

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 15, 2022, 3:10 p.m.
State Capitol, Via Videoconference

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



Thank you for the opportunity to submit testimony on this bill, which would set a deadline for how close to a meeting a board packet may be distributed. The Office of Information Practices (OIP) **offers comments and technical amendments in a proposed Senate Draft bill.**

The 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 24 hours in advance
- (3) Remove limits on when oral testimony can be provided during a meeting.

OIP is neutral as to the substantive changes, but offers comments and technical amendments that would remove duplicative and conflicting provisions 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 moving the entire definition into 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 24 hours before oral testimony or 24 hours before a deadline for submitting written testimony. **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, 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. 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 24 hours in advance of the meeting as this bill proposes. 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.

OIP understands that the intent of one of the bill's proposed amendments 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. **While OIP is neutral on setting a firm deadline for board packet distribution to the public, OIP has some technical concerns** with the proposed placement of the requirement in both sections 92-3 and 92-7.5, which is duplicative; with calculating the deadline in two different ways; and with 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.

Assuming this Committee intends to create a firm deadline for submission of board packets, **the bill confusingly sets three duplicative but slightly different deadlines** on page 2, at lines 1, lines 6-9, and at line 21, continuing to page 3 at line 1. One sets a deadline of at least 24 hours for the public “to review” while the second sets a deadline of at least 24 hours prior to the deadline for providing oral testimony, and the third sets a deadline of at least 24 hours before the deadline for submitting written testimony. **The deadlines also inadvertently create new statutory requirements that even a board that does not normally create board packets must always have a board packet for the public review, and implicitly authorize and indeed require a deadline for written testimony which OIP’s opinions have found not to be allowed under the current Sunshine Law.**

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

prepared the attached draft bill to effectuate the assumed intent of this bill and to address what appears to be unintended consequences. Thus, OIP's draft:

- (1) adds one new definition of "board packets" in section 92-2, HRS, and removes it from section 92-7.5 to avoid confusingly splitting up the definition;
- (2) retains the proposed proviso to section 92-3, HRS, "that the boards shall not limit the presentation of oral testimonies solely to the beginning of the boards' agenda or meeting";
- (3) clarifies a new requirement in section 92-7.5, HRS, to provide the public with board packets no later than twenty-four hours "prior to the meeting time" while clarifying that the new language does not require boards to create a board packet, and removes other unclear or conflicting provisions that would have also implicitly required the boards to set a deadline for testimony; and
- (4) deletes language proposed in section 92-3, HRS, that would have implicitly required all boards to prepare board packets.

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

SECTION 1. Section 92-2, Hawaii Revised Statutes, is amended by adding a new definition to be appropriately inserted and to read as follows:

“Board packet” means documents that are compiled by a board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F and excluding executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time required for public disclosure of the documents.

SECTION 2. Section 92-3, Hawaii Revised Statutes, is amended to read as follows:

"§92-3 Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item[-]; provided that the boards shall not limit the presentation of oral testimonies solely to the beginning of the boards' agenda or meeting. The boards may provide for reasonable administration of oral testimony by rule."

SECTION 3. Section 92-7.5, Hawaii Revised Statutes, is amended to read as follows:

"[+]§92-7.5[}] Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, but no later than twenty-four hours prior to the meeting time, the board shall also make the board packet available for public inspection in the board's office[-]; provided that nothing in this section shall require creation of a board packet. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

~~[For purposes of this section, “board packet” means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section.]~~

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 5. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 6. This Act shall take effect upon its approval.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Government Operations
Honorable Sharon Y. Moriwaki, Chair
Honorable Donovan M. Dela Cruz, Vice Chair

RE: Testimony Supporting S.B. 2143, Relating to Board Meetings
Hearing: February 15, 2022 at 3:10 p.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**.

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.



SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Tuesday, February 15, 2022 3:10 pm, Videoconference
SB 2143

Relating to Board Meetings

TESTIMONY

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

Chair Moriwaki and Committee Members:

The League of Women Voters of Hawaii strongly supports SB 2143. Both the public and board members find it helpful to review “board packets” prior to meetings.

Hypothetically, if you were a board rather than a legislative committee and the bills on your February 15, 2022 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, either to you or the public, prior to your February 15, 2022 meeting.

Thank you for the opportunity to submit testimony.

National Federation of the Blind of Hawaii
Testimony before the Committee on Government Operations (GVO)
Hawaii State Senate
Thirty-First Legislature, Regular Session of 2022
February 15, 2022, 3:10 PM, hearing on SB2143

Good afternoon chair, vice chair, and members. I am James Gashel, representing the National Federation of the Blind of Hawaii, supporting but suggesting two amendments to SB2143.

This bill proposes amendments to the open meetings law generally aimed at more effective public participation in board meetings of public bodies. NFB of Hawaii supports the objectives as set out in SB2143 and requests the following two amendments to improve public access:

(1) In section 3, revised section 92-7.5, after “As soon as practicable,” we suggest adding: “but at least 24 hours prior to the deadline for submitting written testimony, . . .” This amendment acknowledges the need to review board packets before the meeting, whether the packets are available in standard print or electronic files. In fact, it would be rare that a printed packet would not be written first as an electronic file and then printed. Providing board packets as electronic files should not be a burden to a board any more than providing access to printed copies.

(2) After “packet.” At the end of the sentence identified in (1) above, we suggest adding: “Electronic files of board packets shall include a screen reader accessible format for use by persons unable to read standard print due to a disability.” This amendment acknowledges the need of some people to read board packets with audio or braille output technology when they are not able to see and read printed text on a screen. Boards would not have a burden in saving files in screen reader accessible formats such as HTML, TXT, or Word. Formats, such as PDF are often much less accessible to screen readers.

Members of the NFB of Hawaii are blind. By definition we cannot see or read hard copy board packets or information on computer screens. We can read printed information without difficulty if it is prepared in a format accessible to the electronic screen reading technology we use.

We do not expect a public board to provide screen reading technology, just to use standard screen reader compatible formats. With computer technology developed as it is, the request to specify a screen reader accessible format is entirely reasonable. It should not be considered an accommodation to choose an accessible format over an inaccessible one. It’s really just a matter of awareness.

Mahalo for hearing our concerns. If SB2143 is important enough to pass, improving public participation in board meetings, we just don’t want to be left out. Blind people must not end up on the wrong side of the digital divide.

Statement Before The
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Tuesday, February 15, 2022

3:10 PM

Via Video Conference

in consideration of
SB 2143**RELATING TO BOARD MEETINGS.**

Chair MORIWAKI, Vice Chair DELA CRUZ, and Members of the Senate Government Operations Committee

Common Cause Hawaii supports SB 2143, which requires each state board to make its board packets publicly available prior to the board's meeting.

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 making board packets available at least twenty-four hours prior to the oral and written testimony deadlines. 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, 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. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



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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 GOVERNMENT OPERATIONS

February 15, 2022
3:10 p.m.
State Capitol
via videoconference

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

Aloha Chair Moriwaki, Vice Chair Dela Cruz, and members of the Committee on Government Operations.

The Hawai'i Tourism Authority appreciates the opportunity to testify and provide comments regarding SB2143, 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 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 twenty-four 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. The board relies on this information as part of its decision making process and therefore this would frustrate the board's ability to make informed policy decisions in a timely and meaningful way.

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

PETER L. FRITZ

THE SENATE
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2022

COMMITTEE ON GOVERNMENT OPERATIONS

Testimony on S.B. 2143
Hearing: February 15, 2022

RELATING TO BOARD MEETINGS

Chair Moriwaki, Vice Chair Dela Cruz and members of the Committee, my name is Peter Fritz. I am testifying **in support of Senate Bill 2143 and offer an amendment to encourage boards to timely make the board packet available to the public.**

As an incentive to ensure that meeting notices are timely posted, §92-7(c), HRS, provides that if “the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held.”

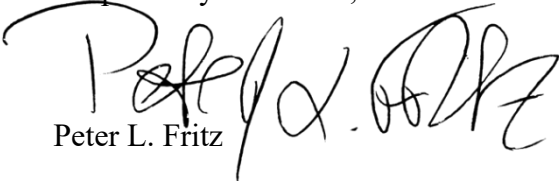
A similar incentive should be considered to encourage boards to timely make the board packet available to the public. Without such a provision, boards have little incentive to timely make a board packet available to the public knowing that citizens are unlikely to bring an action under §92-12, HRS. Section 92-12 provides that a citizen may commence a suit in circuit court for the purpose of requiring compliance by a public body.

Adding language that provides that a meeting “shall be canceled as a matter of law and shall not be held” if the board packet or other document is not timely made available provides an incentive to a board.

I offer the following for the consideration by the Committee. The additional language is in a font that is red, italic, bold and underlined.

"[H]§92-7.5[H] **Board packet; filing; public inspection; notice.** At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office[-]; provided that board packets shall be made available for public inspection at least twenty-four hours prior to the deadline for submitting written testimony. ***If the board packet is not available at least twenty-four hours prior to the deadline for submitting written testimony, the meeting shall be canceled as a matter of law and shall not be held.*** The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

Respectfully submitted,


Peter L. Fritz

SB-2143

Submitted on: 2/12/2022 11:52:40 AM

Testimony for GVO on 2/15/2022 3:10:00 PM

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.

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.

SB-2143

Submitted on: 2/12/2022 3:59:54 PM

Testimony for GVO on 2/15/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Donna Ambrose	Individual	Support	No

Comments:

I urge you to pass this bill in order to give the public access to board meeting materials at least 24 hours prior to testimony deadlines. This will permit people interested in the topic(s) at hand the opportunity to participate in a more informed manner. I also support this Bill's providing for public input after each agenda item rather than lumping them at the beginning without the benefit of hearing each presentation. Mahalo

SB-2143

Submitted on: 2/12/2022 5:16:09 PM

Testimony for GVO on 2/15/2022 3:10:00 PM

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

Comments:

Aloha GVO Committee,

This bill aims to make a more informed public and committees.

I support SB 2143 making board packets available at least twenty-four hours prior to the oral and written testimony deadlines. 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.

- This bill provides a better mechanism for people to give better input. It specifically provides the public 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 this bill..

Mahalo

tlaloc tokuda

Kailua Kona, HI 96740

SB-2143

Submitted on: 2/13/2022 5:50:53 AM

Testimony for GVO on 2/15/2022 3:10:00 PM

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

Comments:

I support SB 2143 making board packets available at least twenty-four hours prior to the oral and written testimony deadlines. 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, because 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.

SB-2143

Submitted on: 2/13/2022 11:59:26 AM

Testimony for GVO on 2/15/2022 3:10:00 PM

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

Comments:

Informed and active participation by the people is a basic cornerstone of our democracy. Because of our responsibilities, however, it is essential to have materials related to Board Meetings sufficiently in advance to enable the public, regardless of schedule and location, to review and understand them.

I therefore support SB 2143 making board packets available at least twenty-four hours prior to the oral and written testimony deadlines. SB 2143 also enables the public to testify after each agenda item, and so have the 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.

SB-2143

Submitted on: 2/14/2022 12:32:28 PM

Testimony for GVO on 2/15/2022 3:10:00 PM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Barbara Best	Individual	Support	No

Comments:

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.

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.