

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 1, 2022, 2:00 p.m.
State Capitol, Via Videoconference

Re: Testimony on H.B. No. 1551
Relating to the Commission to Promote Uniform Legislation

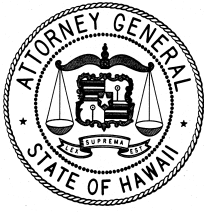
Thank you for the opportunity to submit testimony on this bill, which would allow any number of members of the Hawaii Commission to Promote Uniform Legislation from the Sunshine Law, part I of chapter 92, to attend and participate in meetings hosted by the national Conference of Commissioners on Uniform State Laws, including meetings specifically and exclusively held for or directed at the Hawaii Commissioners. The Office of Information Practices (OIP) offers comments.

OIP understands that most of the meetings hosted by the national conference likely will not involve discussion of Hawaii-specific legislation, but notes that this bill would specifically allow the Hawaii Commissioners to discuss what legislation should be proposed or recommended to the Hawaii Legislature during meetings hosted by the national conference. They could even do so during a meeting specifically held for the Hawaii Commissioners, so long as they refrain from voting on it at that time and report their attendance at the next Hawaii Commission meeting, along with the matters presented or discussed during the meetings hosted by the national conference.

The Sunshine Law's permitted interaction allowing board members' discussion of board business in the course of their attendance at national conferences and other informational meetings is limited to less than a quorum of a board's members and excludes meetings specifically and exclusively organized for the board, whereas this permitted interaction would allow all the Hawaii Commission members to discuss board business even at meetings specifically and exclusively organized for them. Thus, this bill allows discussion of Hawaii Commission business, specifically which uniform legislative proposals should be proposed in Hawaii, in circumstances that go beyond what the Sunshine Law would otherwise allow.

On the other hand, the nature of the Hawaii Commission's work is such that even when it makes a final decision to pursue a particular uniform legislative proposal in Hawaii, that proposal is still subject to the full legislative process, including the opportunity for public scrutiny and comment, before it can become a law. Thus, OIP believes the question of whether to provide the Sunshine Law exception proposed by this bill is for the Legislature to make by balancing the public interest in access to the Hawaii Commission's decision-making process against the benefit of fuller participation in the national conference meetings for the Hawaii Commission's purpose of promoting uniform legislation for ultimate decision-making by the Legislature.

Thank you for considering OIP's testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

H.B. NO. 1551, RELATING TO THE COMMISSION TO PROMOTE UNIFORM LEGISLATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 1, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Stella M.L. Kam, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Attorney General strongly supports this bill.

This bill amends sections 3-1 and 3-2, Hawaii Revised Statutes (HRS), to allow the five members of the Commission to Promote Uniform Legislation (Hawaii Commission) to attend and fully participate in Uniform Law Commission (ULC) meetings on the national level without violating the State's Sunshine Law, part I of chapter 92, HRS. This amendment would allow all Hawaii Commission members to actively work towards the goal of promoting uniformity of legislation for the State. Currently, under Sunshine Law restrictions, only two members of the Hawaii Commission are allowed to attend and participate at the national ULC meetings.

This bill would clarify that the meetings hosted by the ULC shall not be considered to be meetings of the Hawaii Commission and shall be exempt from certain requirements of chapter 92, HRS, with the proviso that the Hawaii Commission members may not vote at the national ULC meetings on which uniform laws should be proposed or recommended to the Legislature for enactment in Hawaii. This bill also would require the Hawaii Commission members to report at their next Sunshine Law Hawaii Commission meeting about their participation at and the matters discussed at the national ULC meetings that relate to official Hawaii Commission business.

We respectfully ask the Committee to pass this bill. Thank you for the opportunity to testify.

DATE: January 28, 2022

TO: Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
And Members, House Committee on Judiciary & Hawaiian Affairs

RE: Testimony in support of **HB 1551**, RELATING TO THE COMMISSION TO PROMOTE UNIFORM LEGISLATION

FROM: Lani Ewart

HEARING: Tuesday, February 1, 2022, 2:00 p.m., Via Videoconference

Chair Nakashima, Vice Chair Matayoshi and Members of the Committee:

My name is Lani Ewart, and I am a member and the current chair of the Hawaii Commission to Promote Uniform Legislation (“CPUL”). Thank you for this opportunity to testify in support of H.B. No. 1551 which would provide a limited exemption from certain requirements of the Hawaii sunshine law in order to allow any number of members of the CPUL to attend and participate in meetings hosted by the Uniform Law Commission.

The CPUL was established in Hawaii over a century ago to advise the Legislature and the Attorney General regarding legislation that would be uniformly applicable in Hawaii and other States. The members of the CPUL serve as commissioners to the Uniform Law Commission (“ULC”), a national nonprofit organization that is made up of volunteer attorneys appointed by their States, with a mission to develop and draft model legislation for States in areas in which uniformity is practical and desirable. Such uniform laws would provide predictability and consistency in commercial transactions, family law, and other matters affecting residents of different States. With the enactment of dozens of uniform laws, such as the Uniform Commercial Code, the Uniform Partnership Act, the Uniform Transfers to Minors Act and, most recently in 2021, the Uniform Trust Code, Hawaii has benefited significantly from the work of the ULC and the CPUL at ULC meetings.

Pursuant to section 3-2, HRS, one of the primary duties of the CPUL is the representation of the State of Hawaii at the annual meeting held by the ULC. At such annual meetings and related ULC meetings that normally precede each annual meeting, the commissioners from all States, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, study, draft, discuss, amend and vote on proposed uniform acts. The ULC strongly encourages all the commissioners, regardless of their subject matter expertise, to attend all the meetings and contribute their comments, so uniform acts are truly representative of diverse state experiences.

The ULC annual meetings, which are usually held outside of the State, take place over a period of six to seven consecutive days with sessions scheduled for the entire day and sometimes running into the evenings. However, to comply with section 92-2.5(e), HRS, no more than two members (*i.e.*, less than a quorum of the five members of the CPUL that can attend the same meeting) are able to attend and participate during each session of the meeting hosted by the ULC, even though the ULC might, and often does, schedule more than two proposed uniform laws for presentation and discussion during the same session.

The CPUL commissioners are attorneys who are in private and public practice in different subject areas with varying experiences and perspectives. For the State of Hawaii to fully benefit from the representation by CPUL commissioners at the ULC meetings, the commissioners should be able to attend the meetings and be fully involved in selecting, proposing, drafting and supporting uniform acts as needed according to the agenda set by the ULC and not be restricted by a statutorily specified limited number of members. The amendments made by HB 1551 to section 3-2, HRS, are intended to provide the limited exemption for the members of the CPUL to fully participate in the ULC meetings.

To be clear, the limited exemptions would only apply to the meetings and the sessions of the meetings hosted by the ULC. At the ULC meetings, the CPUL commissioners do not vote on which uniform acts they would propose to the Legislature of

the State of Hawaii. Such actions are taken at a duly noticed open meeting of the CPUL convened pursuant to part I of chapter 92, HRS.

I respectfully request your support of H.B. No. 1551.

Blake K. Oshiro, Esq
222 S. Vineyard Street, Ste 401
Honolulu, HI. 96813
(808) 531-4551 Blake.Oshiro@808cch.com

January 30, 2021

Representative Mark Nakashima, Chair
Representative Scot Matayoshi, Vice-Chair
House Judiciary and Hawaiian Affairs Committee Members

Re: HB1551: RELATING TO THE COMMISSION TO PROMOTE UNIFORM
LEGISLATION - SUPPORT

Provides a limited exemption for the Hawaii Commission to Promote Uniform Legislation from certain requirements of part I of chapter 92, HRS, for the purpose of allowing commissioners of the Commission to Promote Uniform Legislation to attend and participate in a full capacity in meetings hosted by the Uniform Law Commission, without any limitation on the number of participating commissioners, in furtherance of its goal of representing and promoting uniformity of legislation for the State.

Dear Chair Nakashima, Vice-Chair Matayoshi and Committee Members:

Thank you for the opportunity to testify in support of House Bill (HB) 1551. I am a member of Hawaii's Commission to Promote Uniform Legislation (CPUL or Commission).

The Commission's work is statutorily an "advisory capacity" to the Attorney General (AG) and the Hawaii State Legislature (Legislature) on "matters relating to the promotion of uniform legislation." Haw. Rev. Stat. (HRS) Section 26-7. As such, the CPUL here acts in collaboration with the Uniform Law Commission (ULC), during its deliberative work in coming up with the proposed uniform legislation.

The ULC was established in 1892 and provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

The ULC drafts uniform laws for the states to consider and enact. A uniform act is one that seeks to establish the same law on a subject among the various jurisdictions. When the term "uniform" is used in the nation's laws, it is highly likely that the ULC drafted the act.

Among the ULC's most widely adopted acts are the Uniform Commercial Code, the Uniform Anatomical Gift Act, the Uniform Trade Secrets Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, the Uniform Electronic Transactions Act, and the Uniform Transfers to Minors Act

ULC procedures ensure meticulous consideration of every act.

- 1) Each draft act receives a minimum of two years of consideration. Drafting Committees meet throughout the year in an open process that draws on the expertise of state-appointed commissioners, legal experts, and advisors and observers. All committee drafts are posted on the ULC website for review and comment.
- 2) Draft acts are submitted for initial debate of the entire ULC at an annual meeting. The ULC commissioners sit as a Committee of the Whole and closely consider each act in a deliberative setting. Each act must be considered section by section at no less than two annual meetings.
- 3) Once the ULC Committee of the Whole approves an act at an annual meeting, the final step is a vote by the states, with each state having one vote. A majority of the states present, and no fewer than twenty states, must approve an act before it is officially approved. Upon final approval, ULC uniform acts are then submitted for consideration by the state legislatures for enactment.

The purpose of this bill is to allow the CPUL Members to all attend and participate in the deliberations, discussions and votes taken during the annual meeting. Because the annual meeting goes on for three or more days with multiple sessions, it is helpful to have as many Hawaii CPUL members attend as possible so we can all get a fuller and deeper appreciation and understanding of the issues and bills. Informally, we each take a turn as taking on a session or issue so that we can brief and summarize the deliberations to other members who may or may not have been present. During our time at these annual meetings, no discussions or decisions are made amongst the Hawaii CPUL members.

Instead, all of our “decision-making” meetings for the purposes of deciding which bills to propose in Hawaii, are conducted in a publicly noticed meeting here in Hawaii. As such, the bill does NOT propose to exempt those meetings and discussions as there are actual decisions and Hawaii-related decisions being made.

Thank you for considering this proposal. I am available if you have any questions.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Tuesday, February 1, 2022

2:00 PM

Via Video Conference

in consideration of

HB 1551**RELATING TO THE COMMISSION TO PROMOTE UNIFORM LEGISLATION.**

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the House Judiciary & Hawaiian Affairs Committee

Common Cause Hawaii provides written comments with concerns regarding HB 1551, which provides a limited exemption for the Hawaii Commission to Promote Uniform Legislation from certain requirements of part I of chapter 92, HRS, for the purpose of allowing commissioners of the Commission to Promote Uniform Legislation to attend and participate in a full capacity in meetings hosted by the Uniform Law Commission, without any limitation on the number of participating commissioners, in furtherance of its goal of representing and promoting uniformity of legislation for the State.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to upholding the core values of our representative democracy through increasing civic engagement and breaking down the barriers to participation in our government.

Common Cause Hawaii raises the concern that such carveouts to the Sunshine Law may be effectuated for other boards and commissions, rendering the Sunshine Law a patchwork of differing sections applying to different boards and/or commissions. This would ultimately defeat the purpose and intent of the Sunshine Law set forth in Hawaii Revised Statutes 92-1:

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

HB 1551 may have unintended, severe consequences for open, accessible government in Hawaii.

Thank you for the opportunity to provide cautioning comments on HB 1551. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

5567 Pia Street
Honolulu, Hawaii 96821

Testimony of Ken Takayama
Life Member, Uniform Law Commission on H.B. No. 1551
Relating to the Commission to Promote Uniform Legislation

Before the House Committee on Judiciary and Hawaiian Affairs
Tuesday, February 1, 2022 2:00 PM State Capitol, Via Video Conference

Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on
Judiciary and Hawaiian Affairs.

Thank you for this opportunity to testify in **strong support** of H.B. No. 1551, which provides the state Commission to Promote Uniform Legislation (CPUL) a limited exemption from the state open meetings law. My name is Ken Takayama. I served as a commissioner on the CPUL for twenty-four years. By virtue of having served for twenty years, I am a life member of the Uniform Law Commission (ULC).

The members of the CPUL are Hawaii's delegation to the ULC. All of the states are represented by their own commission. It is through the organizational efforts of the ULC that the commissioners of the various states work together to develop proposals for uniform legislation that the state legislatures are then free to consider for possible enactment.

The development of a "typical" proposal for a uniform law can easily take five years—five years before the state legislatures ever see it. Proposals for uniform laws are:

- (1) Reviewed by both the Scope and Program and Executive committees of the ULC to clarify their parameters;
- (2) Reviewed and considered by a study committee;
- (3) Considered by a drafting committee by means of a line-by-line read through, discussion, and debate;
- (4) In addition, the proposal is also subjected to a line-by-line read through, discussion, and debate at each of two annual meetings of the ULC.

Commissioners carry out the necessary functions in all stages of the development of proposed uniform laws. At each of these stages, the home state of the particular commissioners is immaterial.

In very general terms, it might be said that proposals for uniform laws go through two phases. I personally think of them as the "ULC phase"; and the "state phase". A uniform law proposal is typically in the "ULC" phase when commissioners and ULC staff are reviewing and otherwise working on drafts of uniform law proposals. Multiple

committees may be meeting on a variety of subjects, and the commissioner-members of each committee are typically residents of a variety of states. Many meetings are held by conference call. But those that need to be held in person are nearly always on the mainland to make access easier for most attendees.

A proposal moves into the “state phase” when the ULC completes its work on a uniform law proposal and makes it available to the states. In Hawaii, the CPUL determines which uniform law proposals it will recommend for enactment.

H.B. No. 1551 eliminates a number of open meeting law compliance problems for the CPUL by among other things:

- (1) Clarifying that meetings hosted by the ULC are NOT meetings of the CPUL; and
- (2) Removing limits on the number of CPUL commissioners allowed to attend meetings hosted by the ULC (such as the ULC’s annual meeting, the format for which is generally similar to the meetings of the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG)).

H.B. 1551 improves the state open meetings law by making it inapplicable to the work being done by CPUL commissioners during the “ULC phase” when its applicability will: (1) primarily result in notifying the public of various ULC committee meetings occurring on the mainland; and (2) stymie the ability of the CPUL to carry out its mission of participating in the development of uniform law proposals. The CPUL needs to be able to deploy its personnel strategically to cover all the proposals being considered, and it takes multiple shifts of personnel to listen to the drone of the line-by-line readings.

But despite these changes being proposed with respect to the CPUL, an important feature of the existing law will NOT change; that being: the CPUL’s recommendations on enactment of proposed uniform laws will still have to be made at properly noticed meetings that are open to the public—which is as it should be.

Thank you very much for this opportunity to testify.

**TESTIMONY OF
KEVIN P.H. SUMIDA**

ON THE FOLLOWING MEASURE:

H.B. NO. 1551, RELATING TO THE COMMISSION TO PROMOTE UNIFORM LEGISLATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Tuesday, February 1, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Via Videoconference

Chair Nakashima and Members of the Committee

I am a departing member of the Commission to Promote Uniform Legislation and therefore have no direct interest in this legislation. However, I strongly encourage its enactment.

The members of the Commission to Promote Uniform Legislation constitute the Hawaii delegation to the Uniform Law Commission ("ULC"). The ULC, comprised of delegations from all fifty states and the territories, meets annually to consider, discuss, and revise uniform laws which will eventually be approved by the entire conference and thereafter submitted to the various state legislatures for consideration. While often tedious, the work of the ULC and its state delegations provides the various legislatures with legislative products that benefit from the careful craftsmanship and expertise of some of the finest legal minds in the country. Notable past products include the Uniform Probate Code, the Uniform Heirs Partition Act, and the Uniform Commercial Code (with the American Law Institute).

Although Hawaii is a small state, and its delegation is relatively small, the Hawaii Commissioners have had a disproportionate impact within the ULC. Hawaii Commissioners actively participate in the annual meetings, sit on key organizational committees, and, through appointments on drafting committees, have actively participated in the drafting of many of the legislative products of the ULC. But this is a shared effort, and to be able to maintain this level of participation, they must be able to attend the annual conferences and committee meetings, and fully participate as a state delegation.

I am confident that your Hawaii Commissioners will continue their good work to represent the State of Hawaii, and we should not do anything to limit their participation in the work of the Uniform Law Commission.

HB-1551

Submitted on: 1/28/2022 4:51:52 PM

Testimony for JHA on 2/1/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Elizabeth Kent	Individual	Support	No

Comments:

Aloha,

Thank you for the opportunity to testify in support of HB 1551. I am a member of the Commission to Promote Uniform Legislation and have been to many annual meetings.

Passage of this Bill will help the commissioners do their job as effectively as possible. Allowing all commissioners the opportunity to attend and fully participate in all meeting sessions at the annual meeting will aid us in understanding and raising concerns about the various drafts that are presented at the annual meeting. That in turn helps us to work on laws that will benefit Hawaii.

Please pass HB 1551.

Thank you,

Elizabeth Kent

Peter J. Hamasaki
5333 Malu Place
Honolulu, Hawaii 96816

January 31, 2022

Honorable Mark M. Nakashima, Chair
Honorable Scot Z. Matayoshi, Vice-Chair
Committee on Judiciary and Hawaiian Affairs
House of Representatives
State Capitol
415 S. Beretania Street
Honolulu, Hawaii 96813

Re: SUPPORT for H.B. No. 1551, relating to the Commission to Promote Uniform Legislation – JHA Hearing on 2/1/2022 @ 2:00 p.m.

Dear Chair Nakashima, Vice-Chair Matayoshi and Committee Members:

Thank you for hearing House Bill No. 1551, relating to the Commission to Promote Uniform Legislation (“Commission”), which is to be heard by your Committee on Judiciary and Hawaiian Affairs on Tuesday, February 1, 2022, at 2:00 p.m. I have served as a member of the Commission since 2005, and write in strong support of House Bill No. 1551, which would provide a limited exemption for the Commission from certain requirements of part I of chapter 92, Hawaii Revised Statutes, for the purpose of allowing commissioners of the Commission to attend and participate in a full capacity in meetings hosted by the Uniform Law Commission (“ULC”).

The ULC is composed of delegations from the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. The purpose of the ULC is to develop proposed uniform and model state laws for consideration by the states in areas where uniformity among states is desirable and practical, but state, rather than federal, jurisdiction should be preserved. Perhaps the most well-known example of the ULC’s work is the Uniform Commercial Code, but the ULC’s scope is not limited to commercial laws, and includes family law, privacy, technology, real property, intellectual property, civil procedure, and criminal law, among others.

Hawai‘i traditionally has been active in considering and adopting uniform and model acts of the ULC, and, according to ULC records, as of October 1, 2021, Hawai‘i had adopted 146 uniform or models acts of the ULC. Most recently, during the 2021 legislative session, the Legislature passed, and the Governor signed House Bill No. 125, enacting the Uniform Employee and Student Online Privacy Act, and Senate Bill No. 385, enacting the Uniform Trust Code.

Under the ULC’s process for adopting uniform and model acts, proposed acts are prepared by drafting committees of commissioners, and then considered by the ULC as a whole. Typically, proposed acts are considered at a minimum of two annual ULC meetings, at which time the proposed acts are read and discussed on a line-by-line basis by the entire ULC. Until the Covid-19 pandemic forced remote/hybrid meetings during 2020 and 2021, the annual meetings were held

Honorable Mark M. Nakashima, Chair
Honorable Scot Z. Matayoshi, Vice-Chair
Committee on Judiciary and Hawaiian Affairs
January 31, 2022
Page 2

on a live, in-person basis, in a single location. The ULC anticipates resuming in-person (only) annual meetings from 2022.

As part of the consideration of proposed acts by the ULC at its annual meetings, each commissioner present has the opportunity during the proceedings to ask questions, provide comments or suggested revisions or propose amendments. At the conclusion of the annual meeting, those proposed acts which are on “final” reading are subject to a vote by the state delegations as to whether they should be adopted by the ULC as a uniform or model acts. Allowing all members of the Commission to attend ULC meetings and participate in its deliberations is a vital part of the Commission’s role within the ULC and House Bill No. 1551 would facilitate such participation.

Uniform and model acts adopted by the ULC have no force of law unless and until they are adopted by the appropriate state legislative body. Apart from commissioners’ roles in the ULC’s drafting and deliberative activities, the Commission supports the Hawai‘i legislative process by proposing or supporting the adoption of uniform and model acts by the Hawai‘i Legislature. However, House Bill No. 1551 is not intended to exempt the Commission’s activities with respect to the Hawai‘i legislative process and the Commission holds, and would continue to hold regular, duly noticed public meetings at which such matters are openly discussed.

For the foregoing reasons, we respectfully request your support for House Bill No. 1551 to allow the Hawai‘i Commission to continue to be able to provide input on the uniform and model acts of the ULC. Thank you for your consideration of House Bill No. 1551.

Very truly yours,

A handwritten signature in black ink, appearing to read "Peter J. Hamasaki", written in a cursive style.

Peter J. Hamasaki