



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

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Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
HOUSE COMMITTEE ON GOVERNMENT REFORM
Friday, February 11, 2022
9:30 AM
State Capitol, Conference Room 309

in consideration of
HB 1874
RELATING TO BOARDS.

Chair McKelvey, Vice Chair Wildberger, and Members of the House Committee on Government Reform.

The Office of Planning and Sustainable Development (OPSD) **supports** HB 1874, which allows a board to conduct up to one retreat in private per calendar year; provided that the board does not vote on any matter, make decisions, or deliberate toward a decision on any matter currently pending before the board or likely to arise before the board.

Currently, under Hawai'i Revised Statutes §92-2.5 that kind of retreat is not permitted. Allowing a board to take a step back once a year to focus on discussing how to best meet its responsibilities and how to function as a "team," without the need to undertake its regular business agenda, would provide a space for an intimacy difficult to reach in a Sunshine meeting. Furthermore, a retreat would afford board members the opportunity to come together privately to share experiences and mana'o and to strengthen social bonds, leading to more cohesive and efficient board meetings.

HB 1874 will only strengthen the work done by the many boards and commissions. Both the OPSD and the Environmental Advisory Council support HB 1874.

Thank you for the opportunity to testify on this measure.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Government Reform

From: Cheryl Kakazu Park, Director

Date: February 11, 2022, 9:30 a.m.
State Capitol, Conference Room

Re: Testimony on H.B. No. 1874
Relating to Boards

Thank you for the opportunity to submit testimony on this bill, which would add a new permitted interaction to the Sunshine Law allowing a board to hold up to one retreat per year provided that it does not discuss or decide on any matter pending before or likely to arise before it. The Office of Information Practices (OIP) offers comments.

As introduced, the proposed permitted interaction specifically excludes any discussion or decisions on matters currently pending or likely to arise before the board. The main concern OIP has with the proposed permitted interaction would be that since the Sunshine Law generally does not apply to board members' discussion of issues that are not either pending before or reasonably likely to come before the board in the foreseeable future, it would seem unnecessary to create a Sunshine Law exception in the form of a permitted interaction to specifically allow discussions that would not be regulated by the Sunshine Law in any case.

The purpose clause of this bill does indeed seem to reflect a belief that the Sunshine Law would not allow board members to, for instance, jointly attend trainings on ethics, the Sunshine Law, or the laws their board administers, or on

relevant factual and historical background or board procedures. In fact, trainings on and discussion of this sort of general information is not prohibited by the Sunshine Law, so long as they do not include discussion of specific matters pending before or likely to come before the board. Therefore, the effect of creating a permitted interaction specifically to allow it is confusing and could instead have the unintended effect of implying a contrary legislative intent for the Sunshine Law to prohibit such discussions except as specifically permitted in the proposed permitted interaction.

OIP's understanding is that this proposal originates from a desire by one or more boards to be able to hold an annual retreat at which board business **can** be privately discussed among all board members, but only for one day each year. This bill does not do that. **If it were amended to instead allow for a board's full membership to privately discuss matters pending before a board at a retreat lasting no more than one day a year, with the time limitation being the primary safeguard to the public interest since there would be only so much that could be discussed during a single day, OIP would need to look at that amended proposal to comment on its potential effect for boards and the public.**

Thank you for considering OIP's testimony.



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David Y. Ige
Governor

John De Fries
President and Chief Executive Officer

Statement of
JOHN DE FRIES

Hawai'i Tourism Authority
before the
COMMITTEE ON ECONOMIC DEVELOPMENT

February 11, 2022
9:30 a.m.
State Capitol
via videoconference

In consideration of
HOUSE BILL NO. 1874
RELATING TO BOARDS

Aloha Chair McKelvey, Vice Chair Wildberger, and members of the Committee on Government Reform.

The Hawai'i Tourism Authority (HTA) appreciates the opportunity to offer this testimony in **support** of HB1874, which allows a board to conduct up to one retreat in private per calendar year with the requirement that, during this retreat, the board does not vote on any matter, make decisions, or deliberate toward a decision on any matter currently pending before the board or likely to arise before the board.

As is a common practice by the boards of many non-profit organizations, similarly, boards and commissions of the state would benefit from the ability to conduct at least one retreat per year. Board retreats allow members to engage and interact with each other in an environment that is designed to promote discussion, creative thinking and strategic planning. These retreats often serve as a way to reenergize and refocus board members in preparation for the year ahead.

We appreciate the opportunity to provide this testimony in **support** of HB1874. Mahalo.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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House Committee on Government Reform
Honorable Angus L.K. McKelvey, Chair
Honorable Tina Wildberger, Vice Chair

RE: Testimony Commenting on H.B. 1874, Relating to Boards
Hearing: February 11, 2022 at 9:30 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 testimony **commenting on H.B. 1874**.

In 1986, the Department of the Attorney General concluded that a retreat to be conducted by the Office of Hawaiian Affairs was a meeting under the Sunshine Law because the board members would be discussing matters over which OHA had supervision, control, jurisdiction, or advisory power (*i.e.*, board business). AG Op. No. 86-19. That opinion was limited to the specific facts of the retreat that OHA planned to hold. Neither the Attorney General nor the Office of Information Practices have addressed retreats in a formal opinion since 1986.

Discussions among board members are not subject to the Sunshine Law if the discussions do not concern board business. *E.g.*, OIP Op. No. F19-03 at 9-11. Thus, if “retreat” is defined as in H.B. 1874 to specifically exclude discussion of “any matter currently pending before the board or likely to arise before the board”, then it is not a discussion of board business and thus not subject to the Sunshine Law under existing law.

Thank you again for the opportunity to testify **commenting** on H.B. 1874.

Statement Before The
Friday, February 11, 2022
9:30 AM
Via Videoconference, Conference Room 309

in consideration of
HB 1874

RELATING TO BOARDS

Chair McKELVEY, Vice Chair WILDBERGER, and Members of the House Government Reform Committee

Common Cause Hawaii opposes HB 1874, which allows a board to conduct up to one retreat in private per calendar year; provided that the board does not vote on any matter, make decisions, or deliberate toward a decision on any matter currently pending before the board or likely to arise before the board.

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

While Common Cause Hawaii understands that retreat may be beneficial for team building, we are concerned that matters of “information gathering, and general discussions on matters of shared concern” related to board issues are of importance to the public and should be discussed at an agenda meeting. See HB 2505 at page 5, lines 12-15.

Common Cause Hawaii is also concerned that during the retreat, while “the board shall not vote on any matter, make decisions, or deliberate toward a decision on any matter currently pending before the board or likely to arise before the board”, conversations may still take place impacting future votes. See HB 1874 at page 5, lines 15-18.

Further, Common Cause Hawaii is concerned that there is no requirement in HB 1874 that members are required to report their attendance and the matters presented and discussed at the retreat related to the Board.

For these reasons, Common Cause Hawaii opposes HB 1874. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

Puananionaona Patria Thoene

onaona.thoene@gmail.com

Friday, February 11, 2022

9:30 am

via videoconference

Testimony of Puananionaona P. Thoene before the
HOUSE COMMITTEE ON GOVERNMENT REFORM

providing **TESTIMONY IN SUPPORT** of
HOUSE BILL (HB) 1874
RELATING TO BOARDS

February 10, 2022

Aloha e Chair McKelvey, Vice Chair Wildberger, and Members of the House Committee on Government Reform,

I am the current Chair of the Environmental Advisory Council (EAC), however, I submit this testimony in **support** of HB 1874 in my individual capacity.

Often times, a Board or Commission needs to step back from its regular business and look towards the bigger picture — the future. Statutorily responsible for specific issues, a Board can benefit from a single-purpose meeting — a retreat — that allows those appointed members a break from regular business with a singular focus on how to best accomplish its responsibilities, and how to function as a “team.”

Given the specific rules of Sunshine, that kind of “retreat” is impossible. Allowing a Board to meet once/year, without the need to undertake its regular business agenda, would provide a space for an intimacy difficult to reach in a Sunshine meeting. If a large number of non-Board members were to attend, the conversation would be quite difficult to manage. Limiting this one-day/year “retreat” would allow for a more in-depth discussion.

In addition, relationship-building among Board members can take time because the Board only meets once a month at most. A retreat would allow Board members to come together to share experiences and mana‘o in an informal and more intimate setting than a Board meeting. The ability to hold a retreat to strengthen social bonds/team building further allows for more cohesive and efficient board meetings.

This bill — HB1874 — requires a report back, and provides for the Board to announce the date of the retreat and record its attendance. It further prohibits any decision-making. This legislation will only strengthen the work done by the many Boards & Commissions. For these reasons, I am in strong support of HB 1874.

Mahalo for the opportunity to testify on this measure and for your consideration.



UNIVERSITY
of HAWAII®
SYSTEM

**House Committee on Government Reform
Friday, February 11, 2022 9:30 a.m.**

**Testimony by:
Ben Kudo, Vice-Chair, University of Hawai'i Board of Regents**

H.B. No. 1874 – RELATING TO BOARDS.

Chair McKelvey, Vice Chair Wildberger, and members of the Committee:

The Board of Regents (“Board”) supports H.B. No. 1874 which seeks to allow boards to conduct a single, one-day retreat annually, provided that the board does not vote on any matter or make decisions on any matter currently pending before the board or likely to arise before the board.

The interactions of members of public boards and commissions are limited under Chapter 92, Hawai'i Revised Statutes. In cases where potential board business is involved, interactions are restricted to two members outside of a public meeting. This may pose challenges for the entire board to have full, candid, and honest discussions in a situation where a vote or decision is not imminent. We wish to limit or reduce the “chilling effect” that an open retreat has upon members of a board who wish with good intentions to express unpopular or contrarian views and choose instead to remain silent. Fostering better communications by and between members of a board can only facilitate a healthier environment to provide individual and collective public service. This proposal will significantly encourage and provide a non-existent opportunity for board members to engage in team and relationship building, and to better empathize with each member’s individual perspectives, values, background, and beliefs.

This proposal would allow boards to conduct one private retreat per year, not to exceed one calendar day, and would require information regarding what was discussed to be reported at the next duly noticed meeting of the board. It also stipulates that the board shall not vote, make decisions, or deliberate toward a decision on any matter currently pending before the board or likely to arise before the board.

We would like to propose some amendments to subsection (g) on page 5 to clarify the intent of the legislation, change “calendar year” to “fiscal year”, make changes for drafting consistency, and add additional safeguards to alleviate concerns about discussions taking place at a retreat with respect to seeking a commitment to vote:

“(g) Two or more members of a board may conduct up to one retreat in private per fiscal year to enable them to perform their duties faithfully; provided that the retreat shall not exceed one calendar day or twenty-four-hour period. The board shall announce the date and place of the retreat at a meeting

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held prior to the retreat. At a duly noticed meeting of the board after the retreat, the board shall publicly report on the retreat, including matters discussed. The board shall not make or seek a commitment to vote during the retreat, and shall not vote on any matter discussed during the retreat until a board meeting at least six calendar days after the board meeting at which the board publicly reported on the retreat.

As used in this subsection, "retreat" means a gathering of two or more members of a board for the purposes of orientation, team building, information gathering, strategic envisioning and planning, and general discussions on matters of shared concern, including matters relating to the efficiency, effectiveness, and conduct of the board."

Thank you for the opportunity to provide testimony in support of H.B. No. 1874, and ask for your favorable consideration of the proposed amendments.