



## DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813  
Ph. (808) 586-8121 (V) • TTY (808) 586-8162 • Fax (808) 586-8129

April 2, 2024

### TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY

#### House Bill 1598 HD1 SD1– Relating to the Sunshine Law

The Disability and Communication Access Board (DCAB) supports House Bill 1598 HD1 SD1 - Relating to the Sunshine Law.

The bill would change the deadline to distribute board packets to board members and to the public from 48 hours prior to the meeting and set it at two business days. It also would allow public testimony to be distributed to board members prior to the meeting without restriction.

The current 48 hour deadline often falls on a weekend or holiday when staff is unavailable. Calculating it by business days avoids this situation and provides a more consistent process.

Currently, when a member of the public submits testimony prior to a meeting, but after the 48 hour deadline, board members are unable to review it until the meeting has been called to order. The result is often a cursory review. Allowing board members to receive testimony prior to the meeting allows for a careful review and provides adequate time for the members to formulate any questions or ideas in response.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW  
Executive Director

# 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 Judiciary

From: Carlotta Amerino, Acting Director

Date: April 2, 2024, 10:05 a.m.  
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 1598, H.D. 1, S.D. 1  
Relating to the Sunshine Law

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Thank you for the opportunity to submit testimony on this bill, which would require board packets (if used) to be distributed at least two business days before the meeting rather than 48 hours before the meeting, but would make an exception for public testimony, allowing it to be distributed even within the two-business day period. The Office of Information Practices (OIP) offers **comments and a proposed amendment**.

The Sunshine Law's board packet provision currently requires a board packet, *i.e.* materials compiled and distributed to board members before a meeting for their use at the meeting, to be distributed at least 48 hours prior to the meeting. Board packets must also be made available to the public at that same time. Since written public testimony is among the materials compiled and distributed to board members for their use at a meeting, and it usually comes in within the last day or two before a meeting, boards have had to use work-arounds to avoid violating the 48-hour deadline, such as waiting to distribute the testimony until the meeting itself (so that it is not distributed **before** the meeting and thus is not technically a "board packet"). This measure would provide helpful clarity and

assist boards in distributing written public testimony to their members in time for those members to read it before the meeting.

The bill's change for other board packet materials to be distributed--from the current 48 hours to the proposed two business days--before the meeting will make it easier for both the general public and for government agencies to review materials prior to a meeting held a day or two after a weekend or holiday. However, OIP recognizes that an unintended consequence may be that board staff will not be able to compile other meeting materials in time to meet what will often be an earlier deadline than the present 48-hour standard, thus possibly impeding board members' ability to fully review and consider what could be extensive reports and analyses that were not included in a board packet before the meeting. OIP views the question of whether to make this change as a policy decision best made by the Legislature.

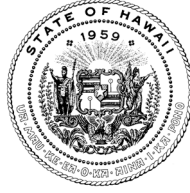
The bill also proposes creating two new requirements for board packets. First, it would require a board's notification to persons on the mailing list that the board packet is available to include a list of the documents comprising the packet, and second, it would add a requirement that board packets be posted on a board's website. Regarding the requirement for boards to provide, essentially, a list of contents for the board packet when notifying the public that it is available, OIP assumes that it would not require, for instance, listing each piece of testimony received, but would allow listing the materials by category. Assuming that to be the case, OIP would expect this to be straightforward for many boards but perhaps more challenging for those that routinely have a very large volume of materials in the packet.

Regarding the website requirement, OIP notes that boards are currently required to post their minutes on their website or the relevant department or

county website. Thus, while this is yet another legal requirement for boards to meet, OIP would expect them to have a method for uploading documents in place already. However, OIP notes that the timing of when board packets must be uploaded is not clear in the bill. OIP therefore recommends that if this Committee wants to move forward in creating this new web posting requirement for board packets, it should combine it with the existing requirement to accommodate requests for electronic access as soon as practicable, by **amending bill page 2 lines 16-19 to read as follows:**

**The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet [-] and shall post the board packet on its website.**

Thank you for considering OIP's testimony.



**STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

**NADINE Y. ANDO**  
DIRECTOR | KA LUNA HO'OKELE

**JOSH GREEN, M.D.**  
GOVERNOR | KE KIA'ĀINA  
**SYLVIA LUKE**  
LIEUTENANT GOVERNOR | KA HOPE KIA'ĀINA

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

**KA 'OIHANA PILI KĀLEPA**  
335 MERCHANT STREET, ROOM 310  
P.O. BOX 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
cca.hawaii.gov

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
Senate Committee on Judiciary  
Tuesday, April 2, 2024  
10:05 a.m.  
Conference Room 016 and Videoconference**

**On the following measure:  
H.B. 1598, H.D. 1, S.D. 1, RELATING TO THE SUNSHINE LAW**

**WRITTEN TESTIMONY ONLY**

Chair Rhoads 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 (Division). The Department opposes this bill.

The purposes of this bill are to: (1) require boards to make available for public inspection board packets, if created, at the time the board packet is distributed to board members but no later than two business days before the board meeting; (2) carve out an exception by allowing public testimony to be distributed to board members within two business days before the board meeting; (3) require boards to include in the notice to persons requesting notification of meetings, a list of the documents that were compiled by the board and distributed to board members before a board meeting for use at the meeting; and (4) require boards to post board packets on its website.

While the Department appreciates open government, the Department must oppose this measure for the following reasons:

This bill proposes to change the distribution for board packet materials from 48 hours before a noticed meeting to two (2) business days before a meeting. The Department agrees with the Office of Information Practices, that a possible unintended consequence of this proposed amendment is that boards/commissions/committees subject to the Sunshine Law may be unable to compile meeting materials in time to meet a possible earlier deadline than the current 48-hour requirement. This may interfere with board members ability to fully review and consider information that were not timely included in a board packet prior to a noticed meeting. This new requirement may lead to boards, commissions, and committees having to defer agendized items, such as applications for licensure, if it fails to meet this new deadline.

This bill also proposes to require boards to include in the notice to persons requesting notification of meetings, a list of the documents that were compiled by the board and distributed to board members before a board meeting for use at the meeting. It further proposes to require boards to post the board packet on its website.

For the Committee's information, the Division has 25 boards and commissions administratively attached to it, which hold public meetings subject to the Sunshine Law. On average, there are at least 25 publicly noticed meetings a month. Currently, the Division has: 5 secretaries who compile, redact, and prepare meeting packets for all boards and commissions, and 1 specialist that upload all meeting minutes and Zoom recordings to our board websites. The Division does not have the personnel or resources to maintain and meet the requirements of this bill.

Lastly, if this bill becomes law, the Department is concerned that the Division's regular operations will likely be hindered, as it is forced to expend more resources and personnel time towards meeting these requirements.

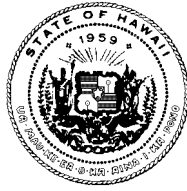
For these reasons, the Department respectfully requests that this measure be held. If the Committee is inclined to move this measure forward, the Department respectfully requests 4 FTEs to be appropriately allocated and a general fund appropriation to fund these positions to meet the requirements of this bill. The

Department may then assess fees to its applicants and licensees to pay back the general fund. The Committee may consider the following language to be included in this bill:

Fees assessed shall defray costs incurred by the department to support the operations of the licensing programs. Fees collected shall be managed in accordance with section 26-9(l).

Thank you for the opportunity to testify on this bill.

JOSH GREEN, M.D.  
GOVERNOR  
KE KIA'ĀINA



CATHY BETTS  
DIRECTOR  
KA LUNA HO'ŌKELE

JOSEPH CAMPOS II  
DEPUTY DIRECTOR  
KA HOPE LUNA HO'ŌKELE

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

TRISTA SPEER  
DEPUTY DIRECTOR  
KA HOPE LUNA HO'ŌKELE

April 1, 2024

TO: The Honorable Senator Karl Rhoads, Chair  
Senate Committee on Judiciary

FROM: Cathy Betts, Director

SUBJECT: **HB 1598 HD1 SD1 - RELATING TO THE SUNSHINE LAW.**

Hearing: April 2, 2024, 10:05 a.m.  
Conference Room 016, State Capitol & Video Conference

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) appreciates the measure's intent, provides comments, and defers to the Office of Information Practices, other impacted Departments, Boards, and Commissions.

**PURPOSE:** This bill requires boards to make available for public inspection board packets, if created, at the time the board packet is distributed to board members but no later than two business days before the board meeting. Carves out an exception by allowing public testimony to be distributed to board members within two business days before the board meeting. Requires boards to include in the notice to persons requesting notification of meetings, a list of the documents that were compiled by the board and distributed to board members before a board meeting for use at the meeting. Requires boards to post board packets on its website. Takes effect 7/1/2491. (SD1)

DHS provides comments regarding the proposed amendment that "[t]he board shall post the board packet on its website." At DHS, access to update the agency's website is limited to agency staff, and commissioners do not have direct access to the agency website. Given the



April 1, 2024

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DHS staff workload, DHS may not be able to timely assist the Commissions with uploading documents to the DHS website prior to meetings.

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



Senate Committee on Judiciary  
Chair Karl Rhoads, Vice Chair Mike Gabbard

Tuesday, April 2, 2024, 10:05 am Public Hearing in Conference Room 016 on  
HB 1598, HD1, SD1, RELATING TO THE SUNSHINE LAW

TESTIMONY

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

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

**The League of Women Voters of Hawaii supports HB 1598, HD1, SD1.**

Before State law addressed timing of staff submittals, some agencies routinely delayed distribution and public disclosure of board packets until the beginning of board meetings. Last minute staff submittals encourage boards to uncritically “rubberstamp” proposed policy and last minute public disclosure of staff submittals inhibits informed public participation at board meetings.

Because some boards do not have websites, and because neighbor islanders and rural Oahu residents are unlikely to travel to a downtown Honolulu office to review a board packet, we suggest amending three sentences on page 2 lines 16-19 of HB 1598, SD1 to read:

*The board is not required to mail board packets. As soon as practicable, prior to the meeting, the board shall accommodate requests for electronic access to the board packet [-] ; and post the board packet on the website used for posting of board minutes.*

Thank you for the opportunity to submit testimony.



Senate Committee on Judiciary  
Honorable Karl Rhoads, Chair  
Honorable Mike Gabbard, Vice Chair

**RE: Testimony in Support of H.B 1598 H.D. 1 S.D. 1, Relating to the  
Sunshine Law**  
Hearing: April 2, 2024 at 10:05 a.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 **in strong support** of H.B. 1598 H.D. 1 S.D. 1. This measure amends HRS § 92-7.5 in several ways, consistent with its original intent, to promote informed public participation in public meetings.

H.B. 1598 H.D. 1 S.D. 1 carves out “public testimony” to permit that category of documents to be sent to boards less than 48 hours before a meeting. This would clear up present confusion about whether testimony submitted less than 48 hours before a meeting can be given to board members in advance of the meeting. (The Office of Information Practices presently interprets section 92-7.5 as prohibiting this.)

H.B. 1598 H.D. 1 S.D. 1 clarifies that the board packet must be made publicly available on a business day, not a weekend or holiday, before the meeting. Using “business days,” instead of calendar days, ensures the deadline does not fall on day when board offices are not open.

H.B. 1598 H.D. 1 S.D. 1 also incorporates two amendments this Committee made to a companion measure, S.B. 2638 S.D. 1, to require the posting of board packets on board websites and itemizing of board packet contents. These additions further promote public access to the information necessary to understand and meaningfully participate in board decision-making. This Committee may wish to consider clarifying when board packets must be posted on the board’s website.

Simply clarifying the original legislative intent, this measure ensures the public’s right to access materials critical to understanding board activity and be heard on those matters, while accounting for boards’ operational practicalities.

Thank you again for the opportunity to testify in support of H.B. 1598 H.D. 1 S.D. 1.





## **HAWAII STATE - COMMISSION ON FATHERHOOD (HS-COF)**

*The Hawaii State Commission on Fatherhood (HS-COF) serves  
In an advisory capacity to state agencies and makes  
recommendations on programs, services, contracts,  
policies and laws relating to children and families.  
fatherhoodcommission.hi@gmail.com*



Date: April 2, 2024 - Hearing at 10:05 AM  
To: Chair Rhoads and Members of the Committee:  
From: Jeff Esmond, Chair, Hawaii State Commission on Fatherhood (HS-COF)  
Subject: **HB1598 HD1 SD1 - Relating to the Sunshine Law**

### **Chair's Position: HS-COF offers comments on HB1598 HD1 SD1**

The Hawaii State Commission on Fatherhood (HS-COF) supports the Sunshine Law and, as Chair, I would like to submit some comments to HB1598 HD1 SD1, strictly about Section 1 item (4) 'Require boards to post board packets on its website.'

As Chair, I prepare all agendas and board packets. Until now, I have not had the assistance of administrative staff in fulfilling the online requirements of the Sunshine Law.

This bill requires board packets to be posted to the Commission's website. HS-COF does not have editing control of our Commission website. If I want or need to request an addition or edit to the website, I need to email the staff at the Department of Human Services (DHS) to make the request and then wait for them to complete the request.

It is not uncommon for a board packet not to be ready until the last minute. This bill would put one of the Sunshine Law requirements completely out of a Board or Commission's control, because, though the DHS staff has been especially supportive of my requests, there is no guarantee the website will be updated timely with the board packet.

Furthermore, I believe that having meeting materials such as the agenda, posted on the State Calendar website, and board packet, on the Commission website, publicly available at different locations, makes it confusing and burdensome.

As such, I would offer the following suggestions:

- Add a link to State Calendar meeting announcements to allow a Board or Commission to attach a board packet to the meeting announcement, with the board packet link available up to the two business day requirement. Note that currently a calendar item cannot be edited within 6 days of the announced meeting.
- Require Boards and Commissions to post a link on their own websites to the State Calendar so that the public can find meeting and board packet information.

Thank you for the opportunity to submit my thoughts and for considering my comments on this measure of the bill.

**HB-1598-SD-1**

Submitted on: 4/1/2024 3:56:32 AM

Testimony for JDC on 4/2/2024 10:05:00 AM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
PL Fritz	Individual	Support	Written Testimony Only

Comments:

I strongly support this measure that promotes transparency by making it easier for members of the public to access the information used by the board members for a meeting.