

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: February 23, 2024, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 1598
Relating to the Sunshine Law

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.

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 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") to avoid violating the 48-hour deadline. 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 proposed change in the distribution deadline for other board packet materials, from 48 hours before the meeting to 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 of the change is that boards may be unable to compile meeting materials in time to meet what will in many cases be an earlier deadline than the present 48-hour standard, which may impede board members' ability to fully review and consider what could be extensive reports and other materials that were not included in a board packet before the meeting. OIP thus views the question of whether to make this change as a policy decision best made by the Legislature.

Thank you for considering OIP's testimony.



House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Gregg Takayama, Vice Chair

RE: Testimony in Support of H.B 1598, Relating to the Sunshine Law
Hearing: February 23, 2024 at 2:00 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 **in strong support** of H.B. 1598. This measure amends HRS § 92-7.5 in two ways. First, it allows board members to receive, in advance of a meeting, public testimony submitted less than 48 hours before a board meeting. Second, it clarifies that board packets must be available to the public two *business* days before a meeting, instead of 48 hours.

H.B. 1598 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.

H.B. 1598 also 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” ensures the deadline does not fall on day when board offices are not open.

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.



HB-1598

Submitted on: 2/21/2024 10:39:26 AM

Testimony for JHA on 2/23/2024 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Cathy Goeggel	Animal Rights Hawai'i	Support	Written Testimony Only

Comments:

So frequently, BLNR and BOA have not provided adequate time for interested parties to examine often hefty documents in order to digest content and write testimony. Please support HB1598.

Mahalo!



February 21, 2024

House Committee on Judiciary & Hawaiian Affairs
Representative Tarnas, Chair
Representative Takayama, Vice-Chair

Comment on HB1598, Relating to the Sunshine Law

Chair Tarnas, Vice-Chair Takayama and Members of the Committee,

UNITE HERE Local 5 represents 10,000 working people in the hotel, food service and health care industries across Hawaii.

We support improving public transparency to government functions. We interpret HB1598's intent to improve public access to board packets related to public agency meetings by improving the 48 hour inspection and access rights under current law.

We assume "two business days" means greater than 48 hours, which would be an improvement to current public access rules. We also assume it's mainly targeted towards issues that arise with 48 hour notices that overlap weekends.

However, there are ambiguities between "two business days" and 48 hours during the work week. Legal precedent or statutory definitions may explicitly explain the practical difference between two business days and 48 hours, but HB1598 doesn't refer to a source that defines the difference.

For example, what is business day "0" versus business day "1", or does the time of day a board packet is released impact the business day eligibility, or is there a minimum hour threshold to count a day as a full business day?

Or to give a detailed example, if public access to a board packet was given at 4:59pm on a Wednesday for a meeting on Friday at 12pm. That is 43 hours of notice. Is that considered two business days since the public access started "within" typical business hours on Wednesday and covered all of Thursday? Is the intent of this rule that the public access notice be given sometime on Tuesday, so that Wednesday and Thursday are the two full business days being met?

Presumably, HB1598's intent is that public access must be no-less-than two full business days consisting of 48 hours.

HB1598 can be improved by explicitly defining the practical application of two business days.

Thank you for your consideration.



Feb. 23, 2023

David Tarnas
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 1598

Chairman Tarnas and Committee Members:

We support this bill, which would clarify when public inspection board packets have to be distributed -- from 48 hours to two business days before the meeting.

This bill would clarify when packets would be available when weekends and public holidays come into play. For example, if a packet was posted Friday and the meeting was Monday, the time limit would give the public little if any time to see it.

The measure allows for distribution of public testimony to board members within two business days of the meeting.

Thank you for your time and attention,

Stirling Morita
President
Hawaii Pro Chapter SPJ