

From: [R. Brian Black](#)
To: [Standards of Conduct](#)
Subject: Testimony
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Attachments: [8-17-22 Testimony.pdf](#)
[signature.asc](#)

Aloha, please see the attached written testimony for meeting tomorrow.

Best,
Brian

R. Brian Black
Executive Director
Civil Beat Law Center for the Public Interest
700 Bishop Street, Suite 1701
Honolulu, HI 96813
(808) 531-4000

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
info@civilbeatlawcenter.org

VIA ELECTRONIC MAIL

Commission to Improve Standards of Conduct
House of Representatives

RE: August 17, 2022 Agenda - Concepts to Improve the Legislative Process

Dear Chair Foley and Members of the Commission:

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. Please consider the following suggestions in your discussions about improvements to the legislative process.

1. **Posting Testimony.** Each legislative committee follows its own practices in posting public testimony on the Internet. Some committees post testimony in advance, some when the hearing starts, some as each legislative proposal is discussed, and some after the hearing. Separate from the Internet posting, legislative staff may alert certain lobbyists or executive agency personnel in advance of issues raised in the testimony of others.

Pre-hearing access to public testimony on the Internet is critical to a fair and informed discussion of issues at the hearing. Testifiers often are blindsided by questions from legislators based on testimony of others that the individual has not had an opportunity to review carefully (if at all).

Legislative committees typically set a 24-hour deadline for the timely submission of testimony. It would be minimally reasonable to require posting of *timely submitted* testimony on the Internet at least 2 hours before a meeting.¹ However, because the Legislature receives most testimony by electronic submission through its website, a better solution would be automated posting of testimony on the Legislature's website in real time as the testimony is submitted.²

¹ Adjusted for the unique circumstances of the Legislature, such a requirement would be similar to the Sunshine Law requirement – passed during the 2022 session – that boards must post board packets 48 hours before a meeting. See HRS § 92-7.5.

² A concern may be raised that public testimony must be reviewed by legislative staff before public posting. As the Department of the Attorney General advised Senator Harimoto in 2017, that is not the case. Mar. 29, 2017 Ltr. to Sen. Harimoto fr. R. Chun (“Answer: The public has a constitutionally protected right to free speech and a right to

2. **Scheduling Hearings.** Committee chairs have near absolute authority to determine what matters referred to the committee will be heard. There are processes for a majority of committee members to override the chair. House Rules 11.3;³ Senate Rules 23. However, it should not require, in effect, a revolt by committee members to have a bill publicly heard and considered.⁴ All legislators are elected as equals and should be provided a process to ensure that their constituents' interests are considered.

In addition to mitigating the excessive authority of committee chairs over hearings on bills, empowering committee members would provide for individual accountability of those legislators. A committee member would not be able to simply blame the chair for the failure to hear a bill. When legislators deflect individual responsibility by blaming "leadership" or a committee chair, it diminishes public trust in the Legislature as an institution. Each legislator must have a measure of power if we expect them to be held accountable by constituents.

At the same time, in the limited legislative session, not all of the thousands of bills can be heard. An appropriate number of committee members – less than a majority – should have clear authority to add a bill for hearing.⁵

3. **Votes on Bills in Hearings.** Chairs have unilateral authority to "defer" bills in a committee hearing. For the reasons stated, power among individual legislators should be more egalitarian. And when members of the public have made the effort to testify and observe a hearing, it should not be one person's decision whether a proposal advances. If a bill has been heard, any committee member should be empowered to call for a vote.

4. **Public Deliberations.** Nearly all committees hear public testimony on legislative proposals, then recess (for a few minutes to several days) to deliberate privately before

petition the government. We know of no authority that allows or requires the Senate to redact or edit written testimony submitted by the public.").

³ The House process is especially onerous and clearly intended to discourage any effort by non-chair legislators to have bills scheduled for hearing.

⁴ Also, when a majority of committee members is required, that means a majority substantively discussed the legislative proposal without a public hearing. That undermines confidence in the process because the outcome will be viewed as predetermined before the views of constituents and other stakeholders could be considered in a hearing.

⁵ An appropriate fraction may be one third of committee members because even on the smaller Senate committees, it would require at least two members to agree.

reconvening to vote.⁶ In contrast, under the Sunshine Law, when more than two board members discuss matters pending before the board, those discussions must occur publicly. The public should expect no less from their elected representatives in the House and Senate. When members of a committee are discussing legislation that is before the committee, those discussions should occur in public.

Thank you for the opportunity to submit testimony on these issues.

⁶ This practice is questionable in light of article III, section 12 of the Hawai`i Constitution: "Every meeting of a committee in either house or of a committee comprised of a member or members from both houses held for the purpose of making decision on matters referred to the committee shall be open to the public."