



UNIVERSITY OF HAWAII

BOARD OF REGENTS

Testimony presented before the
Senate Committee on Higher Education
April 15, 2019 at 2:00 p.m.

by
Kendra Oishi
Executive Administrator and Secretary of the Board of Regents

S.R. No. 134, Proposed S.D.1 – URGING THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII TO FOLLOW AND ABIDE BY THE PUBLIC NOTICE REQUIREMENTS FOR ITS MEETINGS PURSUANT TO CHAPTER 92, HAWAII REVISED STATUTES.

Chair Kim, Vice Chair Kidani, and members of the Committee:

The Office of the Board of Regents (Board Office) offers the following comments on the objectives of this resolution. The Board of Regents already abides by the public notice requirements for meetings pursuant to Chapter 92, Hawaii Revised Statutes (HRS).

The Board Office follows the public meeting notice requirements prescribed under section 92-7, HRS, which requires notice to be posted on the State's electronic calendar and that notice be provided to the Office of the Lieutenant Governor no less than six calendar days prior to the meeting. The processes that the Board Office employs pushes the University Administration to provide all materials and settle agenda items in time so that the agendas can be published and materials can be made publicly available early enough to at least meet the six calendar days requirement.

In addition, while the recommendation to record more detailed minutes of meetings is laudable, the minutes of all Board of Regents meetings and committee meetings conform to the standards under section 92-9, HRS. The minutes of the committees and full board are already quite detailed and present discussions, questions, answers, and topic summary that are in greater depth than the statute requires. As a matter of illustration, the average length of minutes for Board of Regents meetings held over the past year are between 13-15 pages long.

Thank you for the opportunity to testify on this measure.

SENATE COMMITTEE ON HIGHER EDUCATION
AMENDED NOTICE OF HEARING

DATE: Monday, April 15, 2019
TIME: 2:00 PM
PLACE: Conference Room 414
State Capitol
415 South Beretania Street

Personal Testimony of Jim Shon: SUPPORTING SR 134 SD1

URGING THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII TO FOLLOW AND ABIDE BY THE PUBLIC NOTICE REQUIREMENTS FOR ITS MEETINGS PURSUANT TO CHAPTER 92, HAWAII REVISED STATUTES. (PROPOSED SD1)

Members of the Committee,

In the 1970s as a member of the newly created Common Cause Hawaii, Lobbied for passage of our Sunshine Law.

Chapter 92-1 Reads:

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes *to public scrutiny and participation* is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) **The provisions requiring open meetings shall be liberally construed;** and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

Since the 1970s I have testified at scores of boards and commissions. I strongly support and appreciate the efforts of Common Cause and the Civil Beat Center on Law in its ongoing efforts to open up our democracy. It has, candidly, been an ongoing struggle to hold the State and its boards to the spirit and intended letter of the law.

My observations and hopefully constructive suggestions apply to the Board of Regents and many other Boards. Chapter 92 tells you what is the MINIMUM requirement.

However, it is worth considering what is the BETTER POLICY to improve public trust, appreciation, and participation in the essential and good work of the Regents and other Boards.

1. PARTICIPATION. While much of Chapter 92 focuses on the right of the public to observe decision making, it also includes our right to **participate**. This means that it is not enough, in my personal view, to allow people to sit and watch. It is not enough, especially if the public address system is not working. It is not enough to confine public testimony to the beginning of the agenda, before anyone can hear staff presentation and board discussion. It is not enough to withhold public posted testimony until the last minute, preventing the community from knowing and perhaps responding to other voices and views. (Testimony should be posted as soon as it is received.)

Just as the public can testify on each and every legislature bill before a committee (not all at once for all bills at the beginning), so it should be for board agenda items. It is not enough for a consequential, constitutionally created board to confine its public testimony to those *physically present* when we have the technology to allow for public testimony via telecommunications feeding directly into the Board room. (Even in the 1990s Senator Andy Levin and I held the first Interisland teleconferenced public hearings.) And, I would argue, it is really not in the spirit of Chapter 92 to cut off public testimony at an arbitrary 2 or 3 minutes, even if there are only one or two individuals providing public testimony. Time management of Agendas hopefully would not be such that members are discouraged from asking questions of the public testifies simply because there is no time.

2. SETTING THE FUTURE AGENDAS. It would also be refreshing if each BOR agenda also included the following item: *Suggestions and Discussion of future Agenda Items*. This became an important issue for the Board of Education, which continues the tradition of many boards to prohibit this discussion, and to prohibit public testimony suggesting future agenda items. Future agenda items seems to be the purview of only the Chairs, and not even members. A proactive embracing of the importance of public testimony, especially from students, faculty, other staff, and the community, would send an important and concrete message that a board values and respects a broader participation. It is also very important that this agenda item be broad enough for any topic to be raised for a future board agenda, with particular attention to whether it should be an Action Item. In the past, I have seen important issues raised for discussion, but our AGs telling a board, you can talk but you cannot act. You cannot authorize a letter or communication to the Governor or anyone else. If it is not an Action Item, it is limited. Not all agenda items need be talked to death, and not all Action Items require action: it is an option. It can be tabled.

3. POSTING OF NOTICES ON TIME. It is only logical that if a Regents meeting is being held at 9am on a Thursday, the notice and official materials would appear six days before, at 9am. However, OPI in 2006 ruled that a Court case determined the definition of “day” so that technically a Thursday meeting notice need not appear until midnight, on the previous Friday!!! This was the reason for my raising the issue as to whether the posting was too late to comply with the law. For all those who do not work on the weekends, this means many would not see this notice until the following Monday. This is precisely the kind of legalese that diminishes the public’s faith in government. Regardless of the Court’s determination, *a sincere and open process would make every effort to do it better, not only what is technically required.*

Thus, while it may be technically within the law for the BOR to NOT post a notice until midnight, I would argue this is not an acceptable behavior by any board that honors and respects public input. Whether the law needs to be changed is your call. But how to better invite valued public participation can be a matter of policy.

In this day of digital communications, and with known public meeting dates well in advance, and with a multi-island higher education system, it should not be too difficult to **adopt the policy** that notices and materials be available six full working days before the TIME of the meeting.

In addition, if the Legislature can arrange for individuals to receive a notification through email of a public hearing, is it not reasonable that the Board of Regents and others could establish the same system for those who sign up? Thus, as soon as a notice is ready to go, I would receive an email, just as I do for any legislative hearing in committees I follow.

The issue of notices and agendas becomes even more crucial for the various BOR Committees, for more often than not the framing and deciding of issues is done at this level, and typically ratified at the General Board meetings. Again, while this resolution focuses only on the Board of Regents, the issue is a chronic one extending to a casual attentiveness toward public input demonstrated by many boards covered by Chapter 92.

Thank you for consideration of these remarks.

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Senate Committee on Higher Education
Honorable Donna Mercado Kim, Chair
Honorable Michelle N. Kidani, Vice Chair



RE: Testimony Commenting on S.R. 134 Proposed S.D. 1
Hearing: April 15, 2019 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 **with comments on S.R. 134 Proposed S.D. 1**.

In addition to the concerns raised in the Proposed S.D. 1, the Law Center recently identified two other Sunshine Law compliance issues with the University of Hawai'i Board of Regents.

First, the Board's agenda notices imply that individuals must pre-register to testify.¹ At best, the Board's language has a chilling effect on the right of "all interested persons" to testify on matters before the Board. HRS § 92-3. At worst, if the Board denies anyone who has not registered the right to testify, it violates the Sunshine Law. OIP Op. No. 02-02 at 3-6 ("the OIP is of the opinion that to disallow testimony from anyone who has not signed up by a specific time would be contrary to a basic policy of the Sunshine Law.").

Second, the Board has been delinquent in posting some form of meeting minutes on the Internet within 40 days. HRS § 92-9(b). As two current examples among several, no minutes have been posted for the November 27, 2018 meeting of the Research and Innovation Committee or the December 19, 2018 meeting of the Independent Audit Committee of the Board. <http://www.hawaii.edu/offices/bor/archive/>. The Board may post draft minutes or notes from the meeting, but it cannot let months pass without posting some public record of what happened at a meeting.

Thank you again for the opportunity to testify concerning S.R. 134 Proposed S.D. 1.

¹ The agendas read: "Registration for oral testimony on agenda items will be provided at the meeting location 15 minutes prior to the meeting and closed once the meeting begins."

LATE

SR-134

Submitted on: 4/14/2019 6:21:21 PM

Testimony for HRE on 4/15/2019 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dylan P. Armstrong	Testifying for Oahu County Committee of the Oahu County Democrats	Support	No

Comments: