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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. 2368
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.

Statement Before The
SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Tuesday, February 15, 2022

3:10 PM

Via Video Conference

in consideration of
SB 2368**RELATING TO INFORMAL MEETINGS.**

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

Common Cause Hawaii opposes SB 2368, 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 SB 2368. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Tuesday, February 15, 2022, 3:10 pm, Videoconference

SB 2368

Relating to Informal Meetings

TESTIMONY

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

Chair Morikwaki and Committee Members:

The League of Women Voters of Hawaii strongly opposes SB 2368.

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. SB 2368 would exempt council quorums that attended any "informational meeting or presentation" from most Sunshine Law requirements which apply to council meetings. Under SB 2368, 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 SB 2368, 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. SB 2368 would even allow a council quorum to attend an "informational" event at Disneyland.

Under SB 2368, if a private special interest group which wished to influence council decisions invited a county council and others to attend an "informational meeting or presentation" about pending council matters, SB 2368 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.

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

RE: Testimony Opposing S.B. 2368, Relating to Informal 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 **opposing S.B. 2368**.

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 S.B. 2368**.



Feb. 15, 2022

Sen. Sharon Y. Moriwaki
Senate Committee on Government Operations
State Capitol
Honolulu, HI 9681

Re: SB 2368

Chair Moriwaki and Committee Members:

As we have said in past years, please kill this bill.

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.

There has been no demonstration by the county councils that the law doesn't work.

And now, the county councils are asking for exemption from the provisions that they have come up with.

We fear that this measure could be used to circumvent the protections for transparency in 92-3.1(b) for limited meetings.

Thank you for your attention,

Stirling Morita
President
Hawaii Chapter SPJ