

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 18, 2022, 9:30 a.m.
State Capitol, Via Videoconference

Re: Testimony on S.B. No. 3172
Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony on this bill, which would amend the Sunshine Law, part I of chapter 92, to (1) eliminate the option for boards to keep recorded minutes in the form of a recording accompanied by a written summary and instead require written minutes for every meeting, (2) require a board that records its meeting for any reason to keep the recording indefinitely, and (3) require a board with a meeting recording to also prepare a written summary to accompany the recording, in addition to the written minutes of the meeting. The Office of Information Practices **(OIP) has concerns about the unintended consequences of this proposal, and recommends an amendment** if this Committee wishes to return to the Sunshine Law's pre-2017 minutes requirement for full written minutes of every meeting.

Currently section 92-9, HRS, gives a board two separate options for how to keep its minutes: it can keep traditional written minutes, or it can keep recorded minutes consisting of an audio or video recording of the meeting and a written summary of key meeting information plus time stamps for each agenda item, motion, and vote. A board is not required to keep

a recording of a meeting as a general rule (with the exception of a recording of a remote online meeting, which must be posted online until replaced by the meeting minutes). **Thus, a board that records its meeting can choose to either use the recording as the basis for recorded minutes, in which case it must post the recording and the written summary online, or to do traditional written minutes, in which case it is under no obligation to keep or post the recording.** There are common elements between full written minutes and the written summary accompanying recorded minutes, namely the meeting date, time, and place, members present or absent, and a record of votes, but there are notable differences. **Written minutes** are required to include the “substance of all matters proposed, discussed, or decided” and any other information a member requests to be included in the minutes, which does not require a transcript, but does require at least a **detailed paraphrase of the discussion** that includes which members spoke and the gist of what they said. **Recorded minutes**, on the other hand, are not required to include this detailed paraphrase of the discussion in the accompanying written summary, but **must instead have the time stamps** (which written minutes do not) pointing the public to where in the recording to find the discussion of each agenda item as well as each motion and vote.

This bill would take the two separate options for how a board can keep its minutes--the option of written minutes and the option of recorded minutes--and fold them together to **require any board that records its meeting to keep both written and recorded minutes** of that meeting. For a board that records its meeting to help in preparing written minutes and plans to discard the recording afterward (many boards use a voice recorder to create such a temporary recording), **this bill would require keeping the recording indefinitely and going to the additional effort of preparing a written summary to accompany it, in**

addition to preparing the full written minutes. For a board that records its meeting with the intent to prepare a written summary and post both the recording and summary online as recorded minutes, this bill would require also preparing full written minutes in addition to the written summary. **If a board does not record its meeting, however,** the requirement to maintain a recording of the meeting and prepare an accompanying written summary would not apply and **the board would only be required to prepare traditional written minutes.**

This bill creates what could be a significant disincentive for boards to record meetings in the first place, since the board will be required to prepare full written minutes either way but creating a recording will also require the board to keep a copy of the recording indefinitely and prepare a written summary to accompany it. Because of that, OIP believes **this bill may discourage boards from recording meetings, with the unintended result that there is less of a record, rather than more, of what happened** at past board meetings.

Based on the purpose clause, it appears this measure stems from a belief that recorded format minutes are too challenging for some members of the public to use, even with the availability of timestamps indicating when in the recording discussion began for each agenda item, vote, or motion. If that is the case, **and if this Committee believes recorded format minutes do not serve the public as well as traditional written minutes, OIP would respectfully recommend this Committee remove the option of recorded format minutes altogether and return to traditional written minutes** rather than penalize boards for recording a meeting by assigning them extra duties. For this Committee's reference, **OIP has appended to its testimony language to amend subsections 92-9(a) and (b) to provide the same minutes format requirements that applied prior to the 2017 amendment, while retaining**

Senate Committee on Judiciary
February 18, 2022
Page 4 of 5

the requirement to post minutes online that was also added at that time.

This amendment would eliminate the option of recorded minutes and require traditional written minutes for all meetings, if that is the Committee's intent.

Thank you for considering OIP's testimony.

(a) The board shall keep written ~~[or recorded]~~ minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. ~~[A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:~~

- ~~(1) The date, time, and place of the meeting;~~
- ~~(2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;~~
- ~~(3) A record, by individual member, of motions and votes made by the board; and~~
- ~~(4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.]~~

Hawaii
Holding Power Accountable

Statement Before The
SENATE COMMITTEE ON JUDICIARY

Friday, February 18, 2022

9:30 AM

Via Videoconference

in consideration of
SB 3172
RELATING TO PUBLIC AGENCY MEETINGS.

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

Common Cause Hawaii supports SB 3172, which provides that any electronic audio or visual recording of a board meeting shall be maintained as public record.

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

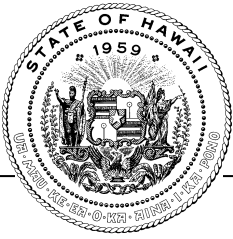
Common Cause Hawaii agrees that there is confusion around meeting minutes and written summaries of recorded meetings and SB 3172 requires that complete minutes. Further, SB 3172 requires that any electronic audio or visual recording of a board meeting must be maintained as public record.

Common Cause Hawaii also suggests that all boards under part I of chapter 92, Hawaii Revised Statutes be required to livestream using audiovisual or audio technology their meetings. The recording of each meeting should be archived and made available to the public on the board's website or, if the board does not have a website, on an appropriate state or county website immediately after the meeting. The livestreaming of meetings will provide for more participation and greater governmental accountability and transparency.

Thank you for the opportunity to testify in support of SB 3172. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,

Sandy Ma
Executive Director, Common Cause Hawaii



**STATE OF HAWAII
OFFICE OF PLANNING
& SUSTAINABLE DEVELOPMENT**

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Statement of
MARY ALICE EVANS
Director, Office of Planning and Sustainable Development
before the
SENATE COMMITTEE ON JUDICIARY
Friday, February 18, 2022
9:30 AM
State Capitol, Via Videoconference

in consideration of
SB 3172
RELATING TO PUBLIC AGENCY MEETINGS.

Chair Rhoads, Vice Chair Keohokalole, and Members of the Senate Committee on Judiciary.

The Office of Planning and Sustainable Development (OPSD) **appreciates the intent of SB 3172**, which provides that any electronic audio or visual recording of a board meeting shall be maintained as public record, and offers the following **comments with concerns**:

- Audiovisual meeting recordings can be over 1 gigabyte in file size for a single remote meeting. Indefinite maintenance of all such recordings as a public record as currently proposed in this bill would require a board to do so through external storage on a server or maintain an account on a hosting platform such as YouTube or Facebook.
- A board's staff may record an in-person, multi-site, or remote meeting to assist it in preparing accurate written minutes (separate from the recording requirement for remote meetings under Hawaii Revised Statutes §92-3.7). Because these staff recordings serve a *notetaking* purpose, they may include, for example, remarks outside of the meeting proceedings useful for preparing written minutes (e.g., noting a speaker's name) or background noise if staff are attending remotely (e.g., young children or pets). Furthermore, there may be duplicate recordings of a meeting, such as if multiple board staff record the same meeting. However, according to page 2, lines 11-12, "*any* electronic audio or video recording of the meeting" (*italics added*) would need to be maintained as a public record. OPSD **requests clarification** in SB 3172's language on the breadth of this requirement and its applicability.

Thank you for the opportunity to testify on this measure.

SB-3172

Submitted on: 2/17/2022 9:29:36 AM

Testimony for JDC on 2/18/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
Winston R Welch	Individual	Support	Yes

Comments:

Dear Senators,

I would like to **STRONGLY SUPPORT** SB 3172 regarding strengthening of if the Open Public Meetings Statute.

I come from the perspective of having served on Neighborhood Board #5, but also professionally when trying to gain access to topics of importance across different neighborhood boards where inadequate or incomplete meeting minutes have hindered information flow.

In particular, the importance of complete written minutes or public open meetings must be provided, as well as any video recording with a written summary of important time stamps where video recordings are made of the meeting. Meeting videos of Neighborhood boards, with written summaries and time stamps should be posted on the meetings minutes section of the NCO website.

Currently there are critical deficiencies in the manner in in which the NCO office policies are regarding the length of meetings and meeting notes taken. These deficiencies have been explained in other testimony, particularly by Michelle Matson, which whom I completely concur.

I ask that you pass this SB3172 for better democracy and community voices at our most basic levels and to ensure high-quality meetings and accountability to the public.

Respectfully, Winston Welch

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

RE: Testimony Supporting S.B. 3172, Relating to Public Agency Meetings
Hearing: February 18, 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 government transparency. Thank you for the opportunity to submit testimony **supporting** S.B. 3172.

Audio or video recordings are helpful for the public, but are not a substitute for proper written minutes. The public should not be required to spend excessive time listening to recordings simply to understand the basic substance of the discussion that occurred at a public meeting.

Thank you again for the opportunity to testify in **support** of S.B. 3172.



SENATE COMMITTEE ON JUDICIARY
Friday, February 18, 2022, 9:30 am, Videoconference
SB 3172
Relating to Public Agency Meetings

TESTIMONY

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

Chair Rhoads and Committee Members:

The League of Women Voters of Hawaii supports SB 3172. Lengthy recordings of disorganized, garbled conversations at board meetings are not an adequate substitute for properly written board meeting minutes.

Thank you for the opportunity to submit testimony.



Feb. 18, 2022

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

Re: S.B. 3172

Chair Rhoads and Committee Members:

We support this measure.

Detailed written minutes should be kept for the public to read, and video or audio recordings of meetings should supplement the minutes, not replace them.

The public does not have the time to sit through video or audio recordings.

Thank you for your time and attention,

Stirling Morita
President
Hawaii Chapter of the Society of Professional Journalists

SB-3172

Submitted on: 2/12/2022 7:03:11 PM

Testimony for JDC on 2/18/2022 9:30:00 AM

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

Comments:

Aloha JDC Chair and Committee,

It is good idea to have both meeting minutes and written summaries of recorded meetings as required by SB3172.

It is also a good idea to any electronic audio or visual recording of a board meeting must be maintained as public record as required by SB3172.

I am a volunteer for Common Cause and they suggest (and i agree with them) that all boards under part I of chapter 92, Hawaii Revised Statutes be required to livestream using audiovisual or audio technology their meetings. The recording of each meeting should be archived and made available to the public on the board's website or, if the board does not have a website, on an appropriate state or county website immediately after the meeting. This Bill creates more participation and greater governmental accountability and transparency so it is a good bill that will hopefully make it to the floor

Mahalo,

tlaloc tokuda

Kailua Kona, HI 96740

SB-3172

Submitted on: 2/13/2022 12:41:08 PM

Testimony for JDC on 2/18/2022 9:30:00 AM

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

Comments:

In _1984_, George Orwell famously noted, "Who controls the past controls the future. Who controls the present controls the past." As we have seen from recent events, having an accurate and timely understanding of what happens is necessary for both good governance and to learn from the past that we may have a better present and future.

SB3172 provides that any electronic audio or visual recording of a board meeting shall be maintained as public record. Given the speed at which technology evolves, the requirements of SB3172 for both meeting minutes and written summaries of recorded minutes, as well as the maintenance of any electronic audio or visual recordings of board meetings as public record, are wise and proactive.

Further, the past few years have shown how livestreaming of meetings and making recordings available to the public on the board's website have increased accessibility and participation. It would be helpful if all boards, under part I of chapter 92, Hawaii Revised Statutes, be required to do so. Boards without their own website could stream/archive on an appropriate state or county website.

These measures allow for more participation and greater governmental accountability and transparency.

SB-3172

Submitted on: 2/13/2022 9:44:55 PM

Testimony for JDC on 2/18/2022 9:30:00 AM

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

Comments:

In addition to meeting minutes and written summaries of public agency meetings, electronic audio or visual recordings should also be maintained for public review. I also believe all boards under part 1 of Chapter 92, Hawaii Revised Statutes be required to livestream their meetings. All of these policies will enhance government accountability and transparency. Mahalo.

SB-3172

Submitted on: 2/14/2022 6:48:47 AM

Testimony for JDC on 2/18/2022 9:30:00 AM

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

Comments:

It is good idea to have both meeting minutes and written summaries of recorded meetings as required by SB3172.

It is also a good idea to any electronic audio or visual recording of a board meeting must be maintained as public record as required by SB3172.

It is further recommended that all boards under part I of chapter 92, Hawaii Revised Statutes be required to livestream using audiovisual or audio technology their meetings. The recording of each meeting should be archived and made available to the public on the board's website or, if the board does not have a website, on an appropriate state or county website immediately after the meeting. This will allow for more participation and greater governmental accountability and transparency.

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

SB-3172

Submitted on: 2/16/2022 9:20:40 AM

Testimony for JDC on 2/18/2022 9:30:00 AM

Submitted By	Organization	Testifier Position	Remote Testimony Requested
PL Fritz	Individual	Support	No

Comments:

This bill should provide that the Office of Enterprise Services and the State Archives develop archiving standards that use a format that can be accessed easily and requires stable media. Analogue tape is not stable over the long term.

Senate Committee on Judiciary

**February 18, 2022 Public Hearing
9:30 AM**

SENATE BILL 3172 Relating to Public Agency Meetings

Testimony in Full Support with Recommendations

Aloha Chair Rhoads, Vice Chair Keohokalole and Committee Members,

I have been an elected member of the Diamond Head/Kapahulu St. Louis Heights Neighborhood Board for many years, serving Diamond Head Sub-District 3 and the larger community district in the capacities of Board member, chairperson, vice chairperson and most recently secretary. Today I am offering the following testimony in support of Senate Bill 3172 as an individual community member and public interest advocate, with additional recommendations stemming from direct evidence and experience.

The purpose of Senate Bill 3172 is to provide the public with as much access and information as possible, to define the difference between regular meeting minutes and written summaries of recorded meetings, and to emphasize that complete minutes remain required.

In addition to ensuring complete Neighborhood Board meeting minutes that truly reflect a) the substance of all matters proposed, discussed, and decided and b) the views of the participants, Senate Bill 3172 and strengthening HRS 92-9 should also address substantial failures of continuing concern in order to benefit the public with complete records of public meetings in the public interest, as follows:

- To publicly disclose and electronically post meeting minutes that have been reviewed, corrected and/or revised, *approved and adopted* by the Neighborhood Boards.
- To electronically post the complete meeting minutes as adopted by the Neighborhood Board and video recordings with time-stamped summaries *together* with the meeting agenda under the respective dates of the subject monthly Neighborhood Board meetings.
- To provide *complete* video recordings extending to adjournment of the monthly Neighborhood Board meetings.
- To respond to and remedy such concerns expressed directly to the Neighborhood Commission Executive Director and assistants, and in public testimony before the Neighborhood Commission.

Official Meeting Records of Elected Community Boards

O'ahu's Neighborhood Board System was created "to assure and increase community participation in the decision-making process of government."

Neighborhood Boards meet monthly with often long agendas that include reports from elected and administrative officials as well as issues of community interest, and many times the elected Boards deliberate complex issues and proposals that may significantly affect their communities.

The Neighborhood Commission Office (NCO) of the City and County of Honolulu administers the Neighborhood Board System and provides O'ahu's Neighborhood Boards with assistants who publicly post the meeting agendas and draft the meeting minutes for review, approval and adoption by the Neighborhood Boards. The Executive Director of the Neighborhood Commission

is appointed by the Mayor of the City and County of Honolulu and is expected to understand and follow the Hawaii Open Public Meetings Statute, HRS 92.

However, for the past year complications and difficulties have arisen regarding an internal directive issued by the NCO Executive Director to the Neighborhood Board assistants that the Neighborhood Board meeting minutes drafted for Neighborhood Board review, approval and adoption are not to exceed four (4) pages.

This is a detrimental directive, especially for Boards with long agendas and meetings that can exceed three (3) hours due to complex issues, long reports, and numerous active participants with the statutory right to be heard. Further, radically restricting the content of the minutes distorts the “true reflection of the substance of all matters proposed, discussed, and decided. . . and the views of the of the participants” as required by HRS 92-9 (a).

During Neighborhood Board meetings with substantive community issues, many members of the public as well as Board members participate by providing information, asking questions and making recommendations that can result in official positions reflecting the community’s interests; and some public matters under deliberation can extend over several months until resolution.

But the “true reflection . . . of the substance of all matters proposed, discussed, and decided” and “the views of the of the participants” have often been absent, distorted, and at times misrepresented in the meeting minutes produced by the NCO over the past year because of the Executive Director’s internal directive.

Therefore, because “complete minutes are still required” in the form of a “true reflection . . . of the substance of all matters proposed, discussed, and decided” and “the views of the of the participants,” but complete minutes as the true reflection of the meetings have been restricted, the public is not being provided with a complete record of the meetings to ensure public knowledge, understanding and full disclosure of the public matters before the Board “to assure and increase community participation in the decision-making process of government” as properly expressed by Senate Bill 3172.

Additional Public Disclosure Issues

In addition to the public being short-changed by the NCO restricting Neighborhood Board meeting minutes as a complete and true reflection of these public meetings, Neighborhood Board meeting minutes that are reviewed, corrected and/or revised, approved and adopted by the Neighborhood Boards have been physically prevented by the NCO from being properly publicly posted with their respective monthly Neighborhood Board meeting agendas on the NCO web site. Instead, the NCO restricts the meeting record to only the draft minutes provided to the Boards by the NCO assistants prior to Board review, correction and/or revision, approval and adoption. This appears to be a violation of the Sunshine Law, which remains unenforced.

In addition, the vast majority of Neighborhood Boards have voted to provide video recordings of their monthly meetings to the public, and these recordings are broadcast on the ‘Olelo television network and are made available for unlimited public access on the ‘Olelo Net website.

However, NCO restricts the videos to three (3) hours, and when Neighborhood Board issues and reports extend beyond that time, with some meetings in session for up to four (4) hours, the NCO videos do not record the remainder of the meeting, including issues discussed and votes taken. Further, some Neighborhood Board videos posted by the NCO have been cut to less than ninety minutes of a normal three-hour meeting.

Conclusion

In view of the above, Senate Bill 3172 is strongly supported for strengthening the Open Public Meetings Statute HRS 92 in the larger public interest by emphasizing that *complete* written minutes of the open public meetings must be provided for the public record, as well as video recordings with written summaries to include recording time stamps. Notably, the meeting videos should also be complete and posted on the NCO's web site under the respective meeting dates together with the Board's adopted minutes.

It is also recommended that deviations from the statutory requirements and such arbitrary directives as described above should be addressed in Senate Bill 3172 with remedies included in the Statute, together with oversight and enforcement guidelines implemented by the State Office of Information Practices as may be necessary to protect the public interest.

Most sincerely and respectfully,

Michelle S. Matson

RELATING TO PUBLIC AGENCY MEETINGS

SECTION 1. The legislature finds that opening the governmental process to public scrutiny and participation is the only viable and reasonable method of protecting the public's interests. Therefore, the discussions, deliberations, decisions, and actions of governmental agencies in the formation and conduct of public policy must be conducted as openly as possible.

The legislature further finds that many members of the public are interested but do not have the ability to attend meetings, nor the time or technology to listen to recordings, those persons are therefore unnecessarily prevented from exercising their right to scrutinize and participate. Especially for community board proceedings, the public has a right to be kept informed by way of accurate and complete minutes of such proceedings. The written summaries that accompany any recordings of such meetings as outlined in section 92-9(c), Hawaii Revised Statutes, does not meet the standards set out in section 92-9(a), Hawaii Revised Statutes, nor was it intended to substitute for complete minutes.

The purpose of this Act is to, for the sake of providing the public with as much access and information as possible, make clear that there is a difference between regular meeting minutes and written summaries of recorded meetings, and that complete minutes are still required.

SECTION 2. Section 92-9, Hawaii Revised Statutes, is amended to read as follows:

"§92-9 **Minutes.** (a) The board shall **keep written** ~~[or recorded]~~ minutes of all meetings~~[-]~~, provided that **any electronic audio or video recording of the meeting shall also be maintained as a public record.** Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but **the written minutes shall be kept and give a true reflection of the matters discussed at the meeting and the views of the participants.** ~~[Written]~~ The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) **The substance of all matters proposed, discussed, or decided;** and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) **The minutes shall be made available to the public by posting on the board's website** or, if the board does not have a website, on an appropriate state or county website **within forty days after the meeting** except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(c) A written summary shall accompany any [minutes] recording of a meeting that [are] is posted in a digital or analog recording format and shall include:

- (1) The date, time, and place of the meeting;
- (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- (3) A record, by individual member, of motions and votes made by the board; and
- (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

~~(e)~~ (d) All or any part of a meeting of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting."