

Commission to Improve Standards of Conduct

Dear Mr. Chairman and members of the Government Operations Committee,

Thank you for the opportunity to comment on HB 723, HD 1, proposed by the Commission to Improve Standards of Conduct (Commission). The origin and justification of this bill and other bills proposed by the Commission are extensively discussed in the Commission's December 1, 2022 Final Report (Report) found on the House of Representatives website under Special Committees.

The bills recommended by the Commission are a package that would increase transparency and accountability in state and county government and help restore public trust in government which has been severely eroded in the past few years by highly publicized instances of corruption and misconduct in state and county government. HB 723, HD 1, is part of this package and would contribute to this goal by expanding the application of the Sunshine Law to legislatively appointed bodies, including task forces, working groups, special committees, and select committees. Despite public testimony received by the Commission that the Sunshine Law should apply to the Legislature and its proceedings, the Commission concluded given "the strict legislative timetable and deadlines mandated under Article III of the Hawaii Constitution" it was not practical to apply the Sunshine Law to the Legislature. Report at 26. However, HB 723, HD 1, would "better effectuate the spirit and intent of the Sunshine Law" by applying it to legislative appointed bodies except when the Legislature deems it impractical to do so. Id.

Many of the Commission bills are the same or similar bills proposed by the State Ethics and Campaign Spending Commissions. Some of the Commission's bills were deferred in the House because the House had already passed the State Ethics or Campaign Spending Commission bill of the same content. The Three Commissions worked together in drafting these bills. I am grateful to your committee for hearing HB 723, HD 1, the first House Bill you are hearing that was introduced at the request of the Commission, so I take this opportunity to briefly comment not only on HB 723, HD 1, but the package of bills introduced in the House at the request of the Commission.

The members of the Commission worked very hard over a period of nine months, reaching out to public officials, community leaders, experts in various fields within the Commission's mandate and held extensive public hearings in drafting the bills recommended to the House and now to the Senate. These public hearings are summarized in the Report at 13-18 and Appendix B of the Report which contains the Commission's minutes of these public meetings. The notice of the Commission's meetings with a link to a video recording of each meeting and testimony submitted and documents considered at each meeting can be found at the House webpage's a link to the Commission under House Special Committees.

The following is the list of bills recommended by the Commission:

HB 705 – Requires each house of the Legislature to post a report of the legislative allowance expenditures for each member of the respective house on the Legislature’s website. The purpose of this bill is to “increase transparency and ease of access to information related to expenditure of taxpayer monies.” Report at 28.

HB 706 – Requires all members of the Legislature to disclose certain relationships with lobbyists or lobbying organizations in their financial disclosures. The purpose of this bill is to “increase transparency and potentially uncover conflicts or self-dealing.” Report at 28.

HB 707 – Makes it a class C felony to make false, fictitious or fraudulent claims against the state or a county, or any of their department or agencies, disqualifying a person from holding elective public office for a period of 10 years upon conviction of making a false, fictitious or fraudulent claim. This bill is modeled after the federal false claims statute. Report at 21. This bill comes with two others – HB 710 (false statement) and HB 711 (fraud) which are also modeled after federal statutes. Federal, state and county law enforcement officials testified before the Commission that state and county law enforcement need statutes as their federal counterpart have to root out corruption in state and county government rather than always relying on federal enforcement to do this job.

HB 708 – Amends the information in the statement of expenditures reports that lobbyists and other individuals are required to file with the State Ethics Commission to include the identity, by bill number, resolution number or other similar identifier, of the legislative or administrative action that was commented on, supported by or opposed by the person filing the statement. Report at 28. As with other bills in the Commission’s package, this bill would increase transparency and expose any potential conflict of interest.

HB 709 – Requires a lobbyist training course to be designed and administered by the State Ethics Commission, makes the training course mandatory for all lobbyists who are required to register and renew their registration with the State Ethics Commission. The Commission found “that more education and training can be done to ensure that lobbyists have notice of the law, understand the application of the law, and comply with legal requirements.” Report at 29.

HB 710 – Is modeled after the federal false statement statute by establishing a class C felony offense for a person who dealing with state or county government to knowingly or willfully falsifies, conceals or covers up a material fact; makes materially false, fictitious or fraudulent statement or representation; or makes or uses any false writing or document known to have materially false information; and disqualifies a person from holding public office for a period of 10 years upon conviction of making a false statement. Report at 20. As with HB 707 on false claims, federal, state and county law enforcement testified before the Commission this bill is

necessary for state and county law enforcement to root out corruption and misconduct in state and county government rather than always relying on federal law enforcement to do this job.

HB 711 – Is the last of three bills recommended by the state and county law enforcement coalition and is modeled after the federal fraud criminal statute in making it a class B felony for a person to obtain financial benefit or other gain by means of false statements, misrepresentations, concealment of important information or deception, and prohibiting a person convicted of fraud from being a candidate for public office for a period of 10 years. Report at 20.

HB 712 – Would encourage public boards to maintain any electronic audio or visual recording of a board meeting as a public record on the board’s website regardless of whether written minutes of the meeting have been posted and to submit a copy of the recording to the State Archives. Report at 27. A similar bill in the last regular session of the Legislature was supported by the Commission, passed by the Legislature but vetoed by the Governor (SB 3172, SD 1, HD 2, CD 1). Report at 10. The Commission has attempted to address the concerns raised by the Governor in this bill.

HB 715 – Prohibits lobbyists from making prohibited gifts to legislators and state employees with administrative fines imposed for violations. Report at 33.

HB 716 – Requires the Office of Elections to prepare a voter information guide to educate voters on each candidate’s positions and their candidate statements and provide ballot question analyses and appropriates funds for the preparation and distribution of guides and analyses. The Commission found “Hawaii’s voter turnout is well below the national average for each election” and “registered voters may not have access to or be aware of information on the candidates or issues on the ballots.” Report at 34.

HB 717 – Prohibits under certain circumstances legislators and state employees from hiring or promoting relatives or household members and from making or participating in certain other employment-related decisions and from awarding a contract to or otherwise taking official action on a contract with a business if the legislator’s or employee’s relative or household member is an executive officer of or holds a substantial ownership interest in the business, and imposing administrative fines for violations. Report at 29.

HB 718 – Authorizes the Campaign Spending Commission to serve preliminary determinations of probable cause via first class mail instead of certified mail, establishes a presumption of receipt when mailed to the address contained in a candidate or committee organizational report. Report at 21.

HB 719 – Imposes a cap on charges for the reproduction of certain government records; waives the cost of duplication of government records provided to requestors in electronic format;

imposes a cap on charges for searching for, reviewing and segregating records; provides a waiver of fees when the public interest is served by record disclosure; and appropriates funds to carry out the provisions of this act. Report at 27. A similar bill was supported by the Commission and passed by the Legislature last regular session (SB 3252, SD2, HD2, CD1) and vetoed by the Governor. Report at 10. The Commission has attempted in this bill to address concerns raised by the Governor.

HB 720 – Increases the amount of partial public financing available for all offices up for election in varied amounts with a downward adjustment of the minimum amounts of qualifying contributions for county prosecuting offices. The Commission noted “that increased amounts of partial public funding of elections proposed in this bill are intended as a floor, or a minimum level. If fiscal resources are or become available, the Commission encourages the Legislature to be bold and devote additional fiscal resources to further the purpose of this bill and to seek additional permanent funding sources for future elections. Implementation of this proposal would assist in diminishing the impact and influence resulting from Citizens United.” Report at 32.

HB 721 – Eliminates the use of campaign funds to purchase up to two tickets for an event or fundraiser held by another candidate or committee. The Commission found “that this practice is commonplace amongst legislators and gives the appearances of impropriety since the campaign funds of the purchaser/candidate are likely contributions made to the purchaser/candidate and not to the candidate holding the event or fundraiser.” Report at 3334.

HB 722 – Expands the reach of the requirement to file a notice of intent to hold a fundraiser or fundraiser event by removing the current \$25 threshold. The Commission stated this bill would further public transparency and improve public confidence in campaigns. Report at 33.

HB 723 – Expands application of the Sunshine Law to legislatively appointed bodies, including task forces, working groups, special committees, and select committees. This bill would also require each chamber of the legislature to hold public hearings on its rules on a biennial basis. The Commission concluded given “the strict legislative timetable and deadlines mandated under Article III of the Hawaii State Constitution” it was not practical to apply the Sunshine Law to the Legislature. This bill would “better effectuate the spirit and intent of the Sunshine Law.” Report at 26.

HB 724 – Amends the prohibition against contributions to a candidate committee or noncandidate committee by state and county contractors by including state and county grantees and owners, officers and immediate family members of a state or county contractor or state or county grantee. Report at 33.

HB 725 – Establishes the Office of Public Advocate and codifies rights of the public with respect to the conduct and operation of the Legislature and its members. This bill would also specify procedures for the investigation and reporting of alleged violations of the public’s rights. “The Commission offers this proposal as an aspirational starting point for how the public and legislators can best engage with each other in a respectful and transparent manner during the legislative process. Collectively, the 13 rights of the public embody ideals of respect, fairness, openness, and dignity in the legislative process. The rights also require that official legislative business be conducted in a transparent and honest manner and that decisions be based on the merits of the legislation.” Report at 26-27.

HB 726 – Prohibits state and county elected officials from soliciting and accepting campaign contributions during any regular or special session of the Legislature, including any legislative recess days, holidays and weekends. This bill if enacted “would reduce the negative perception of legislators soliciting or accepting contributions from individual or organizations that have an interest in matters pending before the legislature during session.” Report at 32.

HB 727 – Limits the permitted uses of campaign funds to only those purposes that are directly related to the campaign of candidates. Report at 33.

HB 728 – Provides funds to county ethic boards “in an effort to ensure that these boards have adequate resources to continue their operations and pursue their respective missions.” Report at 30.

HB 729 – Requires the Campaign Spending Commission to publish on its website the names of candidate committees and noncandidate committees who fail to properly file an organizational report. The Commission found that this bill “would improve compliance and also bring awareness of noncompliance to the public.” Report at 28.

HB 730 – Limits the amount of cash contributions a candidate, candidate committee or noncandidate committee can accept in the aggregate in each election period to \$100 with a receipt required for each contribution. Report at 33.

HB 731 – Provides that a person waives the right to a contested case hearing if that person fails to request a contested case hearing within 20 days of the Commission’s preliminary determination. It would also allow the Campaign Spending Commission to file its final order with the Circuit Court of the First District for confirmation as a civil judgment, enforceable and collectible as any other judgment issued in circuit court. Report at 21.

HB 732 – Authorizes the Campaign Spending Commission to presume that a violation of a campaign spending law has occurred if a respondent fails to explain or otherwise respond to a complaint alleging a campaign spending violation. Report at 21.

HB 733 – Increases the amount of fine for campaign spending law violations that may be assessed against a noncandidate committee making only independent expenditures and that has received at least one contribution of more than \$10,000 or spent more than \$10,000 in an election period. It authorizes the Campaign spending Commission to order that the payment of a fine assessed against a noncandidate committee, or any portion thereof, be paid from the personal funds of an officer of the noncandidate committee. Report at 34.

HB 796 – Proposes a constitutional amendment to prohibit a person from serving as a member of the Legislature for more than 16 years during that person’s lifetime. “The Commission discussed this proposal at great length and considered the testimony received and personal viewpoints of each commissioner. The Commission looked at similar provisions for guidance and debated the well-balanced pros and cons of this proposal, which was reflected in the slim 4-3 margin by which the Commission adopted the motion to adopt this proposal.” Report at 35. Despite a turnover in the House of Representative of over 50% and the Senate of more than 33% in the last decade, “people feel a proposal like this is necessary and that a limit on the duration of holding state elected office may reduce the potential for corruption and allow for the periodic infusion of fresh ideas and services to constituents.” Id

I deeply appreciate the time, consideration and action you are taking on House bills proposed by the Commission to Improve Standards of Conduct. Your actions this session will significantly contribute to greater transparency and accountability in state and county government and help restore public trust in government.

A handwritten signature in black ink that reads "Daniel R. Foley". The signature is written in a cursive, flowing style with a large, sweeping flourish at the end of the name.

Respectfully submitted, Judge Daniel Foley (ret.)

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: March 21, 2023, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on H.B. No. 723, H.D. 1
Relating to the Sunshine Law

Thank you for the opportunity to submit testimony on this bill, which would apply the Sunshine Law, part I of chapter 92, to legislatively appointed bodies, as defined in the bill, and require the Senate and the House of Representatives to hold public hearings on their rules. In addition to the Sunshine Law's notice and other requirements, the bill would also require legislatively appointed bodies to give the separate public notice required for an agency holding a public hearing. The Office of Information Practices (OIP) seeks clarification of what groups not already subject to the Sunshine Law this bill is intended to apply the Sunshine Law to.

The bill's purpose clause indicates that it is a proposal of the Commission to Improve Standards of Conduct (Commission) formed pursuant to H.R. 9 of 2022. Please note that **OIP was not part of the Commission or consulted** by the Commission regarding this or other bills proposing amendments to laws OIP administers, so although OIP administers the Sunshine Law **OIP has no information about what this proposal is intended to do and the proposal does not reflect input from OIP.**

Currently, the Sunshine Law's open meeting, notice, and agenda requirements as applied to "the state legislature or to any of its members" are preempted by the rules and procedures adopted by the Senate and the House of Representatives. An individual legislator thus is subject only to House or Senate rules and not the Sunshine Law in his or her capacity as a legislator.

But if a legislator sits on a board that is itself subject to the Sunshine Law, then the legislator is subject to the Sunshine Law in their capacity as a board member. The definition of a "board" subject to the Sunshine Law encompasses not just permanent boards typically created by statute or executive order, but also working groups, task forces, and similar bodies created by session law for a limited term. (OIP has previously held that a board created by a legislative resolution, which lacks the force and effect of law, is not generally a Sunshine Law board.) When such a group – or any other Sunshine Law board – includes legislators, the legislator members are subject to the Sunshine Law in the same way as the other board members.

This bill would apply the Sunshine Law (except where a bill or resolution specifies otherwise) to a "legislatively appointed body," defined as a "task force, working group, commission, special committee, or select committee that has a membership consisting in part or in whole of state legislators who were appointed by one or both houses of the legislature or one or both of the presiding officers of each house of the legislature." Thus, it applies both to all-legislator bodies and to groups with a mix of legislator and non-legislator members. The definition suggests it could apply to groups appointed by the Senate President or House Speaker as well as to groups appointed by one or both legislative houses, but the new requirement also appears to anticipate that such groups would be created by bill or

resolution, since it provides that a bill or resolution establishing such a body can exempt it by setting out a specific finding or declaration justifying the exemption.

It is not clear to OIP just what sort of groups, not previously subject to the Sunshine Law, this bill is intended to affect. If the bill's intended target is a group created by statute or session law, then the bill would seem unnecessary since such a group is already generally subject to the Sunshine Law. If it is intended to cover task forces, working groups, and special or select legislative committees created by legislative resolution, then the bill will represent a change in the law by applying the Sunshine Law to groups not otherwise subject to it.

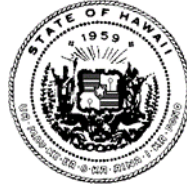
To the extent this bill is intended to cover groups appointed by the Senate President or House Speaker without the involvement of a bill or legislative resolution, it would represent a change in the law and would potentially encompass legislative caucuses and internal projects, which also could not be exempted in the absence of a bill or resolution creating them.

OIP also notes that this new requirement mandates two different forms of public notice, both the Sunshine Law's usual meeting notice and an agency's notice of public hearing set out in part IV of chapter 92, which seems duplicative.

This bill is confusing, may apply more broadly than intended if interpreted to favor openness as the Sunshine Law requires, and requires affected groups to follow multiple public notice standards. For OIP to effectively administer this new requirement if passed, OIP respectfully requests that the bill be amended to explain, preferably with examples, what sort of groups not already subject to the Sunshine Law are intended to be made subject to the Sunshine Law through this bill.

Thank you for considering OIP's testimony.

JOSH GREEN, M.D.
GOVERNOR
KE KIA'ĀINA



CATHY BETTS
DIRECTOR
KA LUNA HO'OKELE

JOSEPH CAMPOS II
DEPUTY DIRECTOR
KA HOPE LUNA HO'OKELE

STATE OF HAWAII
KA MOKU'ĀINA O HAWAI'I
DEPARTMENT OF HUMAN SERVICES
KA 'OIHANA MĀLAMA LAWELAWE KANAKA
Office of the Director
P. O. Box 339
Honolulu, Hawaii 96809-0339

March 20, 2023

TO: The Honorable Senator Angus L.K. McKelvey, Chair
Senate Committee on Government Operations

The Honorable Senator Karl Rhoads, Chair
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: [HB 723 HD1](#) – RELATING TO THE SUNSHINE LAW.

Hearing: March 21, 2023, 3:00 p.m.
Conference Room 225 & Via Videoconference, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) provides comments and defers to the Office of Information Practices.

PURPOSE: This bill expands the application of the State's sunshine law to legislatively appointed bodies, including task forces, working groups, commissions, special committees, and select committees. (HD1)

The Department appreciates the collaborative work done by the Commission to Improve Standards of Conduct (CISC) to meet its essential goal of providing recommendations that would help restore public trust in state government and increase the level of transparency in its operations and accountability of individuals given current events.

However, DHS has concerns and requests clarification on whether the bill intends that the Sunshine Law applies to temporary task forces or workgroups requested through resolutions or other legislative requests versus those created through an act of law. These

temporary work groups or task forces often have quick turnarounds and are tasked with examining the status of an issue and making recommendations to the Legislature. In addition, participation by department staff in permanent or temporary task forces and work groups is generally in addition to staff's regular duties. DHS does not have staff available to support temporary task forces and work groups or unstaffed Commissions, so currently, other job duties are delayed or interrupted while supporting or participating in these workgroups. Consequently, expanding Sunshine Law requirements to all legislatively created workgroups and task forces, especially those created by resolution or formal or informal legislative requests, will increase the workload of staff and likely delay or thwart the focused work that needs to occur for an issue to move forward and further impact staff's ability to get their primary jobs done.

Thank you for the opportunity to provide comments on this measure.



SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Tuesday, March 21, 2023, 3 pm, State Capitol Room 225 & Videoconference
HB 723, HD1
Relating to the Sunshine Law

TESTIMONY

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

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The League supports HB 723, HD1. The amended bill establishes clear, reasonable procedures to determine whether the Sunshine Law would apply to legislatively appointed advisory bodies created by session laws and resolutions.

Thank you for the opportunity to submit testimony.

HB-723-HD-1

Submitted on: 3/15/2023 7:21:36 PM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Andrew Crossland	Individual	Support	Written Testimony Only

Comments:

I support this Bill.

HB-723-HD-1

Submitted on: 3/15/2023 10:17:09 PM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Will Caron	Individual	Support	Written Testimony Only

Comments:

It isn't right that the legislature created a Sunshine Law for the purpose of public participation and transparency, but then exempted itself from it. The public has a fundamental right to know how decisions are made on their behalf. This is essential for a healthy democracy. If decisions will take longer to make as a result, then the legislature should consider revising its schedule to accommodate the extra time needed, even if this means extending the legislative session by a week, a month or even more. Please support HB723 HD1.

HB-723-HD-1

Submitted on: 3/16/2023 7:30:45 AM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Nanea Lo	Individual	Support	Written Testimony Only

Comments:

Hello,

It isn't right that the legislature created a Sunshine Law for the purpose of public participation and transparency, but then exempted itself from it. The public has a fundamental right to know how decisions are made on their behalf. This is essential for a healthy democracy. If decisions will take longer to make as a result, then the legislature should consider revising its schedule to accommodate the extra time needed, even if this means extending the legislative session by a week, a month or even more. Please support HB723.

me ke aloha 'āina,

Nanea Lo, Mō'ili'ili

HB-723-HD-1

Submitted on: 3/19/2023 11:52:07 AM

Testimony for GVO on 3/21/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
lynne matusow	Individual	Support	Written Testimony Only

Comments:

This is a very important first step in getting the legislature to adhere to the Sunshine Law instead of hiding in the dark. Some legislators are not cognizant in the law. They do not know what it applies to, don't care, and assume that anything they do that they themselves think is open government actually is not.

The Sunshine Law is the foundation of open government. Hopefully in the future we will be able to find a way for the legislature to come in full compliance, via reworking of the legislative calendar, consittutuional amendments if needed to make it work, etc.

This bill is a great beginning of true open government.