

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: January 31, 2023, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 233
Relating to Public Testimony at Open Meetings

Thank you for the opportunity to submit testimony on this bill, which would amend the Sunshine Law to require all boards to accept oral testimony at the beginning of each meeting and also require all boards except county councils not to limit their acceptance of oral testimony to the beginning of the meeting. The Office of Information Practices (OIP) is concerned that this amendment is unclear and it is likely to substantially increase meeting lengths for board that draw significant public testimony.

The Sunshine Law has long required acceptance of oral testimony from every interested person on every agenda item at every meeting, but until recently it set no statutory standard as to when in the meeting oral testimony must be heard. An amendment effective July 1, 2022, added a new requirement that such testimony not be limited to the beginning of a board meeting, which effectively prohibited some boards' practice of hearing all oral testimony at the beginning of each meeting. OIP notes that this bill was part of the Maui County Council package, and as such it seems likely that the intent was to effectively reverse this

change for county councils only, but it was drafted without concern about the effect of the language used on other boards.

For county councils, the effect of the amendment is clear: they would be required to take oral testimony only at the beginning of each meeting, with no obligation to take testimony at any later time. **For all other boards, the amendment would add a new requirement – to hear oral testimony from anyone interested at the beginning of each meeting – to the now-existing requirement that oral testimony not be limited to the beginning of the meeting.** The least contradictory interpretation would be that **all boards other than county councils must now hear from any interested person at the beginning of the meeting, and again hear from any interested person on the same agenda item at a later point in the meeting. In effect, it would require boards to hear oral testimony twice.**

The county councils are not the only boards to receive substantial amounts of public testimony; other major boards such as the Board of Education do as well. If the county councils have found the prohibition on hearing all oral testimony at the beginning of a meeting challenging, so too have other major boards. Far from doing anything to help them, though, this bill's requirement for those other boards to hear oral testimony from every interested person at every meeting **would likely substantially increase other Sunshine Law boards' meeting lengths.**

OIP therefore recommends that if this Committee is inclined to move this bill, it should amend it to clarify what the bill is intended to do and **not create a distinction between county councils and all boards**, to avoid inadvertently burdening other boards in the course of providing special treatment for county councils. If this Committee's intent is to undo the Sunshine Law prohibition on

taking all testimony at the beginning of a meeting, the simplest way to do so would be to amend bill page 1 lines 11-16 to read as follows:

“The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item[~~; provided that the oral testimonies of interested persons shall not be limited to the beginning of a board’s agenda or meeting.~~]”

Alternatively, if this Committee is inclined to leave in place the Sunshine Law’s current prohibition on hearing all testimony at the beginning of a meeting, it should hold this bill.

Thank you for considering OIP’s testimony.

Council Chair
Tasha Kama



Director of Council Services
Traci N. T. Fujita, Esq.


Councilmembers
Tom Cook
Gabe Johnson
Alice L. Lee
Tamara Paltin
Keani N.W. Rawlins-Fernandez
Shane M. Sinenci
Yuki Lei K. Sugimura
Nohelani U'u-Hodgins

Deputy Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
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January 27, 2023

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

FROM: Tasha Kama
Council Chair 

SUBJECT: **HEARING OF JANUARY 31, 2023; TESTIMONY IN SUPPORT OF SB 233, RELATING TO PUBLIC TESTIMONY AT OPEN MEETINGS**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to allow county councils to receive all public testimony at the beginning of their meetings.

This measure is in the Maui County Legislative Package; therefore, I offer this testimony on behalf of the Council.

The Maui County Council supports this measure for the following reasons:

1. Act 264 (2022) amended the State Sunshine Law to prohibit the receipt of all oral testimony at the beginning of a public meeting. Though the asserted basis for the statute was to allow members of the public to view any presentation before testimony, the Office of Information Practices had advised that that practice was already acceptable under the Sunshine Law.
2. The current statute unduly restricts the councils' options for conducting meetings without any new benefit to the public. The statute has only been in effect since July 8, 2022, but has already created much public confusion among County of Maui residents and unfairly restricted the Maui County Council in the conduct of its meetings.
3. In testimony on the bill that became Act 264, OIP Director Cheryl Kakazu Park mused to the Senate Committee on Judiciary: "Is there a benefit to eliminating the practice of taking testimony at the beginning of a meeting that outweighs the potential inconvenience to boards of having to change the way they run meetings on pain of violating the Sunshine Law?" Based on our experience of the past seven months, the answer is no.

For the foregoing reasons, the Maui County Council **supports** this measure.



SENATE COMMITTEE ON GOVERNMENT OPERATIONS
Tuesday, January 31, 2023, 3 pm Hearing, State Capitol Room 225 & Videoconference

SB 233,
Relating to Public Testimony at Open Meetings

TESTIMONY

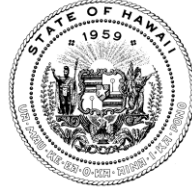
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii opposes SB 233. When any board (including a county council) takes oral testimony or schedules a public hearing on an agenda item, the Sunshine Law should not ALWAYS require the board to take oral testimony on the same agenda item at the beginning of the board meeting. The League's position is that:

- the Sunshine Law should apply to county councils the same way as other boards.
- boards should be required to take oral testimony on every item on their agenda.
- boards should have discretion but not be required to take oral testimony at the beginning of board meetings.

Thank you for the opportunity to submit testimony.



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NADINE Y. ANDO
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

Testimony of the Department of Commerce and Consumer Affairs

**Before the
Senate Committee on Government Operations
Tuesday, January 31, 2023
3:00 p.m.
Conference Room 225 & Videoconference**

**On the following measure:
S.B. 233, RELATING TO PUBLIC TESTIMONY AT OPEN MEETINGS**

Chair McKelvey and Members of the Committee:

My name is Ahlani Quiogue, and I am the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division (PVL). The Department appreciates the intent and offers comments on this bill.

The purposes of this bill are to specify: (1) that boards subject to the open meetings law shall allow oral testimony on any agenda item at the beginning of the board's agenda or meeting, provided that oral testimony shall not be limited to the beginning of a board's agenda; and (2) an exception for the legislative body of each county.

The Department appreciates the intent of the bill as it recognizes the importance of public participation in all government functions. However, it notes that for practical reasons, we find it most beneficial for the twenty-five (25) boards and commissions administratively attached to PVL to allow the public to provide comment prior to each

Testimony of DCCA

S.B. 233

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agenda item, following board members discussion of an agenda item, or a combination of the two. This allows public participants more interaction with the board members and, most importantly, a clear understanding of the matters being discussed by the board and the decisions being made.

Thank you for the opportunity to testify on this bill.

SB-233

Submitted on: 1/30/2023 7:46:01 AM

Testimony for GVO on 1/31/2023 3:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Stirling Morita	Testifying for Hawaii Chapter Society of Professional Journalists	Oppose	Written Testimony Only

Comments:

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Honolulu, HI 96813

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

RE: Testimony Opposing S.B. 233, Relating to Public Testimony at Open Meetings
Hearing: January 31, 2023 at 3:00 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. 233**.

The bill proposes to deny the public the option to testify either at the beginning of a county council meeting or at the time that a specific agenda item is considered. Act 264 last year required this option as part of several Sunshine Law updates to allow for more community participation.¹ There is no reason to exempt county councils from this requirement.

Members of the public should not be denied the opportunity to testify simply because they show up late to a day-long county council meeting or cannot – due to family, work, or other commitments – be present at the beginning of the meeting. Providing testifiers with more flexibility about the timing of testimony encourages public involvement in government business.

Please reject this effort to reduce civic engagement.

Thank you again for the opportunity to testify in opposition to the S.B. 233.

¹ As explained in testimony from Hawai'i County Council Member Heather Kimball, the proposal that led to Act 264 was a collaborative effort between representatives of the Hawai'i State Association of Counties and community organizations.

SB-233

Submitted on: 1/24/2023 3:59:26 PM

Testimony for GVO on 1/31/2023 3:00:00 PM

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

Comments:

Please accept this as testimony in strong opposition. Before COVID, we testified at county council meetings on agenda items, as the agenda item came up. Then, in their infinite lack of wisdom, it was changed to the beginning of the meeting. This measure exemplifies the lack of transparency and not letting citizenr to hear proposal before testifying. The vox populi should be able to speak after a presentation, as their testimony could well change. IO used to sign up late, so i could prepare my testimony based on what others said. I urge you defer this bill indefinitely.

lynne matusow