

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: Cheryl Kakazu Park, Director

Date: February 2, 2024, 10:00 a.m.
State Capitol, Conference Room

Re: Testimony on S.B. No. 2638
Relating to Board Packets

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 the change could make it more challenging for boards to get meeting materials compiled in time to meet what will in many cases be an earlier deadline than the present 48-hour standard, and may impede board members' ability to fully review and consider what could be extensive reports and other materials in a board packet. 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.



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

RE: Comments on S.B. 2638, Relating to Board Packets
Hearing: February 2, 2024 at 10:00 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 S.B. 2638. This measure amends HRS § 92-7.5 to:

- (1) Allow board members to receive, in advance of a meeting, public testimony submitted less than 48 hours before a board meeting; and
- (2) Clarify that board packets must be available to the public two *business* days before a meeting, instead of 48 hours.

S.B. 2638 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.

S.B. 2638 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 S.B. 2638.



PETER L. FRITZ

Email: plflegis@fritzhq.com

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

RE: **Testimony in Support of SB 2638**
Hearing: Friday, February 2, 2024 at 10:00 a.m.

Dear Chair, Vice Chair and Members of the Committee:

My name is Peter Fritz. I am an attorney, an individual with a disability and an advocate for accessibility for individuals with disabilities. I am testifying **in support** of SB 2638 and **proposing an amendment to increase accessibility for individuals with disabilities and members of the public that reside on an outer island.**

This bill amends HRS §92-7.5 by requiring a board packet to be available 2 business days in advance of the meeting instead of 48 hours in advance of a meeting. This change addresses an issue when a meeting is held on Monday and the board packet is unavailable because the 48 hours includes a weekend when the agency is closed.

My **proposed amendment** would require that the notice include a list of the documents provided to members of the board in preparation for the meeting and require that the board packet be posted on an agency's website. Members of the public living on the outer islands cannot easily travel to Oahu to review a board packet. Individuals with disabilities face obstacles and barriers to access a board packet at an agency's office. Any decision to travel to review the documents at the agency's office requires knowing the contents of the board packet.

While HRS § 92-7.5 allows individuals to request notification of the availability of a board packet. This section does not require that the notice identify the documents that were distributed to the board members in preparation for the meeting. Listing the documents provided to the board members in the notice would allow a member of the public living on an outer island to decide if a review of a document is warranted. It would also enable an individual with a disability to make a similar decision. In addition, posting the board packet on the agency's website would increase transparency for all members of the public. I am respectfully requesting the Committee consider amending this bill to read as follows:

"§92-7.5 Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, but no later than [~~forty-eight hours~~] two business days before the meeting [~~time~~], the board shall also make the board packet available for public inspection in the board's office; provided that nothing in this section shall require creation of a board packet[.]; provided further that nothing in this

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Hearing February 2, 2024 at 10:00 a.m.
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section shall prohibit the distribution of public testimony to board members within two business days before the meeting. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that includes a list of the documents that were compiled by the board and distributed to board members before a meeting for use at that meeting and that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. The board shall post the board packet on its website. ~~[As soon as practicable, the board shall accommodate requests for electronic access to the board packet.]~~

Thank you for the opportunity to testify.



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**Senate Committee on Judiciary
Friday, February 2, 2024 10:00 A.M.**

Testimony by:

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

S.B. No. 2638 – RELATING TO BOARD PACKETS.

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

These comments on S.B. No. 2638 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. 2638.



Feb. 2, 2023

Karl Rhoads
Senate Judiciary Committee
016 State Capitol
Honolulu, HI 96813

Re: Senate Bill 2638

Chairman Rhoads 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