

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE CASE  
Chairperson**

**Before the Senate Committee on  
JUDICIARY**

**Tuesday, March 22, 2022**

**9:31 AM**

**State Capitol, Conference Room 016 and Via Videoconference**

**HOUSE BILL 2026, HOUSE DRAFT 2  
RELATING TO CHAPTER 92, HAWAII REVISED STATUTES**

House Bill 2026, House Draft 2 proposes make clarifying changes to Sunshine Law and extends applicability of the Sunshine Law to “adjudicatory functions concerning land use, including but not limited to the adjudicatory functions of the Land Use Commission. **The Department of Land and Natural Resources (Department) requests clarification regarding what kinds of cases will be subject to these new provisions.**

The Department seeks clarification on the Legislature’s intent regarding extending Chapter 92, Hawaii Revised Statutes (HRS), to a board’s adjudicatory functions when those functions concern land use. Because the term “land use” is not defined in the statute, there is ambiguity as to what types of cases this provision refers to. We note that the types of contested cases that the Land Use Commission addresses within its jurisdiction is completely different from the types of contested cases that are adjudicated by the Board of Land and Natural Resources (Land Board). We note the Office of Information Practice’s testimony indicates they read the proposed language to extend to all contested cases. If this interpretation is correct, the Department opposes the proposed language.

The Department notes that contested cases under the Land Board are governed by Chapter 91, HRS, and Section 13-1-5.1, Hawaii Administrative Rules. The meeting requirements under Chapter 92, HRS, specifically do not apply to the adjudicatory functions exercised by a board (Section 92-6, Hawaii Revised Statutes). Rather, Chapter 91, HRS, allows for evidentiary hearings that closely follow court proceedings. The Department does not believe contested cases should be subject to Chapter 92, HRS, for the following reasons.

First, any contested case was first heard and voted on by the Land Board. So, all testimony is part of the record. Under Chapter 91, HRS, agencies have the ability to limit the parties only to those persons whose property interest would be aggrieved by the decision of the agency. During a contested case, a hearings officers should exclude evidence that is irrelevant, immaterial, or

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

unduly repetitious. Subjecting contested cases to Chapter 92, HRS, proceedings would trade efficiency for openness. The interested parties would have already given testimony at the prior Chapter 92, HRS, Land Board meeting, and that testimony would already be in the record. It is not clear what purpose would be served by requiring the hearings officer to receive additional testimony. Rather, this would add cost and time to contested cases, which can already be quite costly. It would also put additional administrative burdens on the hearings officer. The Department notes that it is often difficult to get hearings officers for Department contested cases because of the time and administrative burdens that already exist.

Second, additional administrative burdens would include having to get notices out at least six days before each hearing date and additional difficulties managing logistics for hearings because the hearings officer may not be able to anticipate how many people will appear to testify. This could also put an additional burden, in terms of time and expense, on the parties in the contested case, including public interest groups.

Also, since contested cases are really a hearing on one subject, if this measure passes, the Department requests the legislature to clarify when, or at what points in a contested case hearing public testimony would be required. For example, can the hearing officer close public testimony after the first day, or would public testimony be allowed on all days, even if it is repetitive?

Finally, we point out that the Land Use Commission is already required to hold its adjudicatory hearings under both chapters 91 and 92, HRS, unlike like the Land Board, which meets under Chapter 92, HRS, with only contested cases subject to Chapter 91, HRS.

The Department suggests that the public has ample opportunity to comment at the Land Board meetings. For purposes of running efficient contested cases, adjudicatory actions related to land use should continue solely under Chapter 91, HRS.

Thank you for this opportunity to comment on this measure.

Statement Before The  
**SENATE COMMITTEE ON JUDICIARY**  
Tuesday, March 22, 2022  
9:31 AM  
Via Video Conference and Conference Room 016  
in consideration of

**HB 2026, HD2**

**RELATING TO RELATING TO CHAPTER 92, HAWAII REVISED STATUTES.**

Chair RHOADS, Vice Chair KEOHOKALOLE, and Members of the Senate Judiciary Committee

Common Cause Hawaii supports HB 2026, HD2, which (1) defines "board business" and "informal gatherings", (2) allows a board to prepare and circulate amongst members a statement on a position previously adopted for purposes of submission to the legislature, under certain circumstances, (3) outlines when board packets must be available to interested persons, and (4) applies sunshine law to all adjudicatory functions concerning land use.

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 specifically supports Section 7 of HB 2026, HD1, which provides at page 10, lines 3-4, that the board packet is to be distributed to be board members and the public no later than 24 hours before the meeting time. Common Cause Hawaii notes that SB 2143, SD2 provides that board packets should be publicly available at least forty-eight hours prior to the board meeting. Common Cause Hawaii recommends providing the board packet publicly available at least forty-eight hours prior to the board meeting in line with SB 2143.

Common Cause Hawaii also specifically supports Section 4 of HB 2026, HD1, which provides at page 8, lines 16-18 that public oral testimony should not be limited to the beginning of the agenda or meeting.

These proposed changes to the Sunshine Law will provide the public with time to review board packets before having to provide written testimony so that meaningful testimony may be submitted. Additionally, if the agenda of boards have presentations, the public will have time to review and/or observe the presentations and then provide testimony accordingly, instead of being limited to testifying indiscriminately at the beginning of an agenda without having the opportunity to review board packets or agenda presentations. The public will be able to testify before boards cogently and intelligently with the amendments proposed by HB 2026, HD2.

Thank you for the opportunity to testify in support of HB 2026, HD2. If you have further questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 22, 2022, 9:31 a.m.  
State Capitol, Conference Room 016 and Via Videoconference

Re: Testimony on H.B. No. 2026, H.D. 2  
Relating to Chapter 92, Hawaii Revised Statutes

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Thank you for the opportunity to submit testimony on this bill, which would amend part I of chapter 92, the Sunshine Law, by codifying the definition of board business, adding a new permitted interaction allowing board members to circulate a position statement in the course of preparing legislative testimony, setting a deadline of 24 hours before a meeting for board packets to be provided to members and the public, barring the practice of hearing oral testimony at the beginning of a meeting, and removing land use issues from the Sunshine Law exemption generally applicable to quasi-judicial functions such as contested cases. The Office of Information Practices (OIP) believes the changes proposed in this bill are relatively minor and not inconsistent with the policy and purpose of the law, and thus does not take a position for or against those proposals, but instead **offers comments on how they would change the current law and their potential effects** to assist this Committee in making the policy decision of whether to pursue each proposed amendment.

## 1. Definition changes

First, this bill would amend section 92-2, HRS, to add definitions of “board business” and an “informal gathering” and delete the definition of a “chance meeting.” OIP believes this change would not represent a substantive change to the law. The term “chance meeting,” defined as a social or informal assemblage of members at which board business is not discussed, is used only once in the Sunshine Law, in a provision in section 92-5(b) stating that a chance meeting, permitted interaction, or electronic communication cannot be used to circumvent the law’s spirit or requirements. Thus, the term just serves to underline that a gathering of members at which no board business is discussed is not required to be conducted as a Sunshine Law meeting but also cannot be used as a way to evade the law’s requirements. This proposal would simply replace the term “chance meeting” with the term “informal gathering,” leaving the definition and function the same. OIP therefore believes this change would have no impact on the law’s operation.

**The addition of a statutory definition of “board business” would effectively codify the definition of “board business” that OIP adopted** in an opinion over twenty years ago and has followed since that time. The proposed definition would not substantively change OIP’s existing definition. Codifying the definition will make it easier to find, as not everyone is aware of the body of OIP’s opinions interpreting the Sunshine Law. **Thus, OIP believes that although this change will not alter how the law applies to boards, it will add clarity to the statute itself.**

## 2. Permitted Interaction to Circulate and Comment on Testimony

At page 7 the bill proposes a new permitted interaction, section 92-2.5(h), that would allow board members to “circulate for approval a statement

regarding a position previously adopted by the board” to meet a legislative testimony deadline that is shorter than the Sunshine Law’s six calendar day deadline to notice a meeting, so long as the position was previously adopted by the board and the statement and all communications among board members about it are written and publicly posted online within two days. The issue of how a Sunshine Law board can prepare legislative testimony is one many boards find challenging, and although there are ways for a board to deal with this such as through delegation to staff or to a minority of board members designated under section 92-2.5(b)(2), HRS, to prepare testimony on and present the board’s previously adopted position, the only way now for all members of a board to be able to discuss the actual testimony would be for the board to notice an emergency meeting based on an unanticipated event under section 92-8(b), HRS, which is not a straightforward process. This proposed permitted interaction would make a full board’s discussion of its testimony easier.

Although it goes farther than most permitted interactions by allowing discussion of board business among not just a quorum but all board members, the topic that can be discussed is limited to the approval of a written statement intended for the legislature that reflects a position previously adopted by the board, and the requirement for all communications to be in writing and posted online should help to ensure that the permitted interaction is used only for this fairly narrow purpose and not to shut the public out of policymaking discussions. **OIP thus does not object in principle to this proposed permitted interaction and believes the Legislature must decide whether it represents an appropriate balance between boards’ expediency and the public interest in access to government boards’ discussions and decisions.**

### 3. Board Packet Deadline

At page 10, the bill would amend section 92-7.5 to require that any board packet be available at least twenty-four hours before the meeting time. Currently, the Sunshine Law does not require boards to have board packets, but if a board does distribute documents to its members before a meeting, 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 before the meeting itself, and a board that does not distribute a board packet to its members also does not trigger the requirement to make a board packet available to the public.

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 immediately before the meeting itself, so those boards would have to change their practices to get the board packet out farther in advance of the meeting. However, most boards using packets would presumably not be affected by preparing and distributing the packets at least 24 hours before the meeting, **and since a board is not required to create a board packet in the first place, a failure to do so does not require cancellation of the meeting.** However, if a board had intended to create a board packet and didn’t get it finished in time to meet the deadline, it would have to refrain from sending the materials out in the 24 hours prior to the meeting, and instead wait until during or after the meeting to distribute it to members and the public. Keeping in mind that the public may only have six calendar days’ notice of the meeting, a

requirement to distribute board packets at least 24 hours before the meeting would give the public time to prepare and submit their testimony to the board, and also would give both the public and the board time to review the board packet, including the testimony, and be better prepared for the meeting.

#### 4. Timing of Testimony

A proposed amendment to section 92-3, HRS, at bill page 8 lines 16-18, would set a requirement that oral testimony “not be limited to the beginning of a board’s agenda or meeting.” In its opinions, **OIP has interpreted the Sunshine Law not to set a specific requirement regarding when in a meeting oral testimony may be taken, other than to require that testimony on a particular agenda item at least be taken prior to the board’s own discussion of that issue** (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). OIP is aware that many boards choose to take public testimony on all agenda items at the beginning of a meeting, and OIP has opined that the practice is allowed under the Sunshine Law so long as each interested person has a sufficient opportunity to speak to each agenda item during that period – in other words, taking testimony all at the beginning cannot be used as a way to shorten the total period of time allowed for public testimony. Boards have their own reasons for choosing whether to take testimony at the beginning of a meeting or as each item is called, and OIP’s understanding is that those reasons can include both the board’s own convenience and organizational preference and consideration of what is easier for the public (some people prefer to testify and leave rather than sit through what could be a lengthy meeting waiting for their items of interest).



**This proposal would bar the practice of taking all testimony at the beginning of a meeting, and effectively require that testimony be taken either immediately prior to discussion of each item or at least prior to each category or set of agenda items.** It is not a huge change to the law, but it will change the way some boards operate and give them less control over how they organize their meetings. **Is there a benefit to eliminating the practice of taking testimony at the beginning of a meeting that outweighs the potential inconvenience to boards of having to change the way they run meetings on pain of violating the Sunshine Law? The question, OIP believes, is a policy decision for this Committee to make.**

#### **5. Land Use Related Adjudicatory Functions**

On page 9 beginning at line 12, this bill would amend section 92-6(b), HRS, to make the Sunshine Law applicable to any board's adjudicatory functions concerning land use. Section 92-6(a) sets out an exemption to the Sunshine Law for boards' adjudicatory functions, including but not limited to those governed by contested case requirements. In current law, subsection 92-6(b) creates an exception to that exemption under which the Land Use Commission remains subject to the Sunshine Law's requirements even when exercising its adjudicatory functions. **This proposal would extend that exception-to-the-exemption to make the Sunshine Law applicable to any Sunshine Law board exercising its adjudicatory functions concerning land use, not just the Land Use Commission.**

The exemption for boards' exercise of adjudicatory functions recognizes that for its adjudicatory functions a board is already subject to a different set of standards for public notice, testimony, and written records of decisions, typically as

set out in the contested case requirements and with the primary goal of ensuring due process among interested parties rather than of ensuring general public access to the formation and conduct of public policy as under the Sunshine Law. By exempting boards' adjudicatory functions, the Sunshine Law prevents such boards from being required to simultaneously follow two potentially incompatible standards for notice, testimony, and so forth. The downside of creating an exception to the exemption, then, is that it creates greater administrative challenges for boards that must follow both standards. The benefit is that following both standards helps ensure that for issues where there is both a general public interest and a more direct interest for involved parties, both the public and the involved parties have the opportunity to attend and participate appropriately. **Here, too, OIP believes this Committee must balance those considerations in making a policy decision on whether to make this proposed amendment to the Sunshine Law.**

## **6. 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. Changes also require OIP to review and revise its training materials, and could affect OIP's advice and rulings from one year to next, depending on the amendments to the law. Therefore, in addition to the policy considerations applicable to specific proposed amendments, **OIP would ask this Committee to bear in mind that frequent changes to the law can**

**itself present a challenge to the ability of boards and OIP to keep up with the requirements.** Nonetheless, OIP notes that the changes currently proposed in this bill are not sweeping in scope and would present relatively minimal alterations to how most boards currently do business. If additional changes are made to the bill, however, OIP would have to reassess their impact on boards' and OIP's ability to keep up with the changes.

Thank you for considering OIP's testimony.

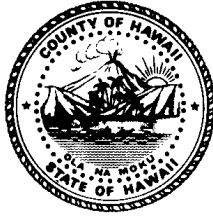
**HEATHER L. KIMBALL**

Council Member

*Chair, Committee on Governmental Operations,  
Relations and Economic Development*

Council District 1

Hawai'i State Association of Counties, Secretary



Contact Information

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**HAWAI'I COUNTY COUNCIL**

*County of Hawai'i  
Hawai'i County Building  
25 Aupuni Street, Suite 1402  
Hilo, Hawai'i 96720*

TO: Karl Rhoads, Chair  
Senate Committee on the Judiciary

FROM: Heather L. Kimball  
Council Member, District 1

DATE: March 21, 2022

SUBJECT: **STRONG SUPPORT HB 2026 HD2, RELATING TO SUNSHINE LAW**

Aloha Chair Rhoads and honorable members of the Senate Committee on the Judiciary

Thank you for scheduling a hearing of HB2026. I am writing today to offer my strong support for HB2026 HD2 relating to HRS Chapter 92, Sunshine Law; Board Business; Informal Gatherings; and Board Packets.

This bill is the result of several months of conversations between City and County of Honolulu Chair Tommy Waters, representatives from Common Cause, League of Women Voters, Office of Information Practices (OIP) and me. I am very pleased with the collaborative approach used in the drafting this bill and I am grateful to Chair Nakashima for introducing it on our behalf.

HB2026 HD2 has been added to the HSAC legislative package. Increasing government transparency and public involvement in government decision making was adopted as a priority for HSAC. We feel that the language in this bill accomplishes both of these objectives.

The lack of clarity in the definition of board business in HRS Chapter 92 has led to confusion and often resulted in a chilling effect on the work of boards subject to Sunshine law. This is particularly true for the County Councils whose work often includes community organizing in addition to board business. Boards are also unclear about their ability to engage in trainings and professional development that would improve their ability to do their work effectively. HB2026 HD2 aims to put into statute a clear definition of board business that was crafted based on previous OIP opinion, and make editorial changes to clarify the reference to this definition.

As state legislators, you more than anyone, are aware of how quickly things move during session. Due to the notice requirements, boards are unable to testify as a whole body on state legislative proceedings in a timely way. The language in this bill provides a mechanism for boards to fully participate in the legislative process when the board has agreed to policy positions in a previously held public hearing.

Furthermore, this bill increases the ability of the public to participate in board proceedings by setting a specific time requirement for board packets to be made available to the public. The public needs the same information as the boards in order to be able to meaningfully testify on matters before the board.

Finally, HB2026 HD2 includes all adjudicatory functions concerning land use in the proceedings subject to Sunshine Law. This will increase transparency and give the public the ability to meaningfully participate and ensure the best land use decision are made through public involvement. Thank you for the opportunity to testify in support of HB2026 HD2 and I urge the committee to pass this important bill.

Thank you in advance for your consideration,

A handwritten signature in cursive script that reads "Heather Kimball".

Heather Kimball  
Council Member District 1



Hawai'i Convention Center  
1801 Kalākāua Avenue, Honolulu, Hawai'i 96815  
**kelepona** tel 808 973 2255  
**kelepa'i** fax 808 973 2253  
**kahua pa'a** web [hawaii-tourism-authority.org](http://hawaii-tourism-authority.org)

**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 JUDICIARY**

March 22, 2022  
9:31 a.m.  
State Capitol  
Conference Room 016 & Videoconference

In consideration of  
**HOUSE BILL NO. 2026 HD 2**  
**RELATING TO CHAPTER 92, HAWAII REVISED STATUTES**

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Aloha Chair Rhoads, Vice Chair Keohokalole, and members of the Committee on Judiciary.

The Hawai'i Tourism Authority (HTA) appreciates the opportunity to offer comments on HB2026 HD 2, which adds definitions for "board business" and "informal gatherings" while also specifying that a board may prepare and circulate amongst its members a statement on a position previously adopted for purposes of submission to the legislature when notice by the legislature is insufficient to interact in any other permitted manner. The measure further outlines when board packets must be available to interested persons and requires the application of the sunshine law to all adjudicatory functions concerning land use.

As an attached agency that is governed by a board, we are often faced with deadlines to circulate and approve drafts of testimony that have a short window to submit to the legislature. This measure would create an inefficiency in that process by requiring that communications among board members about the statement, including drafts, be made accessible to the public within two days of it being circulated. This may frustrate the process and lead to agencies, such as ours, not meeting the often-short deadlines to present meaningful testimony. We would recommend keeping the section that states: "Where notice of the deadline to submit testimony to the legislature is less than the notice requirements in this section, a board may circulate for approval a statement regarding a position previously adopted by the board," and deleting the remaining language.

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

March 22, 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 twenty-four 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.

We appreciate the opportunity to provide our comments on HB2026 HD 2. Mahalo.



SENATE COMMITTEE ON JUDICIARY

Tuesday, March 22, 2022, 9:31 am, State Capitol Room 016 & Videoconference

HB 2026, HD2

Relating to Chapter 92, Hawaii Revised Statutes

**TESTIMONY**

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

Chair Rhoads and Committee Members:

**The League of Women Voters of Hawaii strongly supports HB 2026, HD2.**

Our following testimony will explain Section 6 of HB 2026, HD2. Other parties will submit testimony which explains the rest of this bill.

Under §92-6, Hawaii Revised Statutes, the State Land Use Commission is partially subject to the Sunshine Law, but all other boards are exempt from the Sunshine Law when they exercise “adjudicatory functions” which concern land use. This exemption applies regardless of whether anyone wants, has the right to, or has requested a contested case hearing under Chapter 91. In other words, when a board holds a conventional (not a contested case) hearing on a land use application, the Sunshine Law does **NOT** require public notice; the Sunshine Law does not establish a public right to attend, testify, and videotape; the Sunshine Law does **NOT** require a quorum; and the Sunshine Law does **NOT** require meeting minutes. Fortunately, most boards assume or voluntarily act as if the Sunshine law applies.

Section 6 of HB 2026, HD2 would make the Sunshine Law apply to all board meetings which concern land use. This would mean that

- the public has the right to request email meeting notice of a board meeting on land use (just like other board meetings).
- a quorum is required for a board meeting on land use (just like other board meetings).
- the public can review board packets prior to board meetings on land use (just like other board meetings).
- the public has the right to attend, testify at, and videotape board meetings on land use (just like other board meetings).
- board meeting minutes must include appropriate summary information on board meetings on land use (just like other board meetings).

Thank you for the opportunity to submit testimony.



THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

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Fax: (808) 380-3580  
info@civilbeatlawcenter.org

Senate Committee on Judiciary  
Honorable Karl Rhoads, Chair  
Honorable Jarrett Keohokalole, Vice Chair

**RE: Testimony Supporting H.B. 2026 H.D. 2,  
Relating to Chapter 92, Hawaii Revised Statutes**  
Hearing: March 22, 2022 at 9:31 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. 2026 H.D. 2.**

This bill addresses multiple issues that will provide members of the public and members of Sunshine Law boards with greater opportunity to participate in public discourse.

Section 2 codifies the definition of “board business” that has been used by the Office of Information Practices for decades and may help to address overly conservative legal advice by attorneys for boards and commissions regarding what board members can discuss outside an open meeting.

Section 3 adds a permitted interaction group that will allow board members – subject to reasonable guardrails to avoid private discussions of board business – to participate more readily in proceedings before the Legislature.

Section 4 better protects the public’s right to participate *meaningfully* in board meetings.

Section 6 recognizes that the Land Use Commission is not the only Sunshine Law board that addresses critical issues of land use that affect our entire community and thus justify greater public notice and participation than typical adjudicatory proceedings.

Section 7 provides the public with better advance notice of what will be discussed by boards. **Consistent with this Committee’s approval of S.B. 2143, the Law Center would suggest increasing the availability of board packets to 48 hours before a meeting.**

Thank you again for the opportunity to testify **supporting** H.B. 2026 H.D. 2.



March 22, 2022

Sen. Karl Rhoads  
Senate Judiciary Committee  
State Capitol  
Honolulu, HI 96813

Re: HB 2026, HD2

Chair Rhoads and Committee Members:

Please pass this bill as it makes small changes to Sunshine Law that reflect official opinions and guidance.

For many years, the county councils have come to the Legislature to find ways to meet outside the Sunshine Law. And various attempts have been enacted.

That is why we find limited interaction by board members to prepare statements for the state Legislature to be acceptable.

The measure also makes board packets with detailed information about agenda items available to the public no later than 24 hours before meetings.

Thank you for your time and attention,

Stirling Morita  
President  
Hawaii Chapter of the Society of Professional Journalists

**HB-2026-HD-2**

Submitted on: 3/19/2022 9:48:07 AM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| David Anderson      | Individual          | Support                   | Written Testimony Only |

Comments:

I support that section of HB2026, HD2 providing that the board packet is to be distributed to be board members and the public no later than 24 hours before the meeting time. Please note that SB 2143, SD2 provides that board packets should be publicly available at least forty-eight hours prior to the board meeting. I support making the board packet publicly available at least forty-eight hours prior to the board meeting in accordance with SB 2143, SD2.

I also specifically supports that section of HB 2026, HD2, which provides that public oral testimony should not be limited to the beginning of the agenda or meeting.

These proposed changes to the Sunshine Law will provide the public with time to review board packets before having to provide written testimony so that meaningful testimony many be submitted.

Additionally, if the agenda of boards have presentations, the public will have time to review and/or observe the presentations and then provide testimony accordingly, instead of being limited to testifying indiscriminately at the beginning of an agenda without having the opportunity to review board packets or agenda presentations.

Thank you for the opportunity to submit testimony in support of this bill.

**HB-2026-HD-2**

Submitted on: 3/19/2022 2:31:54 PM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| lynne matusow       | Individual          | Support                   | Written Testimony<br>Only |

Comments:

First, I strongly object to the use of defective effective dates, which often are the kiss of death for a bill. This bill must be amended to state that it is effective upon approval.

Sunshine, openness, transparency. This bill would make it more open to the public, the public which pays taxes, which suffers the consequences, good and bad, of all legislation, the public which should have as much information as possible. The public which understands the impact of laws better than the drafters of language, appointed officers, and even the legislators who vote. It is the public which is at the grassroots, and the grassroots is what matters.

It is important that oral public testimony not be restricted to the beginning of the meeting. It should be after the presentation of those who drafted the language, and it should be item by item. When I testified in person, prior to the pandemic, the public always got to speak after the presenters, item by item. The public can then point out flaws, problems, etc. If the public has not heard the presentation often their testimony does not address the real issues.

**HB-2026-HD-2**

Submitted on: 3/19/2022 4:10:46 PM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| tlaloc tokuda       | Individual          | Support                   | Written Testimony Only |

Comments:

Aloha JDC Chair & Committee,

I am a volunteer for Common Cause HI and I often agree with their well thought out rationale for supporting or objecting to various bills. For bill HB2026 I agree with them. I support that section of HB2026, HD2 providing that the board packet is to be distributed to be board members and the public no later than 24 hours before the meeting time. Please note that SB 2143, SD2 provides that board packets should be publicly available at least forty-eight hours prior to the board meeting. I support making the board packet publicly available at least forty-eight hours prior to the board meeting in accordance with SB 2143, SD2. I also specifically supports that section of HB 2026, HD2, which provides that public oral testimony should not be limited to the beginning of the agenda or meeting.

These proposed changes to the Sunshine Law will provide the public with time to review board packets before having to provide written testimony so that meaningful testimony many be submitted.

Additionally, if the agenda of boards have presentations, the public will have time to review and/or observe the presentations and then provide testimony accordingly, instead of being limited to testifying indiscriminately at the beginning of an agenda without having the opportunity to review board packets or agenda presentations.

Mahalo for your consideration,

Tlaloc Tokuda

Kailua Kona HI 96740

**HB-2026-HD-2**

Submitted on: 3/20/2022 8:03:44 AM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| E. Ileina Funakoshi | Individual          | Comments                  | Written Testimony<br>Only |

Comments:

Alohaj Chair

I am elayne.ileina funakoshi of Pearl City Neighborhood Board #21.

From my experience, the violations of the sunshine law occurs by the chairs because of their unfamiliarity of th application of the law. For example, taking more than one board member to meet with community for item to be put on the agenda or forwarding resolutions/letters for comments before publishing on agenda. This goes on since there is no "policing." Our .chair finally stopped forwarding for comments.

If i may add, electronic communication by chair to individual board member should not be allowed. All electronic communications by chair should include all board members. I cannot comment further on this..

Please contact me if there are any questions.

**HB-2026-HD-2**

Submitted on: 3/20/2022 11:11:48 AM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| laurie boyle        | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Aloha,

I support HB2026 for the simple reason that any members of a board and the community should be allowed ample time to review and prepare for the agenda items of a meeting, which should be at least 48 hours, but 24 hours gives at least some review time.

Mahalo for your time.



**HB-2026-HD-2**

Submitted on: 3/20/2022 7:07:52 PM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Kathy Jaycox        | Individual          | Support                   | Written Testimony<br>Only |

Comments:

Appropriate time is needed to allow for public input.

TO: Members of the Committee on Judiciary

FROM: Natalie Iwasa  
808-395-3233

HEARING: 9:30 a.m. Tuesday, March 22, 2022

SUBJECT: HB 2026, HD2 Sunshine Law, Board Packets – **SUPPORT with Amendment**

Aloha Chair Rhoads and Committee Members,

Thank you for allowing the opportunity to provide testimony on HB 2026, HD2 which mainly would require board packets to be posted or available to the public no later than 24 hours prior to a meeting and specifies that oral testimonies not be limited to the beginning of a board's agenda or meeting.

I support both of these changes. It is difficult to provide meaningful testimony when board materials are posted just hours before a meeting. The requirement to make board packets available no later than 24 hours prior is an improvement, but 48 hours would be better.

The change to when oral testimonies may be given, i.e., not limited to the beginning of the meeting, is important. Right now, if a testifier has multiple bills or resolutions to provide input on, it must all be given at one time for some boards. This disallows the testifier from hearing any discussion whatsoever on those measures.

In addition, board members may lose interest when one person is speaking on multiple issues.

Please amend line 3 on page 10 to "forty-eight" hours and vote "yes" on HB2026, HD2.

*Testifying in my individual capacity.*

**HB-2026-HD-2**

Submitted on: 3/21/2022 7:38:01 AM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>         |
|---------------------|---------------------|---------------------------|------------------------|
| Linda Morgan        | Individual          | Support                   | Written Testimony Only |

Comments:

I strongly support the intention of HB2026 to increase government transparency.

I support the section of HB2026, HD2 providing that the board packet is to be distributed to board members and the public no later than 24 hours before the meeting time. I prefer SB 2143, SD2 which provides that board packets should be publicly available at least forty-eight hours prior to the board meeting. I support making the board packet publicly available at least forty-eight hours prior to the board meeting in accordance with SB 2143, SD2.

I also specifically support the section of HB 2026, HD2, which provides that public oral testimony should not be limited to the beginning of the agenda or meeting.

These proposed changes to the Sunshine Law will provide the public with time to review board packets before having to provide written testimony so that meaningful testimony many be submitted.

Additionally, if the agenda of boards have presentations, the public will have time to review and/or observe the presentations and then provide testimony accordingly, instead of being limited to testifying only at the beginning of an agenda without having the opportunity to review board packets or agenda presentations.

**HB-2026-HD-2**

Submitted on: 3/21/2022 11:03:42 AM

Testimony for JDC on 3/22/2022 9:31:00 AM

| <b>Submitted By</b> | <b>Organization</b> | <b>Testifier Position</b> | <b>Testify</b>            |
|---------------------|---------------------|---------------------------|---------------------------|
| Donna Ambrose       | Individual          | Support                   | Written Testimony<br>Only |

Comments:

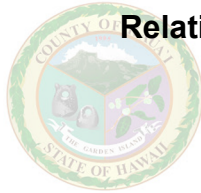
I support making board packets available at least 24, and preferably 48, hours before a meeting. This will allow people time to review materials and provide better-informed testimony. I also support the public's being permitted to testify after each agenda item to benefit from hearing each topic's presentation. Please pass this bill. Mahalo.



Testimony of the

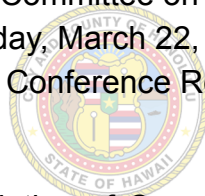
**Hawai'i State Association of Counties**  
on  
**H.B. No. 2026, H.D.2**

**LATE**



**Relating to Chapter 92, Hawaii Revised Statutes.**

Committee on Judiciary  
Tuesday, March 22, 2022, 9:31.m.  
Conference Room 016



The Hawai'i State Association of Counties (HSAC) supports H.B. 2026, H.D.2, which proposes to clarify Hawaii's public agency meetings and records law to allow timely public review and inspection of the material being discussed at the meeting of a board to facilitate meaningful testimony.

Hawai'i's public meetings and records law was enacted to establish guidelines for government agencies to assist the public to scrutinize and participate in various government decision-making processes. Since its enactment in 1975, this law has evolved to protect the people's right to know.

Among the clarifying amendments in H.B. 2026, H.D.2, are:

- Allowing a board to approve a previously adopted position to be included in testimony to the legislature, where the deadline to submit testimony is imminent;
- Specifying when board packets are to be created and made available; and
- Specifying that the open meetings requirements apply to the adjudicatory functions of the Land Use Commission.

For these reasons the Hawai'i State Association of Counties supports H.B. 2026, H.D.2, and requests your favorable consideration of this measure.

