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**Senate Committee on Government Operations  
Tuesday, February 6, 2024 3:10 P.M.**

**Testimony by:**

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

**S.B. No. 2639 – RELATING TO PUBLIC AGENCY MEETINGS.**

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

These comments on S.B. No. 2639 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. 2639.

# 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: February 6, 2024, 3:10 p.m.  
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 2639  
Relating to Public Agency Meetings

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Thank you for the opportunity to submit testimony on this bill, which would update the Sunshine Law's provision allowing any person to enforce the law in court. **The Office of Information Practices (OIP) supports this bill.**

This bill would better align the court enforcement provisions of the Sunshine Law, part I of chapter 92, HRS, with those of the Uniform Information Practices Act (UIPA), chapter 92F, HRS, especially where a member of the public has obtained an unfavorable OIP opinion and wishes to challenge that opinion in court. Under the UIPA, if OIP issues a decision finding that an agency properly denied access to records the requester can still sue the agency for access to the records, and the court will hear that action *de novo*. Under the Sunshine Law, if OIP issues a decision finding that a board did not violate the Sunshine Law, there is not a clear statutory path for the person who complained to OIP to challenge the OIP decision, which in the past has led a member of the public, after receiving OIP's decision that a board had not violated the Sunshine Law, to sue OIP instead of the board for the alleged Sunshine Law violation.

This bill would clarify the matter by specifying that a person can challenge an adverse OIP decision by suing the board (not OIP) over the board's alleged violation that gave rise to the OIP decision, and the court will hear that action *de novo*, just as would be the case when a record requester goes to court to challenge an adverse OIP decision under the UIPA. Also consistent with the UIPA's provisions, the bill provides that a board can only challenge an OIP decision through an appeal as provided in section 92F-43, HRS – in other words, if a complainant goes to court to challenge OIP's conclusion that one thing a board did **was not** a Sunshine Law violation, the board cannot use the court action to challenge OIP's conclusion that a different thing the board did **was** a Sunshine Law violation as an alternative to appealing the OIP decision under section 92F-43.

This bill would also require a person bringing a Sunshine Law suit to notify OIP, which may then intervene, aligning the Sunshine Law with an existing UIPA provision to that effect. Finally, the bill would provide that when a person sues to void a final board action under section 92-11, HRS, that action takes precedence over other cases on the court's docket. This, too, is consistent with a UIPA provision, and also will help to ensure finality for board decisions within a reasonable timeframe consistent with the short 90-day period after a board's final action for any suit to void the action to be filed.

OIP believes this bill brings clarity to the Sunshine Law's enforcement provisions and simplifies things for all concerned by aligning the process for appealing an OIP decision under the Sunshine Law with the process for appealing an OIP decision under the UIPA. **OIP supports this bill, with one amendment to fix a typographical error on bill page 3 line 17: “the circuit court shall hear the challenge adverse determination de novo” should instead be “the circuit court shall hear the challenged adverse determination de novo.”**

Senate Committee on Government Operations  
February 6, 2024  
Page 3 of 3

Thank you for considering OIP's testimony and proposed amendment.

Feb. 6, 2024, 3:10 p.m.  
Hawaii State Capitol  
Conference Room 225 and Videoconference

**To: Senate Committee on Government Operations**  
**Sen. Angus L.K. McKelvey, Chair**  
**Sen. Mike Gabbard, Vice-Chair**

**From: Grassroot Institute of Hawaii**  
**Ted Kefalas, Director of Strategic Campaigns**

COMMENTS IN SUPPORT OF SB2639 — RELATING TO PUBLIC AGENCY MEETINGS

Aloha Chair McKelvey, Vice-Chair Gabbard and Committee Members,

The Grassroot Institute of Hawaii would like to offer its comments in support of SB2639, which would strengthen enforcement of Hawaii's open meetings law by clarifying that individuals may bring a lawsuit against a board after receiving an adverse opinion from the Office of Information Practice — and that the court must hear a challenge de novo — meaning without reference to any legal conclusion or assumption made by the OIP.

Systemic corruption continues to be an issue in our state, with some observers noting that our “go along to get along” culture, entrenched bureaucracy and lack of political diversity contribute to the problem.<sup>1</sup>

Corruption does not have to be criminal — or even intentional — to have a negative effect on public trust. Hawaii's high level of voter apathy is testimony to the public's lack of faith in its political leadership.<sup>2</sup>

There is no one-stop solution to the problem of corruption in our state, but one of the most important correctives is sunlight. We need greater transparency at all levels of government.

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<sup>1</sup> Randall Roth, [“Public Corruption in the Land of Aloha.”](#) Honolulu Civil Beat, Dec. 24, 2023.

<sup>2</sup> Dan Nakaso, [“Voter apathy reaches record in Hawaii's general election.”](#) Honolulu Star-Advertiser, Nov. 12, 2022.

Moreover, it is not enough to enact rules requiring public meetings and open records. There must be an effective way to ensure that state boards and agencies comply with those rules.

By creating a stronger enforcement provision for Hawaii's open meetings law, this bill would improve transparency in government. The added requirement that courts must hear challenges to an OIP decision de novo will help ensure that the intent of this law is not frustrated by excess deference to a previous OIP opinion.

In summary, SB2639 has the potential to improve Hawaii's sunshine law and improve public trust in government.

Thank you for the opportunity to testify.

Ted Kefalas  
Director of Strategic Campaigns  
Grassroot Institute of Hawaii



Feb. 6, 2024

Angus McKelvey  
Senate Government Operations Committee  
State Capitol  
Honolulu, HI 96813

Re: Senate Bill 2639

Chairman McKelvey and Committee Members:

We support this bill, which allows the public to challenge in court the decisions made by the Office of Information Practices.

We believe this would set up a mechanism that could help prevent use of erroneous OIP decisions and opinions as precedent for future opinions.

Thank you,

Stirling Morita  
President  
Hawaii Chapter SPJ

**SB-2639**

Submitted on: 2/1/2024 5:58:05 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Justin Silva	Individual	Support	Written Testimony Only

Comments:

Updates the enforcement mechanisms for the Uniform Information Practices Act and the Sunshine Law



**SB-2639**

Submitted on: 2/3/2024 10:51:39 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Andrew Crossland	Individual	Oppose	Written Testimony Only

Comments:

I **oppose** this Bill.

**SB-2639**

Submitted on: 2/3/2024 12:16:35 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
L Toriki	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose this bill.

What could be the reason to "better align the enforcement mechanisms for the Uniform Information Practices Act and the Sunshine Law "????

Elections must be free and fair and transparent. This bill would make it harder and put limits (2 year provision) for individuals or organizations to challenge an election outcome. Why would our "elected" officials want to make this process harder?? Why are there soooo many bills this session regarding election processes????

**SB-2639**

Submitted on: 2/3/2024 1:20:12 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kimo Sinh	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill.

**SB-2639**

Submitted on: 2/3/2024 1:31:14 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Luna Chow	Individual	Oppose	Written Testimony Only

Comments:

i oppose SB252639.

**SB-2639**

Submitted on: 2/3/2024 7:41:28 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Yvonne Alvarado	Individual	Oppose	Written Testimony Only

Comments:

I, Yvonne Alvarado Oppose Bill SB2639

**SB-2639**

Submitted on: 2/3/2024 9:28:10 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Laurie Langton	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I am in strong Opposition to this bill! Once again the authors are attempting to introduce an unclear (Purposefully no doubt) regarding statute of limitations among other things.

Your constituents, we that pay your salary and put you in that seat, will not be pushed into these scenarios of sneaky bill writing. Stop these bills and vote NO on this one in particular.

Regards

Laurie Langton

**SB-2639**

Submitted on: 2/3/2024 9:45:05 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
ronelle andrade	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose SB 2639 Among other dubious things, this Bill establishes an onerous two-year statutes of limitations to challenge a ruling by the Office of Information Practices. I cannot agree with or support this Bill.

**SB-2639**

Submitted on: 2/3/2024 10:18:00 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
CHESTER LUM	Individual	Oppose	Written Testimony Only

Comments:

Thank you for allowing me to submit testimony opposing this bill.

On Page 3, Line 2 the “two years of a prohibited act” should be at least "five (5) years of the opinion or ruling".

Once again, thank you for allowing me to submit testimony opposing this bill.

Chester Lum



**SB-2639**

Submitted on: 2/4/2024 9:39:21 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Amanda Scardilli	Individual	Oppose	Written Testimony Only

Comments:

OPPOSE BILL SB2639 : DUE TO THE POTENTIAL DAMAGES CAUSE BY THE OFFICE OF INFORMATION PRACTICES.

Thank you,

Amanda Scardilli

**SB-2639**

Submitted on: 2/4/2024 11:01:13 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Anne Kamau	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill. Mahalo.

**SB-2639**

Submitted on: 2/4/2024 11:15:27 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kehaulani Feleciano	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill due the two year statue of limitations to challenge a ruling by the office of information practices.

**SB-2639**

Submitted on: 2/4/2024 11:37:24 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Jeffrey F Mizuno	Individual	Oppose	Written Testimony Only

Comments:

Oppose

**SB-2639**

Submitted on: 2/4/2024 7:17:25 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Monique Perreira	Individual	Oppose	Written Testimony Only

Comments:

This bill is absurd! No statue of limitations!

**SB-2639**

Submitted on: 2/4/2024 7:47:07 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rita Wong	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE SB2639

Among other dubious things, this Bill establishes an onerous two-year statute of limitations to challenge a ruling by the Office of Information Practices

**SB-2639**

Submitted on: 2/4/2024 10:41:50 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ruben Ongos	Individual	Oppose	Written Testimony Only

Comments:

I OPPOSE THIS BILL!!!

**SB-2639**

Submitted on: 2/4/2024 11:14:11 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Debbie Wyand	Individual	Oppose	Written Testimony Only

Comments:

I oppose this bill



**SB-2639**

Submitted on: 2/4/2024 11:28:58 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Catherine Thyne	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I oppose this, there should be no statute of limitations.

**SB-2639**

Submitted on: 2/5/2024 12:26:19 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Manulani Garcia	Individual	Oppose	Written Testimony Only

Comments:

Oppose

**SB-2639**

Submitted on: 2/5/2024 12:32:13 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Magoon Ohana	Individual	Oppose	Written Testimony Only

Comments:

Oppose- 2 years is way too short

**SB-2639**

Submitted on: 2/5/2024 6:35:31 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rosemarie Vailisale	Individual	Oppose	Written Testimony Only

Comments:

I, Rosemarie Vailisale, on behalf of We the People oppose and does NOT support such bill

**SB-2639**

Submitted on: 2/5/2024 6:46:19 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Rami Donahoe	Individual	Oppose	Written Testimony Only

Comments:

This be established a very bad statute of limitations for challenging rullings by the OIP

**SB-2639**

Submitted on: 2/5/2024 7:44:25 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Joelle Seashell	Individual	Oppose	Written Testimony Only

Comments:

Why suggest placing a 2 year statue of limitaions to challange a ruling placed by the Office of Information Practices? Nervous there might be accountabilbity? The fox is gaurding the hen house.

**SB-2639**

Submitted on: 2/5/2024 7:58:13 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
julie schaus	Individual	Oppose	Written Testimony Only

Comments:

I oppose Sb2639

there should be no statute limit

**SB-2639**

Submitted on: 2/5/2024 8:34:53 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Sam schaus	Individual	Oppose	Written Testimony Only

Comments:

I oppose sb2639

there should be No statute limitation



**SB-2639**

Submitted on: 2/5/2024 8:38:21 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ryan Willis	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose

**SB-2639**

Submitted on: 2/5/2024 8:41:46 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kanoë Willis	Individual	Oppose	Written Testimony Only

Comments:

I strongly oppose

**SB-2639**

Submitted on: 2/5/2024 8:54:54 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Greg schaus	Individual	Oppose	Written Testimony Only

Comments:

I oppose sb2639

there should be no statute limitation

**SB-2639**

Submitted on: 2/5/2024 9:30:51 AM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Terry Murakami	Individual	Oppose	Written Testimony Only

Comments:

Oppose, the bill is very dubious and also I'm against a 2 year statute of limitations.



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

**RE: Testimony in support of S.B. 2639, Relating to Public Agency Meetings**  
Hearing: February 6, 2024 at 3:10 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 S.B. 2639. This measure aligns the enforcement mechanisms under the “Sunshine Law,” Hawai`i Revised Statutes (HRS) chapter 92, with those existing under the Uniform Information Practices Act (UIPA), HRS chapter 92F, in several ways.

First, S.B. 2639 would recognize that members of the public may sue a board after receiving an adverse Office of Information Practices (OIP) decision, and that the decision will be reviewed *de novo* – parallel to the UIPA cause of action standards. Under the UIPA, a member of the public who receives an adverse decision from OIP may challenge that decision in court under a *de novo* standard (*i.e.*, no deference to OIP’s decision). In other words, a requester is not punished for going to OIP first instead of going straight to court. In contrast, in the Sunshine Law context, the Hawai`i Supreme Court recognized a cause of action for a member of the public to challenge an adverse OIP decision, but held that the standard of review for the OIP decision was “palpably erroneous” (*i.e.*, a high level of deference to OIP’s decision). *In re OIP Op. No. F16-01*, 147 Hawai`i 286, 465 P.3d 733 (2020). Thus, absent the amendment proposed by S.B. 2639, there exists a strong incentive to bypass OIP altogether on Sunshine Law issues, contrary to the Legislature’s intent for OIP to serve as a faster and more cost-effective venue than the courts.

Second, similar to the UIPA, S.B. 2639 would make clear that an action concerning a Sunshine Law violation is brought against the board, not OIP. The same 2020 Hawai`i Supreme Court decision recognized a cause of action under the Sunshine Law *against OIP*. *Id.* at 297, 465 P.3d at 744 (“original actions may be brought against OIP under HRS § 92-12”). This proposal would close that cause of action but make clear that the public still has a claim – one that must be brought against the board.



Third, similar to the UIPA, S.B. 2639 would recognize that only a member of the public may recover attorney's fees and costs if that person prevails in a Sunshine Law case. Existing law provides a general "prevailing party" fees provision, which in most circumstances would mean that whoever wins may recover fees and costs. In the context of a statute intended to provide government accountability, it does not make sense that a government board could recover money against a member of the public who thought – incorrectly – that the board violated the Sunshine Law. Government should encourage people to question compliance with the law, but the threat of potentially significant liability merely for questioning whether a board violated the Sunshine Law has a chilling effect on lawsuits. In dicta, the Hawai'i Supreme Court has recognized that a broad reading of the current law would have a chilling effect. *Kahana Sunset Owners Ass'n v. Maui County Council*, 86 Hawai'i 132, 136 n.4, 948 P.2d 122, 126 n.4 (1997) ("The main purpose behind HRS § 92-12(c) was to encourage citizens to pursue claims of violations of the sunshine law, and an award of attorneys' fees against a citizen who challenged a sunshine law violation and lost would have a 'chilling effect' and deter citizens from filing HRS § 92-12(c) suits in the future."). This amendment would clarify the language consistent with the original intent, as recognized by the Hawai'i Supreme Court.

Fourth, in parallel with the UIPA, S.B. 2639 would require that individuals suing for Sunshine Law violations must notify OIP about the lawsuit so that OIP may decide whether to intervene.

Fifth, similar to the UIPA, S.B. 2639 would provide that Sunshine Law lawsuits are to be prioritized by the courts, but only when the plaintiff seeks to void a board's final action. Under the Sunshine Law, the most consequential remedy for a violation is voiding an action of the board, which is reserved for the most egregious violations. Such a remedy can have significant implications for the board and for the public, so it is important that lawsuits alleging that a board action is void be resolved expeditiously. This proposal takes the lawsuit priority language from the UIPA and applies it to the Sunshine Law, but restricts that priority to lawsuits that concern voiding a board action.

By aligning the enforcement mechanisms under the Sunshine Law and the UIPA, S.B. 2639 would promote compliance with the Sunshine Law and help ensure OIP serves its intended role.

Thank you again for the opportunity to testify in strong support of S.B. 2639.

**SB-2639**

Submitted on: 2/5/2024 2:38:03 PM

Testimony for GVO on 2/6/2024 3:10:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Noela von Wiegandt	Individual	Oppose	Written Testimony Only

Comments:

Aloha,

I oppose this Bill.

Thank you very much.

Noela von Wiegandt