sunshine Law will need significant amendment.

If the intent of this measure is to permit board members to discuss board business at the specified events, then it must be amended to make that intent clear. In addition, protections – *e.g.*, the limitations in HRS § 92-2.5(e) – should be added to protect the public interest.

Thank you again for the opportunity to testify.