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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. 2235
Relating to Informal Meetings

Thank you for the opportunity to submit testimony on this bill, which would allow all members of a county council to jointly attend informational meetings or presentations. The Office of Information Practices (“OIP”) **opposes this bill. The Sunshine Law’s guest meeting provision enacted in 2014, and made permanent in 2016, already allows all members of a county council to jointly attend community meetings while continuing to protect the public interest through limited meeting safeguards, which this proposal would essentially strip away and render moot.**

In 2014, county council members expressed concerns that the Sunshine Law did not provide them a workable method to attend community meetings or presentations that any number of council members might want to attend and at which a variety of board topics might be raised, and where it would not be practical to follow a set agenda or take public testimony. Consequently, the Legislature passed H.B. 2139, H.D. 1, S.D. 1, C.D. 1, which was signed into law as Act 221, SLH 2014, and created a new type of limited meeting in section 92-3.1, HRS, that allows any number of county council members to attend a meeting open to the public as

the guest of a board or community group. Under this guest meeting provision, the council's notice of the limited meeting is not required to include an agenda, and unless the hosting community group is itself a Sunshine Law board, there is no requirement to take oral testimony at the meeting. **The Legislature included safeguards**, such as the requirement that no limited meeting of this sort be held outside Hawaii, that only one such meeting per community group per month be held, and that no decisions be made at the meeting. In addition, the videotaping requirement applicable to all limited meetings applies to guest meetings as well, unless waived by OIP. The Legislature included a sunset date of June 30, 2016, for the guest meeting provision.

In 2016, the Legislature passed S.B. 2121, S.D. 1, H.D. 1, C.D. 1, signed into law as Act 056, SLH 2016, which **made the guest meeting provision permanent and required each council to report annually to the Legislature** on the effectiveness and application of the guest meeting provision, including any recommendations or proposed legislation. OIP has not seen this year's annual reports, so OIP does not know whether any county's report recommended the legislation proposed by this bill.

The permitted interaction proposed by this bill would effectively render the guest meeting safeguards moot by allowing any number of county council members to attend a community meeting without the oversight that the Legislature built into Act 221 in 2014. At the same time, **ironically, this proposal would limit other boards' ability to use the existing informational meeting permitted interaction to keep abreast of professional developments** relevant to their boards. Because this bill would add a requirement that informational meetings be "open to the public" at the same time it removes, for council members only, the limitation on the number of

board members who can attend an informational meeting together, other boards would still be subject to the limitation on attendance but could no longer send several members to attend a professional conference together as some do under current law, because an event with a registration fee could not be considered “open to the public.”

Without information on county councils’ actual experience using the guest meeting provision and recommendations that will improve the provision for both the councils and the public, **OIP respectfully suggests that the Legislature should not consider broadening the informational meetings permitted interaction to allow full councils to discuss board business outside a Sunshine Law meeting.**

Thank you for considering OIP’s testimony.

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 Opposing H.B. 2235, Relating to Informal Meetings
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 **opposing H.B. 2235**.

In 2014, the Legislature carefully balanced the ability of county councilmembers to attend community meetings against the “the potential for abuse of the public’s right to know and participate in the policy making process.” 2014 Haw. Sess. Laws Act 221. That balance was codified at HRS § 92-3.1(b). **Councilmembers, however, are not using that existing exemption.**

We now have almost 8 years of experience under Act 221. If that carefully balanced compromise legislation is not meeting the needs of county councils, the councils should be able to specify incidents in which the council members wished to attend an event, but were barred from doing so under Act 221. Every year that these proposals arise, the Law Center has requested more information about any difficulties encountered by councilmembers and offered to assist in tailoring amendments to Act 221 to meet any specific difficulties.

Last year, for the first time, representatives from the county councils worked with the Law Center and others regarding specific concerns about the scope of Act 221. That work led to the introduction of H.B. 2026, which the Law Center supports.

There is no justification for this much broader exemption.

Thank you again for the opportunity to testify **opposing H.B. 2235**.



HOUSE COMMITTEE ON GOVERNMENT REFORM

Friday, February 11, 2022, 9:30 am, State Capitol Room 309 & Videoconference

HB 2235

Relating to Informal Meetings

TESTIMONY

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

Chair McKelvey and Committee Members:

The League of Women Voters of Hawaii strongly opposes HB 2235.

The Sunshine Law currently requires that county councils conduct the public's business in public. The law guarantees the public both advance notice and the opportunity to listen to all discussions and decisions by a county council quorum. HB 2235 would exempt council quorums that attended any "informational meeting or presentation" from most Sunshine Law requirements which apply to council meetings. Under HB 2235, when a council quorum attended an "informational meeting or presentation", no advance public notice of council attendance would be required, no council minutes would be prepared, and the public would not have the right to submit oral testimony to the council. Under HB 2235, an "informational meeting or presentation" could include events which charge admission, events which take place on the mainland or a foreign country, multi-day events which include both educational and recreational activities, and private events organized by special interests to influence public opinion and council decisions. HB 2235 would even allow a council quorum to attend an "informational" event at Disneyland.

Under HB 2235, if a private special interest group which wished to influence council decisions invited a county council to attend an "informational meeting or presentation" about pending council matters, HB 2235 would authorize a council quorum to attend and discuss those pending council matters with that private group and with each other. Basically, the Sunshine Law would be "neutered".

No new legislation is needed to allow a council quorum, or even all council members, to attend a meeting hosted by a community group. Since 2014, the Sunshine Law has authorized a county council quorum to hold a "limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, ...", provided that the council provides advance public notice, the public can attend the meeting without paying an admission fee or traveling out-of-state, no council voting commitments are made, and council minutes are prepared. These reasonable provisos recognize that private interests seeking county land use approvals, private businesses seeking county contracts, and ad hoc "NIMBY" groups commonly form "community groups" which host "informational meetings and presentations" for the purpose of advocating for or against special interest projects.

League of Women Voters of Hawaii
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Statement Before The
Friday, February 11, 2022
9:30 AM
Via Videoconference, Conference Room 309

in consideration of
HB 2235

RELATING TO INFORMAL MEETINGS.

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

Common Cause Hawaii opposes HB 2235, which (1) exempts members of a county council from the limitation on the number of members that may attend an informational meeting or presentation on matters relating to official county council business for purposes of permitted interactions and (2) clarifies that such meetings shall be meetings that are open to the public.

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.

The Sunshine Law, Hawaii Revised (HRS) Chapter 92, ensures that public policy and decision-making are conducted as openly as possible for the people have the right to know and authority in our democracy.

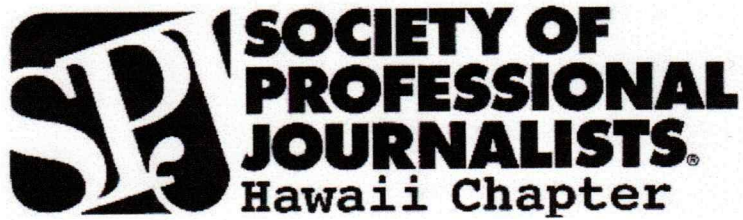
HRS § 92-2.5(e) limits the number of board members who may attend an “informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board.” Councilmembers, who are governed by the Sunshine Law, would like to attend certain government meetings, like the State of the State Address, are barred by HRS § 92-2.5(e) from all doing so.

Instead of providing a blanket exemption to HRS § 92-2.5(e) for councilmembers, which may be subject to abuse, it is unclear why the county council may not avail itself of the limited meeting exception in HRS § 92-3.1(b), which provides that “[a] county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony”

For these reasons, Common Cause Hawaii opposes HB 2235. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



Feb. 11, 2022

Rep. Angus L.K. McKelvey
House Committee on Government Reform
State Capitol
Honolulu, HI 96813

Re: House Bills 2026 and 2235

Chairman McKelvey and Committee Members:

As we have said in past years, please kill this bill as it enacts a broad exemption from the Sunshine Law that is not necessary. We prefer that the committee favorably consider HB 2026, which should resolve many of the issues raised by county councils.

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.

In 2014, lawmakers came up with yet-another amendment to allow council members to meet with community groups with some limitations designed to protect the public's rights, but the county councils have not used it. Now the councils are once again asking for another major exemption in HB 2235.

Thank you for your attention,

Stirling Morita
President
Hawaii Chapter SPJ