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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 WAYS AND MEANS

AND

COMMITTEE ON JUDICIARY

March 2, 2022
9:30 a.m.
State Capitol
via videoconference

In consideration of
SENATE BILL NO. 2143 SD1
RELATING TO BOARD MEETINGS

Aloha Chair Dela Cruz, Chair Rhoads, Vice Chair Keith-Agaran, Vice Chair Keohokalole, and members of the Committee on Ways and Means and the Committee on Judiciary.

The Hawai'i Tourism Authority appreciates the opportunity to testify and provide comments regarding **SB2143 SD1**, which requires each state board to make its board packets publicly available prior to the board's meeting.

The HTA holds regular monthly meetings of its board as well as various committees. The agendas of these meetings often contain items that are time-sensitive and are scheduled to be released on the day of the meeting. An example of this is the research reports jointly released by DBEDT and HTA on the day of the board meeting. If we were required to include that material as part of the board packet that is posted at least forty-eight hours prior to the meeting, we would effectively release the results of that research before DBEDT's intended release date. This would likely result in DBEDT withdrawing from participating in our board meetings as the timing of the release of this information is critical. This would further frustrate the board's ability to conduct its business because it relies on this information to make informed policy decisions in a timely and meaningful way. We would humbly request that language be added that would exempt research reports from being held to the requirements being proposed in SB2143 SD1.

February 3, 2021
Page 2

We appreciate this opportunity to provide comments related to **SB2143 SD1**. Mahalo.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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

Senate Committee on Ways and Means
Honorable Donovan M. Dela Cruz, Chair
Honorable Gilbert S.C. Keith-Agaran, Vice Chair

RE: Testimony Supporting S.B. 2143 S.D. 1, Relating to Board Meetings
Hearing: March 2, 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 S.B. 2143 S.D. 1**.

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.

Thank you again for the opportunity to testify **supporting S.B. 2143 S.D. 1**.



SENATE COMMITTEE ON WAYS AND MEANS

SENATE COMMITTEE ON JUDICIARY

Wednesday, March 2, 2022 9:30 am, State Capitol Room 211 & Videoconference

SB 2143, SD1

Relating to Board Meetings

TESTIMONY

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

Chair Dela Cruz, Chair Rhoads, and Committee Members:

The League of Women Voters of Hawaii strongly supports SB 2143, SD1. Both the public and board members find it helpful to review “board packets” prior to meetings. 48 hours in advance would be desirable, but even 24 hours would be better than the status quo.

The existing Sunshine Law is inadequate. Hypothetically, if you were a board member rather than a member of a legislative committee, and the bills on your agenda were a “board packet” rather than legislation, the existing Sunshine law would not require disclosure of the text of the bills on your agenda to you prior to the beginning of your meeting. And again hypothetically, if the text of the bills on your agenda were not disclosed to the public until after your “board” meeting ended, and I filed a “Sunshine” appeal to OIP, OIP would rule that the existing Sunshine law does NOT require a “do-over”.

Thank you for the opportunity to submit testimony.

Statement Before The
**SENATE COMMITTEE ON JUDICIARY
AND
SENATE COMMITTEE ON WAYS AND MEANS**
Wednesday, March 2, 2022
9:30 AM
Conference Room 211 & Videoconference

in consideration of
SB 2143, SD1

RELATING TO BOARD MEETINGS.

Chairs RHOADS and DELA CRUZ, Vice Chairs KEOHOKALOLE and KEITH-AGARAN, and Members of the Senate Judiciary and Ways and Means Committees

Common Cause Hawaii supports SB 2143, SD1, which defines "board packet" and requires each state board to make its board packets publicly available at least forty-eight hours prior to the board meeting, but only if the board uses board packets.

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

Common Cause Hawaii supports SB 2143, SD1 making board packets available at least forty-eight prior to the board meeting. This will permit people time and opportunity to review the materials and provide meaningful testimony to assist the board with its review and deliberations of agenda items.

Common Cause Hawaii also supports SB 2143, SD1, 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 a presentation.

Thank you for the opportunity to testify in support of SB 2143, SD1. If you have questions of me, please contact me at 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
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TELEPHONE: 808-586-1400 FAX: 808-586-1412
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To: Senate Committees on Judiciary and on Ways and Means

From: Cheryl Kakazu Park, Director

Date: March 2, 2022, 9:30 a.m.
State Capitol, Conference Room 211 and Via Videoconference

Re: Testimony on S.B. No. 2143, S.D. 1
Relating to Board Meetings

Thank you for the opportunity to submit testimony on this bill, proposes to make the following amendments to the Sunshine Law:

- (1) Move the definition of “board packet”
- (2) Add a firm deadline of making board packets available to the public
48 hours in advance
- (3) Remove limits on when oral testimony can be provided during a
meeting.

The Office of Information Practices (OIP) is neutral as to the substantive changes, but **offers comments and technical amendments** as follows.

Board Packet Definition

First, this bill would split the current definition of a “board packet” in section 92-7.5, HRS, into two parts, one of which would be moved to the Sunshine Law’s definitions section and the other part remaining in the board packet section. **While OIP does not object to moving the definition of a “board packet” to the definitions section, OIP recommends avoiding confusion by placing the**

entire definition in the definitions section instead of splitting it up in two different sections.

Firm Deadline for Public Board Packets

Second, the bill would amend sections 92-3 and 92-7.5 to require that any board packet be available for at least 48 hours before a meeting. **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 current 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, 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. Boards that are currently in the habit of sending out a board packet within 24 hours before a meeting would have to change their practices to get the board packet out 48 hours in advance of the meeting as this bill proposes, or forego sending out a board packet and only distribute materials at the meeting itself. Also, keeping in mind that meeting notices need to be posted only 6 days before the meeting and most testimony may not be received by the board until the day before the meeting, the board packets may be of limited value to the public or the board if they must be distributed too far in advance of the meeting without most testimony.

OIP recognizes the challenge that boards face in meeting an advance notice requirement when they are receiving testimony at the meeting itself, as well as the concern of the Hawaii Tourism Authority (HTA) about prematurely releasing DBEDT reports, but understands the intent of the bill 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. **While OIP is neutral on setting a firm deadline for board packet distribution, OIP has a technical concern** with the proposed placement of the requirement in both sections 92-3 and 92-7.5, which is duplicative.

Assuming this Committee intends to create a firm deadline for submission of board packets, **the bill sets duplicative deadlines** on page 2, at lines 8-11, and at line 20, continuing to page 3 at line 2. **The deadline should be in only one place, preferably the board packet section itself, to avoid the possibility of future conflicts if the two deadlines are amended inconsistently.**

Removing Limits on When Oral Testimony Must be Taken

Third, this bill would ban the practice of taking all public testimony at the beginning of a meeting by setting 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 before the board’s own discussion, deliberation, and decisionmaking on 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 as well as consideration of what is easier for the public (some people prefer to testify and leave rather than sit through an entire 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 before discussion of each item or at least before each category or set of agenda items. This will change the way some boards operate and give them less control over how they organize their meetings and the length of board 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? **OIP believes this is a policy decision for the Committee to make.**

OIP's Proposed Amendments

Although OIP does not take a position for or against the proposed amendments, to assist this Committee should it choose to adopt them **OIP has recommended amendments to address OIP's technical concerns to S.B. 2143, S.D.1** by:

- (1) removing the remaining board packet definition language from section 92-7.5 and incorporating its substance into to the new definition in section 92-2, HRS, to avoid confusingly splitting the definition; and
- (2) removing the duplicate board packet deadline in section 92-3, HRS.

Specifically, OIP recommends:

- (1) at bill page 1 line 6, the second half of the definition should be deleted and amended to read “. . . at that meeting, but does not include records that are not fully public under chapter 92F and cannot be reasonably redacted in the time available, including but not limited to executive session minutes and license applications.” This recommendation is made in conjunction with recommendation (3) below.**

- (2) at bill page two lines 8-11, proposed subsection (3) should be deleted and the section should end with subsection (2), deleting “and.”**

- (3) at bill page three lines 14-18, delete the remaining part of the board packet definition, which has been reunited with the rest of the definition in section 92-3 per recommendation (1) above.**

Thank you for considering OIP's comments and proposed amendments.

SB-2143-SD-1

Submitted on: 2/26/2022 8:48:43 AM

Testimony for JDC on 3/2/2022 9:30:00 AM

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

Comments:

This bill establishes more transparency and gives the public the opportunity to provide meaningful testimony.

I am confused. The Sunshine Law applies to all state and county boards and commissions as well as the county councils. Why then does the description on page 5 say: "Defines "board packet" and requires each state board to make its board packets publicly available at least forty-eight hours prior to the board meeting, but only if the board uses board packets. (SD1)" This is incorrect and must be revised to say "each state and county board and commissions and county councils to make its packets publicly available at least forty-eight hours prior to the board meeting but only if the board, council, or commission uses board packets." Perhaps this was an oversight because the legislature does not understand how the Sunshine Law operates, in that it has exempted itself from the provisions of the Law.

The provisions of this bill should also be extended to the legislature. Given the recent corruption charges against former members Sen. Kalani English and Rep. Ty Cullen the now sullied legislative bodies must improve their transparency.

They should also submit themselves to the Sunshine Law and repeal the provisions that exempt the legislature.

It is also important that the public get to speak on each agenda item at the time it is heard, not at the beginning of the meeting. If there are presentations on the item, those should also take place prior to public testimony. Often, when oral testimony is limited to the beginning of the meeting the testifiers have a time limit, and it does not matter if they are testifying on more than one item, the maximum time applies.

SB-2143-SD-1

Submitted on: 2/26/2022 11:17:45 AM

Testimony for JDC on 3/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
John Bickel	Individual	Support	No

Comments:

This only seems fair and open.

SB-2143-SD-1

Submitted on: 2/26/2022 2:26:53 PM

Testimony for JDC on 3/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Lisa Huynh Eller	Individual	Support	No

Comments:

I support SB 2143, SD1 making board packets available at least forty-eight prior to the board meeting. This will permit people time and opportunity to review the materials and provide meaningful testimony to assist the board with its review and deliberations of agenda items.

SB-2143-SD-1

Submitted on: 2/26/2022 4:40:03 PM

Testimony for JDC on 3/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
tlaloc tokuda	Individual	Support	No

Comments:

Aloha JDC/WAM Chair and Commitee, AI am a volunteer for Common Cause HI and i often agree with CCs philosophical positions on a number of issues and bills.

- I support SB 2143, SD1 making board packets available at least forty-eight prior to the board meeting. This will permit people time and opportunity to review the materials and provide meaningful testimony to assist the board with its review and deliberations of agenda items.
- I also support SB 2143, SD1, 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 a presentation.

Mahalo for your considerations.

Tlaloc Tokuda

Kailua Kona HI 96740

SB-2143-SD-1

Submitted on: 2/27/2022 1:38:31 PM

Testimony for JDC on 3/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Michele Mitsumori	Individual	Support	No

Comments:

I support SB2143, SD 1, Relating to Board Meetings, requiring each state board to make its board packets publicly available at least 48 hours prior to the board meeting.

Board meetings are open to the public in order to hear from the community in general and those impacted by its specific decisions. To best assist the board with its review and deliberations of agenda items, people need time and opportunities to review the materials and prepare meaningful and relevant testimony. This is difficult if board packets are available at the last moment or not at all. Forty-eight hours (two full days) is a minimum.

I also support SB2143, SD1's provision that the public shall be permitted to testify after each agenda item. This provides the public with an opportunity to address the presentations made, and avoid limiting the public to testifying only at the beginning of the agenda without knowing the substance of a presentation or being able to respond to content.

Thank you for the opportunity to share my support for SB2143, SD1.

SB-2143-SD-1

Submitted on: 2/27/2022 3:24:58 PM

Testimony for JDC on 3/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
laurie boyle	Individual	Support	No

Comments:

Aloha,

I support SB2143 for the simple reason that it gives attendees to board meetings sufficient time to review the agenda and prepare as well as to be given the opportunity to ask specific questions about the relevant agenda items.

Mahalo for your time.

SB-2143-SD-1

Submitted on: 2/28/2022 2:36:55 AM

Testimony for JDC on 3/2/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
David Anderson	Individual	Support	No

Comments:

I support SB 2143, SD1 making board packets available at least forty-eight prior to the board meeting. This will permit people time and opportunity to review the materials and provide meaningful testimony to assist the board with its review and deliberations of agenda items.

I also support SB 2143, SD1, 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 a presentation.

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