

STAND. COM. REP. NO. 2632

Honolulu, Hawaii

FEB 16 2024

RE: S.B. No. 2517
S.D. 1

Honorable Ronald D. Kouchi
President of the Senate
Thirty-Second State Legislature
Regular Session of 2024
State of Hawaii

Sir:

Your Committee on Government Operations, to which was referred S.B. No. 2517 entitled:

"A BILL FOR AN ACT RELATING TO PUBLIC AGENCY MEETINGS,"

begs leave to report as follows:

The purpose and intent of this measure is to:

- (1) Require that appointments of heads of agencies requiring board appointments be made through a publicly established process and timeline; and
- (2) Require that any vote by a public agency board to hire an officer or employee be conducted in an open meeting.

Your Committee received comments on this measure from the Office of Information Practices, Board of Regents of the University of Hawaii, and Public First Law Center.

Your Committee recognizes that applicants for employment retain certain privacy rights that justify the use of closed executive session under the Sunshine Law, as the Hawaii Supreme Court and Office of Information Practices have recognized. Your Committee further finds that both the Hawaii Supreme Court and Office of Information Practices have determined that the balancing test between the public interest and an individual's privacy interest under the Uniform Information Practices Act does not



apply to the Sunshine Law's executive session provision, which authorizes a board to discuss certain personnel matters in closed session where matters affecting privacy are involved.

Your Committee finds, however, that in some instances, such as the hiring of the head of an agency or division, there is an elevated public interest that makes it appropriate for the Legislature to ensure a statutory minimum level of public accountability in the hiring process and the actual decision to hire. Your Committee believes that this measure will set a minimum level of accountability with respect to a certain class of top level state employees, and will not impact county hiring decisions or interfere with the rights of employees subject to collective bargaining agreements or the civil service system. This measure clarifies that a board that is hiring a head of a state agency or division must openly create a hiring process and follow that process, openly amend it when necessary, and require that the process, at a minimum, include holding a public vote on who to hire for the position without adversely impacting individual privacy rights or frustrating government efforts to recruit qualified candidates by identifying individuals being considered for a position who may not be ultimately hired.

Your Committee recognizes that the Legislature is exempt from the Sunshine Law under section 92-10, Hawaii Revised Statutes, and therefore, this measure will not apply to the Senate's use of advice and consent for appointments, even when those appointments are made by a board subject to the Sunshine Law rather than by the Governor as is usually the case.

Accordingly, your Committee has amended this measure by:

(1) Clarifying that:

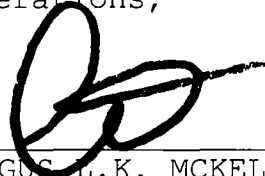
- (A) A public agency board shall use open deliberation in an open meeting to establish a process and timeline for the appointment or selection of a new head of a division or agency of the State;
- (B) Approval of the process and timeline to appoint or select a new head of a division or agency shall be determined in an open meeting;



- (C) Any vote to appoint or select a head of a division or agency of the State shall be conducted in an open meeting; and
 - (D) Any appointment or selection of a head of any division or agency of the State made in violation of these requirements shall be invalid; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

As affirmed by the record of votes of the members of your Committee on Government Operations that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 2517, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2517, S.D. 1, and be referred to your Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Government
Operations,



ANGUS L.K. MCKELVEY, Chair



The Senate
 Thirty-Second Legislature
 State of Hawai'i

Record of Votes
Committee on Government Operations
GVO

Bill / Resolution No.:* SB 2517	Committee Referral: GVO, JDC	Date: 2/13/24		
<input checked="" type="checkbox"/> The Committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: <u>SDI</u>				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
MCKELVEY, Angus L.K. (C)	✓			
GABBARD, Mike (VC)	✓			
SAN BUENAVENTURA, Joy A.	✓			
WAKAI, Glenn				✓
AWA, Brenton				✓
TOTAL	3	—	—	2
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
Distribution: Original Yellow Pink Goldenrod File with Committee Report Clerk's Office Drafting Agency Committee File Copy				

***Only one measure per Record of Votes**

The Senate
 Thirty-Second Legislature
 State of Hawai'i

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Committee on Government Operations
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Bill / Resolution No.:*	Committee Referral:	Date:
SB 2517	GVO, JDC	2.6.24

The Committee is reconsidering its previous decision on this measure.
 If so, then the previous decision was to: _____

The Recommendation is:

Pass, unamended 2312 Pass, with amendments 2311 Hold 2310 Recommit 2313

Members	Aye	Aye (WR)	Nay	Excused
MCKELVEY, Angus L.K. (C)	✓			
GABBARD, Mike (VC)	✓			
SAN BUENAVENTURA, Joy A.	✓			
WAKAI, Glenn	✓			
AWA, Brenton	✓			
TOTAL	5	—	—	—

Recommendation: Adopted Not Adopted

Chair's or Designee's Signature: *[Signature]*

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