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**Senate Committee on Government Operations
Tuesday, February 6, 2024 3:10 P.M.**

Testimony by:

Yvonne Lau, Executive Administrator and Secretary of the Board of Regents

S.B. No. 2830 – RELATING TO MEETINGS.

Chair McKelvey, Vice Chair Gabbard, and members of the Committee:

These comments on S.B. No. 2830 are offered in my capacity as the Executive Administrator and Secretary of the Board of Regents.

The Board of Regents of the University of Hawai'i (Board) has not yet had the opportunity to discuss this measure. Discussion is expected to occur at the Board's next meeting on February 16, 2024.

Thank you for the opportunity to offer comments on S.B. No. 2830.

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 6, 2024, 3:10 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 2830
Relating to Meetings

Thank you for the opportunity to submit testimony on this bill, which would amend the definition of a board subject to part I of chapter 92, the Sunshine Law, to include “policymaking group[s]” and to specify that groups created by emergency proclamation are included in the definition. The Office of Information Practices (OIP) offers comments.

The intent of this bill appears to be to ensure that a group similar to the Build Beyond Barriers Working Group (BBB Working Group) originally created – and exempted from the Sunshine Law – by emergency proclamation, would in the future be automatically subject to the Sunshine Law. However, OIP believes that this bill would not accomplish that intent, because it is based on an incorrect assumption of why the BBB Working Group was initially not required to follow the Sunshine Law.

The Governor’s emergency powers include the ability to suspend laws through an emergency proclamation. That includes the power to suspend the Sunshine Law, as the Governor initially did when creating the working group. **If the Sunshine Law were amended as proposed in this bill, the Governor**

would still have the power to suspend the Sunshine Law – including the new definition of a “board” – for a group created by emergency proclamation in the same emergency proclamation where the group was created. The reason the BBB Working Group was not initially required to follow the Sunshine Law was because the Governor had exempted it from doing so via emergency proclamation, **not** because it did not fall under the Sunshine Law definition of a board. **Thus, this bill would not prevent a Governor from creating a policymaking group exempted from the Sunshine Law using his emergency powers.**

The addition of references to a “policymaking group” with “policymaking responsibilities” as being included in the definition does not actually do much to change the scope of the Sunshine Law’s definition of a board. The existing definition was created to encompass groups that set or influence policy; it already includes groups with “supervision, control, jurisdiction, or advisory power over specific matters which [are] required to conduct meetings and to take official actions[.]” **Because the Sunshine Law’s definition of a “board” already includes groups that make final policy decisions themselves as well as advisory groups that are asked to provide recommendations on policy issues to the final decisionmaker, this bill’s proposed addition of “policymaking group[s]” with “policymaking responsibilities” does not significantly change the current definition.** The BBB Working Group certainly seems to meet the Sunshine Law’s existing definition of a board; again, the issue was not that the Sunshine Law currently does not apply to “policymaking groups” or to groups that make recommendations, but rather that the Governor suspended the Sunshine Law’s application to the group via emergency proclamation.

Similarly, the addition of “emergency proclamation” as an additional formal means of creating a board subject to the Sunshine Law would likely not change the current scope of the definition and, more to the point, **would not ensure that a board created by a future emergency proclamation was subject to the Sunshine Law.** OIP would find a board created by “emergency proclamation” to be a board created by executive order for the purpose of the definition, meaning that OIP would already consider a group created by emergency proclamation to be potentially subject to the Sunshine Law assuming it met the remaining elements of the definition. However, once again, the issue with the BBB Working Group was that the Governor had suspended the Sunshine Law’s applicability to it by emergency order, not that the group would not otherwise have met the definition of a “board” subject to the Sunshine Law.

OIP therefore recommends that if this Committee’s intent is to ensure that the Sunshine Law applies to groups created to emergency proclamation, it should focus on amending the Governor’s emergency powers rather than tinkering with the Sunshine Law’s definition of a “board.”

Thank you for considering OIP’s testimony.



Senate Committee on Government Operations
Chair Angus L.K. McKelvey, Vice Chair Mike Gabbard

Tuesday, February 6, 2024 3:10 PM Public Hearing in Conference Room 225 on
SB 2830, RELATING TO MEETINGS

TESTIMONY

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

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii supports SB 2830.

Thank you for the opportunity to submit testimony.



Feb. 6, 2024

Angus McKelvey
Senate Government Operations Committee
State Capitol
Honolulu, HI 96813

Re: Senate Bill 2830

Chairman McKelvey and Committee Members:

We support this bill, would make it firm that the lieutenant governor and county clerks ensure access to government board meetings notices.

We think this bill would center the responsibility for this important function on the lieutenant governor and county clerks.

Thank you,

Stirling Morita
President
Hawaii Chapter SPJ

SB-2830

Submitted on: 2/1/2024 5:56:51 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

Submitted By	Organization	Testifier Position	Testify
Justin Silva	Individual	Support	Written Testimony Only

Comments:

Amends the definitions of "board", "board business", and "meeting" within state open meetings law to expand the scope of the law to include state and county policymaking groups, including groups created by emergency proclamations.

PUBLIC FIRST
LAW CENTER

Senate Committee on Government Operations
Honorable Angus L.K. McKelvey, Chair
Honorable Mike Gabbard, Vice Chair

RE: Testimony with comments on S.B. 2830, Relating to Meetings
Hearing: February 6, 2024 at 3:10 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency.

Thank you for the opportunity to submit testimony **with comments on** S.B. 2830. This measure proposes to amend certain definitions under Hawai'i Revised Statutes chapter 92, to expand the scope of the law to cover state and county policymaking groups.

We support the intent to increase access to government and opportunities for public participation. We also appreciate the intent to clarify that the Sunshine Law's application to boards created by "executive order" also includes those created by "emergency proclamation."

As written, however, S.B. 2830 misses an important group of policymaking boards—*state boards* established pursuant to *federal law*. Their work is important, publicly funded, and no less for the public than any state board created under state law. And yet they operate outside the Sunshine Law and analogous federal law. To close this gap, we suggest adopting the following amendment (in bold) at Page 1, lines 5 – 14:

"Board" means any agency, board, commission, authority, ~~[or]~~ committee, or policymaking group of the State or its political subdivisions ~~[which]~~ that is created by ~~[constitution,]~~ any **state or federal** constitutional provision, statute, rule, ~~[or]~~ executive order, or emergency proclamation, to have supervision, control, jurisdiction, ~~[or]~~ advisory power, or policymaking responsibilities over specific matters and ~~[which]~~ that is required or requested to conduct meetings and to take official actions~~[-]~~, including the creation of policies or policy recommendations.

If so amended, this measure would increase access to government and create more opportunities for public participation in an important sphere of government.

Thank you again for the opportunity to testify with comments on S.B. 2830.

