

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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To: Senate Committee on Public Safety, Intergovernmental,
and Military Affairs

From: Cheryl Kakazu Park, Director

Date: February 11, 2021, 1:30 p.m.
Via Videoconference

Re: Testimony on S.B. No. 720
Relating to County Council Meetings

Thank you for the opportunity to submit testimony on this bill, which would add a permitted interaction under the Sunshine Law, part I of chapter 92, HRS, allowing a county council to go into recess and all talk together off the record, or “caucus” as stated in the bill description. The Office of Information Practices (OIP) **strongly opposes** this bill.

In addition to being off the record, these discussions could be, and probably would be, held either in another room or with council members huddling together with microphones off and out of public earshot. The clearly foreseeable effect of this bill is to allow council members to do their real discussions and negotiations privately, and use the public meeting for their ceremonial acceptance of testimony and calling of the vote. Such action **runs directly counter to the Sunshine Law’s stated intent “to protect the people’s right to know” and “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.”**

Far from being a minor exception to the Sunshine Law's usual open meeting requirement, **the proposed permitted interaction would rip the heart out of the Sunshine Law's policy** of opening up government decisionmaking, and for county councils would reduce the law to a requirement to announce and keep a record of council decisions that were previously hashed out in private. Rather than enact such a major rollback of public access to county council decisionmaking, contrary to the Sunshine Law's stated policy and intent, **OIP recommends this Committee hold this bill.**

Thank you for considering OIP's opposition to this bill.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
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Senate Committee on Public Safety,
Intergovernmental, and Military Affairs
Honorable Clarence K. Nishihara, Chair
Honorable J. Kalani English, Vice Chair

RE: Testimony Opposing S.B. 720, Relating to County Council Meetings
Hearing: February 11, 2021 at 1:30 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 **strongly opposing S.B. 720**. This bill should be deferred.

This bill exempts county councils from the core purpose of the Sunshine Law. The public will no longer have the opportunity to observe councilmembers debate proposed legislation. Elected representatives should discuss and decide public policy in public, not backrooms.

Moreover, the informal reference in the report title and description to this exemption as a caucus is misleading. A caucus is a partisan assembly for internal discussion of how the caucus will approach its common interest. County councils are not partisan assemblies. Councilmembers represent the public and must be accountable to the people who elected them for the views that they express. This bill takes away the ability of a citizen to know what their elected councilmember is doing.

Thank you again for the opportunity to testify.

Statement Before The
SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Thursday, February 11, 2021

1:30 PM

Via Videoconference

in consideration of

SB 720

RELATING TO COUNTY COUNCIL MEETINGS.

Chair NISHIHARA, Vice Chair ENGLISH, and Members of the
Senate Public Safety, Intergovernmental, and Military Affairs Committee

Common Cause Hawaii opposes SB 720, which authorizes county council members to caucus during official council meetings.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization focused on upholding the core values of American democracy through increasing open government and government transparency and accountability.

The Sunshine Law, Hawaii Revised (HRS) Chapter 92, ensures that public policy and decision-making are conducted as openly as possible for the people have the right to know and authority in our democracy.

SB 720 would provide, at page 5, lines 14-16, that “[t]he presiding member of a county council meeting may temporarily recess the meeting, during which the members may conduct discussion off the record”. This rule would effectively exempt county councils from Sunshine Law requirements when the council is in session and render the Sunshine Law moot. Public transparency would not be served.

Thank you for the opportunity to testify in opposition to SB 720. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



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SENATE COMMITTEE ON PUBLIC SAFETY, INTERGOVERNMENTAL, AND MILITARY AFFAIRS

Thursday, February 11, 2021, 1:30 pm, Videoconference
SB 720, Relating to County Council Meetings

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Nishihara and Committee Members:

The League of Women Voters of Hawaii strongly opposes SB 720.

The Sunshine Law currently requires that county councils conduct the public's business in public. The law guarantees the public both advance notice and the opportunity to listen to all discussions and decisions by a county council quorum. And we like it that way. In contrast, SB 720 provides that "The presiding member of a county council meeting may temporarily recess the meeting, during which the members may conduct discussion off the record." In other words, without public notice, a council quorum could abruptly recess and hold an off-the-record discussion of anything they liked. And at the off-the-record discussion, there would no public audience, no agenda, no minutes, and no restrictions upon vote-trading or seeking of voting commitments.

Thank you for the opportunity to present testimony.



Big Island Press Club

Since 1967, protecting the public's right to know

Big Island Press Club
P.O. Box 1920
Hilo, Hawaii 96721

CONTACT:
info@bigislandpressclub.org

8 February 2021

Senate Committee on Public Safety, Military and Intergovernmental Affairs
From: John Burnett, Immediate Past President, Big Island Press Club

In STRONG OPPOSITION of SB 720, Relating to County Council Meetings

The Big Island Press Club, Hawaii's oldest press club, is in strong opposition of SB 720, Relating to County Council Meetings.

This bill, through the insertion of a single paragraph to HRS Chapter HRS 92-2.5, Section 1, will, if passed and signed into law, all but eviscerate the state's Open Meetings Law, also known as the "Sunshine Law," as it relates to County Council meetings in Hawaii's four counties.

The proposed addition to the law, paragraph (i) of Section 1 of HRS Chapter 92-2.5 reads "The presiding member of a county council meeting may temporarily recess the meeting, during which the members may conduct discussion off the record."

The law as it stands does not allow for a number of members that would constitute the quorum of a County Council to discuss any matters other than those relating to litigation and confidential personnel matters privately, out of earshot of the public.

This measure, if it becomes law, would return County Council meetings to the days of private deal making in the metaphoric "smoke-filled back room." The bill seeks to deprive the public of a significant piece of its right to know how government is or isn't acting in the public's best interest, and to strip away accountability by council members, and the Council itself, to its constituents.

The Legislature, in all its wisdom, penned this enabling language when it crafted Hawaii's vaunted Uniform Information Practices Act: "In a democracy, the people are vested with the ultimate decision-making power. Government agencies exist to aid the people in the formation and conduct of public policy. Opening up the government 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 government agencies — shall be conducted as openly as possible.”

Granting County Councils the ability to conduct off-the-record discussions at will during a meeting recess called by the presiding member of the body is a breach of public trust, and runs counter to Abraham Lincoln’s vision and promise of “government of the people, by the people, for the people.”

I thank you for the opportunity to testify in strong opposition of SB 720 Relating to County Council Meetings.



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

9 February 2021

Senate Committee on Public Safety, Intergovernmental, and Military Affairs

From: Nancy Cook Lauer, publisher, All Hawaii News

www.allhawaiinews.com nclauer@gmail.com 808.781.7945

In **STRONG OPPOSITION** to SB 720, RELATING TO COUNTY COUNCIL MEETINGS.

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, strongly opposes SB 720, Relating to County Council meetings.

There's a common saying that the exception proves the rule. But in this particular case, the exception consumes the rule. If this exemption is allowed, there is scarcely a reason to have a Sunshine Law at all, and it would be a farce to continue referring to it as such.

This bill would add this exemption to our vaunted state Sunshine Law:

(i) The presiding member of a county council meeting may temporarily recess the meeting, during which the members may conduct discussion off the record."

The Legislature expressly declared in statute that "it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and actions of governmental agencies—shall be conducted as openly as possible."

There are already exemptions when a County Council can meet and have discussions off the record, such as when discussing private personnel matters and litigation strategies. This proposed open-ended exemption to allow off-the-record debates – without even an attempt at rationalizing it -- is simply bad for the people and bad for government.

Mahalo nui for holding this bill and continuing to promote government transparency.

SB-720

Submitted on: 2/11/2021 9:42:44 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Hanalei Fergerstrom	Testifying for Na Kupuna Moku O Keawe	Oppose	No

Comments:

We are in OPPOSITION to SB720...we feel this is a slippery slope that counters the intent of the Sunshine Laws.

SB-720

Submitted on: 2/8/2021 11:24:02 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Oppose	No

Comments:

This is a frontal attack on the Sunshine Law. Conduct discussion off the record. Really!! What makes you think they won't reach a decision and the public will be left with a fait accompli? This lets them act in secret, like the old days of smoke filled rooms in the late night early morning hours with the public excluded. Because of COVID it became easier for the public to participate, and now this brutal march backwards.

SB-720

Submitted on: 2/8/2021 12:53:16 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Philip T. Rapoza	Individual	Oppose	No

Comments:

I oppose



Feb. 11, 2021

Sen. Clarence K. Nishihara
Senate Committee on Public Safety, Intergovernmental and Military Affairs
State Capitol
Honolulu, HI 96813

Re: Senate Bill 720

Chairman Nishihara and Committee Members:

We oppose this bill.

No county council should be allowed, without restriction, to discuss any part of public's business in secret outside of the regular meeting. This would create the real possibility that crucial information now discussed before the public would now be buried in secret proceedings.

There is the mention of caucus in the report title. Caucuses are done by political party; county council members run on a nonpartisan basis so there is no authentic reason for them to meet in caucus.

County councils have specified instances where they can meet in secret. There is no need for this measure.

Thank you for your attention,

Stirling Morita
President
Hawaii Chapter SPJ

LATE

SB-720

Submitted on: 2/11/2021 7:20:56 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Individual	Oppose	No

Comments:

This bill looks like a big hole in the sunshine law. Keep meetings open.

LATE

SB-720

Submitted on: 2/11/2021 7:32:18 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
David Hunt	Individual	Oppose	No

Comments:

SB720 is simply 100% UNACCEPTABLE and you know it. The PUBLIC business of ELECTED PUBLIC employees should NEVER be allowed to conduct or discuss business that affects the citizens who put them in office - in SECRECY. This bill would open a pandora's box for further unethical actions by county council representatives. We on the big island have had to launch far too many Board of Ethics petitions, reviews, and investigations already!!!

Do NOT start down this black hole.... VOTE NO ON SB720

LATE

SB-720

Submitted on: 2/11/2021 7:39:45 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Yulia Muzychenko	Individual	Oppose	No

Comments:

County councils are hired by the people officials and can't just hold meetings off the record. This is legal and constitutional right of people to know what the officials proposing, so the people can share their agreements and disagreements with them. Pandemic or not. This part is a promise of constitution and can't be changed.

LATE

SB-720

Submitted on: 2/11/2021 8:18:19 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sunny Savage	Individual	Oppose	No

Comments:

Public officials should remain on the record while employed by taxpayers.

LATE

SB-720

Submitted on: 2/11/2021 8:26:27 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Dana Keawe	Individual	Oppose	No

Comments:

Please oppose SB 720!

No meetings or discussions behind closed doors to the public.

Keep sunshine law intact!

LATE

SB-720

Submitted on: 2/11/2021 8:30:45 AM
Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Judith Perino	Individual	Oppose	No

Comments:

I oppose any exemption to the Sunshine Law. All meetings should be held in full view of the public and no discussions between legislators should occur privately on matters/decisions that involve public policies and legislation.

SB-720

Submitted on: 2/11/2021 8:51:28 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Meredith Buck	Individual	Oppose	No

Comments:

I strongly oppose SB720. The law requires that all deliberations held by councilmembers be carried out in public. Mahalo nui for your time.

LATE

SB-720

Submitted on: 2/11/2021 9:25:22 AM
Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
I. Sam-Vargas	Individual	Oppose	No

Comments:

All deliberations between county council members should continue to be conducted in public. Our elected representatives work for us and we should be able to know how they are conducting business with others and how they represent our interests. This is particularly important when a compromise is reached after much deliberation. It would help explain how the decision was made instead of it being shadowed in secrecy.

LATE

SB-720

Submitted on: 2/11/2021 9:26:38 AM
Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Patricia Blair	Individual	Oppose	No

Comments:

Democracy requires open meetings! Let the Sun Shine In!

LATE

SB-720

Submitted on: 2/11/2021 9:34:40 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Henri Etta Schmitz	Individual	Oppose	No

Comments:

I strongly oppose this Bill!

SB-720

Submitted on: 2/11/2021 9:39:53 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

LATE

Submitted By	Organization	Testifier Position	Present at Hearing
Gordon B. Lindsey	Individual	Oppose	No

Comments:

I stongly oppose SB720 for many reasons

LATE

SB-720

Submitted on: 2/11/2021 9:56:07 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jade mcgaff	Individual	Oppose	No

Comments:

we need FULL DISCLOSURE> no secret meetings.

THank you,

Jade MCGaff, MD

LATE

SB-720

Submitted on: 2/11/2021 10:55:14 AM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Sherri Thal	Individual	Oppose	No

Comments:

I am taking these quotes from the Hawaii Tribune-Herald Newspaper, Feb. 11, 2021, from an article by John Burnett. They sum it up:

"Jeff Portnoy, a Honolulu attorney who represents numerous media outlets, including the Tribune-Herald, and an expert on the First Amendment and media law, called the proposed amendment to the open meetings law "about as anti- a public access provision as I've seen in some time."

"This one paragraph guts the entire purpose of the existing statute, which is to make sure that decision-making, including discussions leading to decision-making, is done in an open proceeding, because this statute, as it presently exists, limits how many members of a body can discuss a particular issue in private," Portnoy said. "This could mean that the entire discussion leading to a decision could be done in private, which means just the vote would be public."

"There's a common saying that the exception proves the rule," added Nancy Cook Lauer, president of the Big Island Press Club, which submitted written testimony in opposition to SB 720. "But in this particular case, the exception consumes the rule. If this exemption is allowed, there is scarcely a reason to have a Sunshine Law at all, and it would be a farce to continue referring to it as such."

Please vote NO on SB720.

Mahalo,

Sherri Thal, Kea'au, HI 96749

State of Hawaii House of Representatives
SB 720 RELATING TO COUNTY COUNCIL MEETINGS
TESTIMONY IN OPPOSITION

LATE

TESTIFIER: Craig Dansie
DATE: February 11, 2021

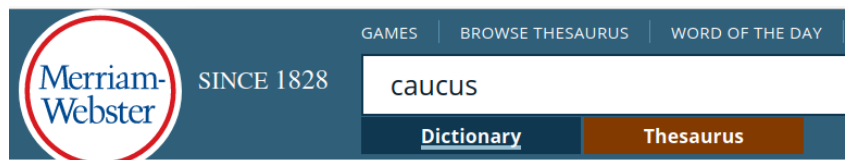
Good afternoon,

My name is Craig Dansie and I am a man currently domiciled in Hawaii in the County of Honolulu My address is 150 Hamakua Drive #304, Kailua, HI. After reading SB 720 and current testimony, I am writing my testimony in **STRONG OPPOSITION** of SB 720 relating to county council meetings.

The bill is proposing to add the following:

“(i) The presiding member of a county council meeting may temporarily recess the meeting, during which the members may conduct discussion off the record.”

Description: Authorizes county council members to **caucus** during official council meetings.



Merriam-Webster SINCE 1828

GAMES | BROWSE THESAURUS | WORD OF THE DAY

caucus

Dictionary | Thesaurus

caucus noun

 Save Word

cau·cus | \ 'kò-kəs \ 

Definition of *caucus* (Entry 1 of 2)

: a closed meeting of a group of persons belonging to the same political party or faction usually to select candidates or to decide on policy

// a presidential *caucus*

also : a group of people united to promote an agreed-upon cause

Caucus = “a closed meeting” = “off the record” = “secret proceedings”?

Should we have a government of the people, by the people and for the people?
Are you our representatives or repressives?

Hawaii Revised Statutes § 92:

§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.

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law.

Here is some advice from a former president:

“The very word secrecy is repugnant in a free and open society; and we are as a people inherently and historically opposed to secret societies, to secret oaths and to secret proceedings. And there is a very grave danger that an announced need for increased security will be seized upon by those anxious to expand its meaning to the very limits of official censorship and concealment. And so it is to the printing press-to the recorder of man's deeds, the keeper of his conscience, the courier of his news – that we look for strength and assistance, confident that with your help man will be what he was born to be: free and independent.”

“For we are opposed around the world by a monolithic and ruthless conspiracy that relies primarily on covert means for expanding its sphere of influence--on infiltration instead of invasion, on subversion instead of elections, on intimidation instead of free choice, on guerrillas by night instead of armies by day. It is a

system which has conscripted vast human and material resources into the building of a tightly knit, highly efficient machine that combines military, diplomatic, intelligence, economic, scientific and political operations. Its preparations are concealed, not published. Its mistakes are buried, not headlined. Its dissenters are silenced, not praised. No expenditure is questioned, no rumor is printed, no secret is revealed.”

- President John F. Kennedy - April 27, 1961

Vote NO on SB 720.

1. Chapter 92, Hawaii Revised Statutes: Public Agency Meetings and Records

<http://oip.hawaii.gov/laws-rules-opinions/sunshine-law/chapter-92-hawaii-revised-statutes-public-agency-meetings-and-records/>

2. The President and the Press: Address before the American Newspaper Publishers Association, April 27, 1961 (text)

<https://www.jfklibrary.org/archives/other-resources/john-f-kennedy-speeches/american-newspaper-publishers-association-19610427>

3. Address, "The President and the Press," Before The American Newspaper Publishers Association, 27 April 1961 (audio)

<https://www.jfklibrary.org/asset-viewer/archives/JFKWHA/1961/JFKWHA-025-001/JFKWHA-025-001>

LATE

SB-720

Submitted on: 2/11/2021 12:27:48 PM
Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Maria Walker	Individual	Oppose	No

Comments:

Aloha Senators,

I am writing to express my opposition to SB720. It is vital to our residents' ability to participate in our democracy that all discussions during County Council meetings occur in public. SB 720 circumvents our state sunshine laws to both aid in elected officials accountability and to help our citizens keep abreast of local issues. Please vote NO on this bill, and keep county deliberations out in the open for all Hawai'ians to know.

Mahalo for hearing my testimony,

Maria Walker

1728 Hulu Rd

Kapa'a, HI 96747

SB-720

Submitted on: 2/11/2021 2:08:12 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
jennifer noel	Individual	Oppose	No

Comments:

I am opposed to SB720 because it is a violation of our sunshine bill. We need our government to be transparent at all times!!

LATE

SB-720

Submitted on: 2/11/2021 3:05:51 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Barbara L. George	Individual	Oppose	No

Comments:

OPPOSE!! Let the sunshine IN!!!

LATE

SB-720

Submitted on: 2/11/2021 4:19:59 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Julio Magalhães	Individual	Oppose	No

Comments:

Dear Members of the Legislature:

I am writing regarding the proposed change that would allow the presiding member of a county council meeting to temporarily recess the meeting, during which the members could conduct discussion off the record.

I strongly oppose this change which would reduce transparency and openness of a body conducting the public's business. Based on my experience, closed off-the-record sessions in other jurisdictions can only occur if a personnel matter or litigation is to be discussed.

I urge you to oppose the proposed changes and vote against SB720. Please preserve open and transparent handling of the public's business.

Sincerely,

Julio Magalhães

Kilauea, Kaua'i

LATE

SB-720

Submitted on: 2/11/2021 9:56:27 PM

Testimony for PSM on 2/11/2021 1:30:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
janice palma-glennie	Individual	Oppose	No

Comments:

aloha,

this bill is an affront to democracy and democratic process. this is an even more egregious effort during covid when the public is already shut out of the process -- not only by design, but, in this case, yes.

Say "NO" to Bill 720. Or face the election consequences as I, and many others, will work to replace you in the next election.

sincerely,

janice palma-glennie

kailua-kona