

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
HAWAII PAROLING AUTHORITY

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No. _____

**TESTIMONY ON HB 1897
RELATING TO THE SUNSHINE LAW**

by
Edmund "Fred" Hyun, Chair
Hawaii Paroling Authority

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

Friday, February 11, 2022 – 9:30 am
State Capitol – Via Videoconference

Chair McKelvey, Vice-Chair Wildberger, and Members of the Committee:

The Hawaii Paroling Authority (HPA) appreciates the opportunity to present OPPOSITION testimony on House Bill 1897. The HPA understands the intent of HB 1897 as how it should apply to a greater number of the existing Boards and Commissions but, due to its quasi-judicial functions, the HPA is an exception.

The HPA is a quasi-judicial body that receives and hears legal arguments and testimony from victims, family members and witnesses regarding personal tragedies of criminal offenses. Also reviewed are confidential legal documents as well as clinical/forensic/medical reports (HIPAA). Like the Judiciary and Crime Victims Compensation Commission, the HPA's quasi-judicial hearings are exempt from a significant number of Sunshine Law requirements pursuant to Hawaii Revised Statutes (HRS) 92-6(a)2c.

The HPA has genuine concerns regarding the logistical, technical, and financial costs to comply with the requirements as outlined in this Bill that will involve the Department of Public Safety's eight (8) correctional facilities as well as HPA's main office.

Thank you for opportunity to present testimony on HB 1897 before the Committee.



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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. 1897
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 comments on HB1897, which requires all boards to livestream meetings and archive the recordings online. The measure also requires a board to identify each item on its meeting agenda as an item for action or an item for discussion and allow for oral testimony after each agenda item. Additionally, the measure amends time frame requirements for the posting of board meeting minutes and board packets and requires that board meeting minutes and board packets be posted online.

The HTA's board and committee meetings, when held virtually, are livestreamed for members of the public to participate and offer testimony. We also allow members of the public to offer testimony as we move from one agenda item to the next to encourage public input. Our concern is that, as we shift away from virtual meetings, and return to in-person meetings, the cost to properly capture and operate a parallel virtual meeting is significant not to mention that due to the length of these meetings often exceeding 4 hours, the size of these video files will add significant cost to increasing storage to handle the additional data. We would urge the committee to consider requiring this for meetings that are only held virtually.

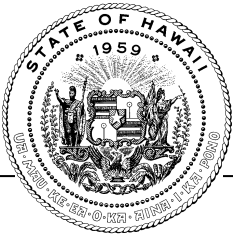
Related to the board packets and minutes, the HTA's agendas often contain items that are time-sensitive and are released on the day of the meeting. One example is the research reports that are

February 9, 2022

released by DBEDT and HTA on the day of the board meeting. Including such material in a board packet that is posted at least forty-eight hours prior to the written testimony would release the results of that research before DBEDT's intended release date. It is likely that DBEDT would not allow this information to be included and would withdraw from participating in our board meetings. This would frustrate the board's ability to make informed policy decisions in a timely and meaningful way. We would recommend removing this language from the proposal.

Finally, the HTA posts the minutes of its board and committee meetings as part of the board and committee packets that are posted on our website.

We appreciate the opportunity to provide comments on HB1897. Mahalo.



**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 1897
RELATING TO THE SUNSHINE LAW.

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

The Office of Planning and Sustainable Development (OPSD) **appreciates the intent of HB 1897**, which requires all boards to livestream meetings and archive the recordings online; identify which agenda items are items for action or items for discussion; allow for oral testimony after each agenda item; and amends time frame requirements for the posting of board meeting minutes and board packets. OPSD further offers the following **comments**:

- Boards would face increased administrative burden under the current language of this bill due to the changes it proposes for meeting livestreams, recordings, and timelines for board minutes and board packets. Advisory boards without dedicated staff support or funding for staffing, such as the Greenhouse Gas Sequestration Task Force that is administratively attached to OPSD, already struggle with capacity to fulfill current Sunshine Law obligations.
- Should a board choose to host an in-person meeting, the livestream and recording requirement outlined on page 2, lines 15-20, would require it to prepare livestreaming technology at the meeting location, thereby greatly increasing a board's administrative and logistical burden and potentially limiting the locations it could choose to host an in-person meeting.
- Furthermore, audiovisual meeting recordings can be over 1 gigabyte in file size for a single meeting. Indefinite archival of all such recordings as currently proposed in this bill would require a board to do so through external storage on a server or maintain an account on a hosting platform such as YouTube or Facebook.

- A board may maintain a dedicated page on its website, separate from its website homepage, for its meeting notices and materials.
- Therefore, we respectfully offer the following amendments for consideration:

Page 2, lines 15-20: “[~~(b) Every meeting of all boards shall be livestreamed through the use of audiovisual or audio technology. The recording of each meeting shall be archived and made available to the public on the board’s website or, if the board does not have a website, on an appropriate state or county website immediately after the meeting.~~]”

Page 4, lines 5-9: “(b) No less than six calendar days prior to the meeting, the board shall post the notice online on an electronic calendar via a link on [~~the homepage of~~] a website maintained by the State or the appropriate county for public inspection.”

Page 5, lines 8-13: “The board shall make the board packet available for all board members and available for public inspection in the board’s office and via a link on [~~the homepage of~~] the board’s website or, if the board does not have a website, on an appropriate state or county website at least [~~forty-eight~~] twenty-four hours prior to the written testimony deadline.”

Page 7, lines 8-16: “The preliminary draft minutes shall be made available to the public for review and input by posting on the board’s website or, if the board does not have a website, on an appropriate state or county website within [~~thirty~~] forty days or by the next meeting, whichever is earlier, except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.”

Thank you for the opportunity to testify on this measure.

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 Supporting H.B. 1897, Relating to the Sunshine Law
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 **supporting H.B. 1897**.

A recurring issue with many Sunshine Law boards is the inability of the public to adequately understand what the board plans to discuss *before the public is expected to provide testimony*. Board agendas are supposed to be detailed enough that the public can decide whether or not they wish to testify; nevertheless, the agendas often are overly generic, use strange jargon, or require members of the public to look elsewhere for information. All of these issues are violations of the Sunshine Law under existing OIP opinions, but, notwithstanding OIP guidance, these poor practices are widespread.

This bill provides the public a more meaningful opportunity to understand what will be discussed in advance of meetings and truly participate in Sunshine Law meetings as the Legislature intended. Members of our community have useful contributions to make to the wide variety of boards and commissions subject to the Sunshine Law. Those contributions cannot happen if the public is kept in the dark about the nature of the discussion until the last minute – or in many cases until after the meeting has already started.

As one suggestion, the Law Center would support an amendment regarding the addition in proposed HRS § 92-3(a). To meet the intent of allowing the public a meaningful opportunity to participate, testimony should be permitted after board discussion, but before a vote on an agenda item. As drafted, a board would take testimony after it has already decided the matter.

“and, before any vote on an item for action, shall allow for oral testimony after discussion of each agenda item.”

Thank you again for the opportunity to testify **supporting** H.B. 1897.

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

in consideration of
HB 1897

RELATING TO RELATING TO THE SUNSHINE LAW.

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

Common Cause Hawaii supports HB 1897, which (1) requires all boards to livestream meetings and archive the recordings online, (2) requires a board to identify each item on its meeting agenda as an item for action or an item for discussion and allow for oral testimony after each agenda item, (3) amends time frame requirements for the posting of board meeting minutes and board packets, and (4) requires board meeting minutes and board packets to be posted online.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening our representative democracy through transparency and accountability reforms.

Common Cause Hawaii supports Section 2 of HB 1897, which provides that the public shall be permitted to testify after each agenda item. This provides the public with an opportunity to address the presentations made instead of being limited to testifying at the beginning of an agenda and not knowing the substance of an presentation.

Further, Common Cause Hawaii also supports livestreaming and recording all meetings, which will allow people to be able to monitor and follow boards more closely than just reviewing minutes.

Common Cause Hawaii also supports Section 4 of HB 1897, which provides that board packets will be made available at least forty-eight hours prior to the written testimony deadline. This will permit people time and opportunity to review the materials and provide meaningful written testimony, addressing items the board will be discussing.

For these reasons, Common Cause Hawaii supports HB 1897. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii

HB-1897

Submitted on: 2/9/2022 12:05:31 PM

Testimony for GVR on 2/11/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
lynne matusow	Individual	Support	No

Comments:

I am in full support. This will aid transparency. However, transparency would be better served if the legislature were to amend the sunshine law by subjecting itself to the provisions of the sunshine law. Given yesterday's news about Kalani English and Ty Cullen, this is the perfect time to redeem the legislature by making it subject to all provisions of the sunshine law.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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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 309 and Via Videoconference

Re: Testimony on H.B. No. 1897
Relating to the Sunshine Law

Thank you for the opportunity to submit testimony on this bill, which would:

- (1) require all Sunshine Law meetings to be livestreamed and to be recorded and posted online;
- (2) require testimony to be taken after, not before, the board's discussion and action on each agenda item;
- (3) require Sunshine Law agendas to identify all items as being for action or for discussion;
- (4) change how a board's notice is posted online;
- (5) allow boards to set a deadline for submission of written testimony and require board packets to be posted online 48 hours prior to that deadline;
- (6) replace the requirement for boards to accommodate requests for electronic access to the board packet with a requirement for boards to accommodate requests from persons with disabilities; and
- (7) require boards to prepare and post online both draft minutes and finalized minutes for every meeting.

While these proposals are intended to benefit the public by increasing the ease of access to Sunshine Law meetings and associated materials, the Office of Information Practices **(OIP) has serious concerns about the fiscal and operational feasibility of these proposals for boards and opposes certain provisions specifically affecting OIP.**

1. Requirement to Livestream and Record All Meetings

Since the new remote meetings provision went into effect on January 1, the Sunshine Law has offered boards three options for holding a meeting: (1) fully **in-person** with board members and the public all attending **at one noticed meeting site** (no electronic connectivity required); (2) **in-person at multiple sites**, with board members and the public all attending at one of two or more noticed meeting sites, which themselves are linked by an audio- or audio-video connection (requires a teleconference or videoconference link between sites); and (3) **remote**, with board members and the public attending from their homes, offices, or other private locations via an online meeting platform, with at least one connected physical location also provided as an option for board members or the public who prefer that to connecting to the meeting using their own equipment (requires an online meeting platform and internet connectivity throughout the meeting). **This bill would effectively remove the ability to conduct in-person meetings under the first two of those options by requiring all meetings to be livestreamed, recorded, and posted online.**

The Sunshine Law covers a wide range of state and county boards, from those with their own offices, staff, and funding such as the County Councils, the University of Hawaii Board of Regents, and the Office of Hawaiian Affairs' Board of Trustees, **to those that must rely upon the**

volunteer efforts of their members combined with some level of assistance in filing notices and finding meeting rooms from the staff of the agency they are attached to, such as the soil and water conservation district boards, the island burial councils, the professional licensing boards, the neighborhood boards, the Kahana Valley Advisory Board, or the many working groups and task forces on a particular issue that are created by State statute or county ordinance and thus subject to the Sunshine Law. Many of these boards have been able to hold remote meetings during the pandemic, thanks only to the relatively forgiving guidelines set by the Governor's emergency proclamations containing fewer requirements than the new statutory provisions and more allowance for good faith failures. OIP's understanding is that such boards would prefer to move back to in-person meetings now that the more stringent statutory requirements are in effect. **Even under the relatively easier emergency proclamations, some boards found remote meetings challenging and frustrating and simply prefer in-person meetings, particularly those based in rural areas without good broadband connectivity and those whose members and constituents are less comfortable with technology.**

By requiring a remote livestream connection for the public at every meeting, this bill would effectively ban boards from holding completely in-person meetings where the participating board members and the public all attend by going to the noticed meeting location in person. **While boards would still be required to provide at least one connected in-person location as the remote meetings option currently requires, the board would no longer have the option of holding a fully in-person meeting to avoid the need for broadband connectivity, suitable equipment, and technically skilled staff or members able to operate the equipment.** The

boards that are comfortable with and plan to continue holding remote meetings under the Sunshine Law will likely not find this requirement challenging, but **for many boards, it will require connectivity, equipment, and support staff they do not currently have.**

The proposed requirement to record all meetings presents a similar challenge. Under the Sunshine Law's remote meeting option, a board must record a remote meeting and post it online if practicable, but is only required to keep it posted until the meeting minutes are posted. The bill's requirement would apply to **all** meetings, so a board would no longer have the option to hold a fully in-person meeting requiring only written minutes. **The bill's requirement would apply in all cases whether practicable or not, and it would require keeping the recording online indefinitely.** For boards that would not otherwise choose to hold remote meetings, creating a recording is an **additional challenge** added to the challenge of livestreaming. For all boards, the requirement to keep such recordings posted online indefinitely presents a **data storage challenge, and ultimately a fiscal challenge** from the cost of additional storage, software and equipment needed for State and county websites to retain online recordings of all meetings of all boards, even as technology changes.

In addition to the fiscal and operational concerns presented by these requirements, OIP is concerned that this change would essentially make in-person meetings moot. If a board must come up with the equipment and connectivity to livestream and record all its meetings for remote public viewing anyway, what reason would it have to hold an in-person meeting that requires its own members to attend in person at the meeting site? Once it has made the effort and commitment needed to keep a livestream connection running throughout the

meeting, why not simply notice it meeting as a remote meeting and give its own members the same option of remote attendance as the public?

Under the current scheme, the different meeting options present a trade-off. An in-person meeting with written minutes is relatively simple to arrange and requires no internet connection, electronic equipment, or technical knowledge to conduct, but the board members must travel to the meeting location to attend the meeting, just as the public must. By contrast, a remote meeting does require an internet equipment, computer access, and some amount of technical knowledge to set up and conduct, but both board members and the public have the option to attend remotely or, if they prefer, go to the connected in-person site that the board is required to offer to accommodate those who prefer not to have to set up their own connection. **By eliminating the benefit of in-person meetings, this proposal is likely to result in all meetings being held as remote meetings, which will naturally decrease in-person attendance by board members.** That may be the direction in which Sunshine Law meetings will trend over time – with more and more remote meetings, and fewer in-person meetings and fewer people showing up at the connected physical location for remote meetings. But with the Sunshine Law’s remote meeting provision being so newly adopted and not even fully in effect yet, **OIP believes it would be more prudent to take the time to see how remote meetings work out under the new provision and not rush to effectively eliminate the in-person meeting as an option, especially with the current digital divide.**

Finally, OIP notes that the livestream and recording provisions end up creating duplicative and sometimes contradictory requirements, as they are simply being added in a new subsection (b) to section 92-3, HRS, rather than actually reworking the sections setting out the requirements for remote

meetings and in-person meetings at multiple sites respectively. For instance, the livestreaming requirement allows for livestreaming through either audiovisual or audio technology, whereas a remote meeting must generally be via an audiovisual connection. Does this mean a board could hold an in-person meeting if it was broadcast via radio, or even ham radio, and an audio recording was made? This and other questions would pose interpretation problems in implementation.

2. Timing of Testimony

At page 2, lines 11-12, this proposal would amend section 92-3, HRS, to require public testimony to be taken after the board's consideration of each agenda item, rather than before the board's consideration of each agenda item as under current law. In its opinions, **OIP has interpreted the Sunshine Law as not setting a specific requirement regarding when during a meeting oral testimony may be taken, other than to require that testimony on a particular agenda item at least be taken before the board's own consideration and discussion of that issue.** The reason for this interpretation is because the function of testimony is **to give the public an opportunity to present information and arguments and perhaps sway the board** in its consideration of the issue. **The bill's change would take away the public's opportunity to sway the board, and would have the effect of instead turning oral testimony into an opportunity to comment on what the board has just done.** Written testimony would become the only opportunity for the public to present information and arguments to the board before its discussion and possible decision.

No doubt there are some members of the public who would like the chance to tell the board what they think of what the board has just decided.

However, the bill's change would be to the **disadvantage of those members of the public who prefer to use oral, rather than written, testimony** as an avenue to inform and potentially sway a board **before** its discussion and decision on an issue. It would be possible to require boards to take two rounds of oral testimony for each agenda item -- one before and one after discussion of the agenda item -- but that would have the **downside of making meetings longer, and considerably longer for boards that typically receive a large amount of public testimony**. While it is certainly within the Legislature's purview to choose to change the function of oral testimony from one of seeking to inform the board's discussion in advance to one of commenting on the board's discussion after the fact, it is not clear to OIP that this change would represent an improvement for most members of the public and **OIP therefore does not recommend this change**.

3. Identification of Agenda Items as For Action or For Discussion

At page 3, lines 7-10, this bill would amend section 92-7 to require Sunshine Law agendas to identify each agenda item as being for action, or for discussion. **OIP interprets the current law as requiring a board to provide adequate public notice of what items it intends to consider at a meeting, but since consideration of an item includes the possibility of both discussion and action, boards are not generally required to specifically notice items as being for discussion or for action.** (Some boards, such as the county councils, may have their own requirements that do call for such specificity.)

Identifying agenda items as being either for action or only for discussion will provide some additional information to the public, but is unlikely to be the critical piece of information determining whether someone is interested in attending and testifying at a meeting, since

someone who cares about the topic under discussion is likely to care about influencing and hearing the board's discussion, not just about watching the board's vote. **This additional requirement for boards to predict in advance whether they will act on or simply discuss an issue will add another layer of challenge to creating proper agendas, particularly since the Sunshine Law does not allow polling board members as to whether they are likely to want to take action on a particular topic. It is also likely to create further delays by boards** that must wait for another meeting to act on a topic so it can be noticed for action, because the person creating the agenda either forgot to include "for action" or guessed wrong as to whether the members were likely to want to take action. Nonetheless, it is for the Legislature to decide whether the additional agenda information about a board's intent to act on an issue is worth the potential challenges and delays it may cause.

4. Changes to How Agenda Is Posted Online

This proposal would change the specifics of how a board's notice is posted online and would remove the current requirement for a board to post its notice in its office. **Current law already requires notice to be posted on an electronic calendar on a State or county website**, depending on whether it is for a State or county board. This proposal would add the (probably redundant) requirement that the website posting must be "online" and would require that the posting on the calendar be "via a link on the homepage" of a State or county website. **It is not entirely clear to OIP what this change is intended to accomplish.** Possibly it is intended to require that the online posting be both on the State or county's electronic calendar, and also that the homepage of a State or county website have a link to the calendar or perhaps the specific meeting posting,

although it is not clear what benefit that would provide. Alternatively, the provision may be intended to require that the calendar posting itself contain a link to a different State or county website where the agenda and other information about the meeting is actually stored.

Since OIP does not understand what this change is intended to accomplish, **OIP believes the proposed amendment needs clarification** as to whether it is the calendar posting that is supposed to link to another website, or another website that is supposed to link to the calendar posting. **Either way, OIP notes that a drawback of introducing an additional element to a board's required online notice (two separate web postings instead of one) is that it is one more thing for a board to accidentally fail to do and end up having to cancel a meeting.** Nonetheless, if this is a change this Committee would like to pursue, OIP would be happy to work with the Committee to determine what the intent is and develop language to make that intent clearer.

5. Board Packet Deadline

At page 5, beginning at line 4, this bill would amend the Sunshine Law's requirement for any board packet to be made public when it is distributed to members by adding a deadline for doing so and adding a requirement for a board packet to be posted online. Currently, the Sunshine Law does not require boards to have board packets, but if a board does, at the same time it distributes the packet to board members it must also make the packet (or a redacted "public" version) available for public inspection in its office, notify persons on its mailing list, and email it upon request. The deadline for public disclosure is thus determined by when the board distributes the packet to the board members, which could be any time up to the meeting itself. OIP understands the intent of this provision is to set

a firm deadline for when packets must be distributed to ensure there is some time for the public (and board members) to look at them prior to the meeting. However, **OIP is concerned about the potential for the language used in the proposal to inadvertently change current law by adding a requirement for all boards to have board packets and an authorization for boards to set a deadline for written testimony.**

By measuring the deadline to distribute a board packet from the “deadline to submit written testimony,” this proposal would implicitly authorize boards to set a deadline for written testimony, which is something that OIP has not interpreted the Sunshine Law to allow. Authorizing boards to set such a deadline seems contrary to the general intent of this bill **and could present problems for the public in that the current six calendar day deadline to file notice of a Sunshine Law meeting was intended to allow time for the notices to reach people receiving them by postal mail, or for people not subscribed to notices to look through the current meeting postings and spot one of interest, and still have time to submit written testimony.**

Creating a deadline even a day or more before the meeting would throw off that timeline.

The substantive question for this Committee is whether to create a firm deadline for submission of board packets, rather than tying it to when packets are distributed to members no matter how late that may be. OIP is aware that some boards distribute a board packet at the meeting itself, so those boards would have to change their practices to get the board packet out in advance of the meeting. A change from submitting board packets any time up to the meeting itself, to submitting board packets any time up to 48 hours before the meeting, will affect those boards that distribute a board packet in the last day or two prior to the

meeting, but not those distributing it earlier than that, as a number of boards do. OIP notes also that by eliminating the requirement that a board packet be made available to the public at the same time it is distributed to members, this proposal would allow a board to distribute its board packet to the board members in advance of the time the packet is made available to the public, so long as it was made available to the public at least 48 hours in advance. The change thus would affect how boards operate, in some cases resulting in the public getting earlier access to a board packet and in other cases getting access to it later than would be required under current law.

OIP notes that this proposal would also require boards to post the public version of a board packet online. Since boards are currently required to make an electronic version of the public packet available reasonably promptly upon request, the additional requirement to actually post the packet online is a change but not a big change for most boards, particularly since those boards that use a board packet are typically posting it online already.

If this Committee does decide to amend the Sunshine Law to create a firm deadline for submission of board packets, OIP recommends an amendment to avoid creating a requirement for all boards to have board packets and also measure the deadline from the meeting time itself for clarity and to avoid implying that boards are allowed to set a deadline for submission of written testimony, which OIP opinions have found not to be allowed under the Sunshine Law. **The following language at what is now bill page 5 lines 12-13 would do that:**

“ . . .on an appropriate state or county website at least forty-eight hours prior to the meeting time; provided that nothing in this section shall require creation of a board packet. The board shall provide notice . . .”

6. Accommodation of Disabled Persons

HRS Section 92-7.5 currently requires boards to provide reasonably prompt access to board packets to any person upon request and to accommodate requests for electronic packets as soon as practicable. The bill at page 5 line 20 to page 6 line 2 proposes to substantially change the current requirements to instead require boards to “accommodate” requests “from persons with disabilities” as soon as practicable. **OIP has a long-standing concern to avoid placing Americans with Disability Act (ADA) and similar accommodation requirements in the Sunshine Law itself, so as not to place OIP in the position of having to opine on what is a reasonable accommodation, an area of law that actually falls under the authority of other agencies such as the Disability Communication Access Board and the Hawaii Civil Rights Commission. OIP has no legal authority or expertise to enforce disability issues and they should not be made part of OIP’s duty to resolve disputes and make determinations under the Sunshine Law. Consequently, OIP strongly opposes this proposal.**

7. Minutes

Beginning at page 6, line 12, this bill would make changes to the way in which Sunshine Law boards are required to keep and publish meeting minutes. Currently, boards are required to keep minutes, with standards for what must be included in written and recorded minutes respectively set by statute, and post those minutes online by 40 days after the meeting. **This proposal would require a board to prepare two sets of minutes for each meeting: first a set of draft minutes, which must be posted by 30 days after the meeting, and then a set**

of “finalized” minutes, which must be posted 14 days after the “next” meeting. OIP has several concerns with this proposal.

First, the Sunshine Law does not require boards to approve their minutes, although many boards choose to do so. Thus, this proposal would be implying a requirement for boards to approve and finalize their minutes through the new requirement to post both draft and “finalized” minutes online. **Second, the timeline set out for the draft and final minutes does not work well for boards that meet frequently.** County councils, for instance, meet multiple times per week, but under this proposal a council holding meetings on March 1 and 2 would be required to have its final March 1 minutes posted by March 16, 14 days after the “next” meeting on March 2, even though it wouldn’t be required to post draft minutes until March 31, 30 days after the March 1 meeting. It seems unfair to set shorter minutes deadlines for boards that meet more often.

In the absence of any apparent benefit to requiring boards to create both draft and final minutes and to post both online, OIP would recommend that this proposed change be omitted from the bill.

8. General Considerations

As a final observation, OIP notes that recent years have seen regular and sometimes substantial changes to the Sunshine Law, including the addition last year of a statutory process by which boards can hold remote Sunshine Law meetings. **Frequent changes to the law can be challenging for boards to adapt to,** as it requires them to learn new requirements and change aspects of how they operate on what can be an annual basis. **This is particularly true for the sort of sweeping changes proposed in this bill.**

While the boards will bear the fiscal costs of changes proposed by this bill and the delays caused by cancellation of meetings that do not meet the new requirements, **OIP will bear the burden of additional training and dispute resolution that will result from challenges resulting from new laws.** For example, OIP devoted over three months to revise and create new training materials for the changes resulting from the Sunshine Law revisions that went into effect on January 1, 2022. Additionally, OIP has had a 54% increase to a 5-year high of 177 Attorney of the Day inquiries in just the past month, most of which challenged board notices that did not meet the new legal requirements and resulted in cancellation of countless board meetings. This additional work has hindered OIP from addressing its growing backlog of formal cases.

Therefore, in addition to the policy considerations applicable to specific proposed amendments, **OIP would ask this Committee to bear in mind that frequent and sweeping changes to the law can make it difficult for boards to keep up with new requirements, thus resulting in legal challenges to boards' actions, additional costs, and delays in boards' important work, as well as creating substantial work for OIP that prevents it from resolving its own growing backlog of cases.**

Thank you for considering OIP's testimony.

HB-1897

Submitted on: 2/10/2022 10:58:47 AM

Testimony for GVR on 2/11/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
PL Fritz	Individual	Comments	Yes

Comments:

My name is Peter Fritz. I am Hard of Hearing (HOH). I am offering comments. This bill makes changes to provide for many documents to be posted online. However, many people do not have access to computers or devices to allow them to access these documents and this bill does not have any consequences if a board failed to meet the deadline for making documents accessible.

While livestreamed meetings and posting of online documents can improve participation by disabled individuals, I am concerned that some of the provisions in this bill may create barriers for the deaf and HOH; blind individually disabled; kupuna and individuals with mobility disabilities such as Parkinson's or quadriplegia.

For example, this bill on page 5, lines 20 and 21 and page 6, lines 1 and 2 state that [a]s soon as practicable, the board shall accommodate requests [~~for electronic access to the board packet.~~] from persons with disabilities. Many blind and visually disabled use a program such as JAWS to convert the text on the screen to speech. However, these individuals often find that the materials do not meet the accessibility requirements of the ADA and they cannot access the information. However, this bill is silent about whether the meeting can be validly held if the board does not timely provide the board packet for the public.

On page 6, lines 14 and 15, the bill provides that minutes may be either written or recorded. Recorded minutes are inaccessible to the deaf and hard of hearing. These individuals need a transcript of the recorded minutes. Blind and visually disabled individuals require written minutes that are accessible and usable by JAWS.

I support providing the board packet 48 hours in advance of the meeting, however, this bill does not contain any provisions that discuss what happens if the board failed to timely provide the minutes. Can the meeting be validly held if the board failed to timely post the minutes?

If this committee chooses to move this bill, I respectfully request the committee move forward with a defective date and that the committee report reflects my concerns regarding accessibility and the need for remedies if the board does not timely post information.

HB-1897

Submitted on: 2/10/2022 2:18:20 PM

Testimony for GVR on 2/11/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Gerard Silva	Individual	Oppose	No

Comments:

All borad Meetings should only be in person. This So called Pandemic is Fake. Puy in to place for only one reason Comunist CONTROL. Every Body should be AWAKE BY NOW!!!

National Federation of the Blind of Hawaii
Testimony before the Committee on Government Reform (GVR)
Hawaii State House of Representatives
Thirty-First Legislature, Regular Session of 2022
February 11, 2022, 9:30 AM, hearing on HB1897

Good morning chair, vice chair, and members. I am James Gashel, representing the National Federation of the Blind of Hawaii, supporting but suggesting amendments to HB1897.

The purpose of this bill is to strengthen the State's sunshine law and to allow the public to give more meaningful, contemporaneous testimony at meetings.

NFB of Hawaii supports this purpose and the substance of the bill, asking for the following changes relating to disability access:

(1) In section 2, in new subsection (b) of revised section 92-3, after "audio technology," we suggest adding: (including, if requested in advance, standard telephone access to listen and give oral testimony)." This suggestion acknowledges the needs of those who don't have access to live streaming by way of computer. This is often the case for people with disabilities and members of our Kupuna population.

(2) In section 3, new subsection (b) of section 92-7, we suggest adding the following new sentence at the end after "applicable." "Notices posted electronically shall be in a format accessible to screen reading technology used by persons unable to read standard print due to disability." This specification is essential for blind people, for example, to have proper notice of the meeting. It is also essential to know the instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline...."

(3) In section 4, revised section 92-7.5, after "written testimony deadline." We suggest adding: "When posted electronically, board packets shall be in a format accessible to screen reading technology used by persons unable to read standard print due to disability." Inserting this sentence will decrease the need for boards to accommodate requests for electronic access from persons with disabilities as later stated.

Members of the National Federation of the Blind (NFB) of Hawaii are blind. By definition we cannot see or read the information on computer screens. We cannot see the information posted on a website. We can read the information however, provided the information is prepared in a format accessible to the electronic screen reading technology we use. Information on a website in an HTML format is generally completely accessible. Information provided in PDF files may be far less accessible to our screen readers.

Thank you very much. The point of our position is to be sure that blind people do not end up on the wrong side of the digital divide if the legislature decides to amend the Sunshine law as proposed in HB1897. Mahalo for your consideration of the three amendments we suggest.

HB-1897

Submitted on: 2/11/2022 8:55:33 AM

Testimony for GVR on 2/11/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Anmarie Mabbutt	Individual	Support	No

Comments:

Dear House Representatives,

I respectfully request you support HB1897. This legislation contains several proposed improvements to the State's Sunshine Law. **All the proposed amendments should be very easy and inexpensive to implement** including the provision of draft minutes within 30 days or by the next meeting whichever is earlier, livestreaming of meetings (which has successfully been done for the past two years), indicating on agendas whether an item is for action or discussion and establishing a deadline for submission of items to the board packet. These proposed amendments are minor but important improvements to the open government laws in the State of Hawaii.

I am a Maui resident, a California attorney and a longtime open government advocate. **I respectfully request you support HB 1897 and move it forward. Given the events of the past week regarding the bribery and wire fraud charges against former State Senator English and State Representative Cullen, I would hope that the legislature would be supportive of legislative proposals that improve transparency and open government in the State of Hawaii.**

Mahalo for your time and consideration of HB1897.

Respectfully,

Anmarie Mabbutt

HB-1897

Submitted on: 2/11/2022 9:17:54 AM

Testimony for GVR on 2/11/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Cara Flores	Individual	Support	No

Comments:

Please support HB1897. Open and transparent government is fundamental to good democracy. This will help prevent corruption and scandal in the future.

Mahalo,

Cara Flores

HB-1897

Submitted on: 2/11/2022 10:06:17 AM

Testimony for GVR on 2/11/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Jayne Bush	Individual	Support	No

Comments:

Dear House Representatives,

Aloha. Please support HB1897. As a resident of Maui, I support the proposed improvements to the State's Sunshine Law. These proposed amendments are important improvements to the open government laws in the State of Hawai'i. I have been alarmed by the lack of promised transparency from our trusted leaders. It has become normal to be excluded from the financial workings of our own communities.

Thank you for your time and consideration of HB 1897.

I trust that you will act in favor of open public knowledge.

Aloha,

Jayne Bush, Maui, HI