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**Senate Committee on Government Operations
Tuesday, February 13, 2024 4:00 P.M.**

Testimony by:

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

S.B. No. 3307 – RELATING TO PUBLIC AGENCY MEETINGS.

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

These comments on S.B. No. 3307 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. 3307.

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 13, 2024, 4:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 3307
Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony on this bill, which would authorize Sunshine Law boards to hold a closed executive session to interview officers or employees, hold “strategic planning retreats,” consult on procurement projects, or plan “community collaboratives and public-private partnerships,” so long as a “trusted public representative” appointed by OIP was present for the closed meeting. The Office of Information Practices (OIP) offers **comments on this bill and, if this Committee chooses to move the bill, suggests an amendment.**

The new executive session purpose proposed in this bill is a broad one and **OIP is concerned that it could potentially cover almost anything a board wanted to discuss in closed session.** Although the new purpose is structured to include a sort of automatic audit through the required presence of a “trusted public representative” reporting back to OIP, as long as the discussion was for one of the listed reasons the board could keep that discussion closed to the public and the “trusted public representative” also would be specifically required to keep the discussion confidential. And not only would this proposal allow closed meetings for

a variety of reasons, at least one of those reasons could apply to the board's discussion of any number of different topics as long as the board labeled the discussion correctly. It would be difficult to say what distinguishes a "strategic planning retreat," in particular, from a wide-ranging discussion of a board's biggest issues in general.

In addition to OIP's underlying concern about the breadth and lack of clear limits to the proposed new executive session purpose, **OIP also has practical concerns about the workability** of the proposed trusted public representative program, which would first involve administrative rulemaking to create a process for selection of trusted public representatives, and once rules were in place, selecting trusted public representatives in consultation with "civic leaders and community members," training the trusted public representatives, and reviewing their reports. The time required to go through rulemaking and the ongoing need to regularly select and train new trusted public representatives can be expected to require far more time from OIP's staff than would potentially be saved by having these trusted public representatives be the ones to review board discussions on OIP's behalf.

OIP does not believe the amendments proposed by this bill are necessary and, as discussed, is concerned that they will provide a loophole to the Sunshine Law's usual open meeting requirements. However, if the Legislature does want to amend the Sunshine Law to add the broad new executive session purpose proposed by this bill -- but only on the condition that its use is automatically reviewed by OIP -- OIP suggests that a more straightforward approach would be to eliminate bill sections 1 and 2 providing for the appointment of trusted public representatives, and amend the new executive session purpose in bill section 3 (at bill page 5

lines 11-14) to instead require a board holding such an executive session to provide a transcript of its discussion for OIP: “provided that the board provides a transcript of the meeting to the office of information practices within 40 days after the meeting.”

Thank you for considering OIP’s testimony.



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

Tuesday, February 13, 2024, 4 PM Public Hearing in Conference Room 225 on
SB 3307, RELATING TO Public Agency 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 3307.

The League opposes amending the Sunshine Law to allow boards to exclude the public from "... strategic planning retreats, consultation meetings on procurement projects, and planning of community collaboratives and public-private partnerships...." However, the League would support SB 3307 if Section 3 were deleted.

Thank you for the opportunity to submit testimony.



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

RE: Testimony in Opposition to S.B. 3307, Relating to Public Agency Meetings
Hearing: February 13, 2024 at 4:00 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 respectfully submit testimony **in opposition to** S.B. 3307 as written.

This measure amends the Sunshine Law to (1) authorize the Director of the Office of Information Practices to adopt rules for selecting “trusted public representatives” to observe board meetings closed to the public, maintain the confidentiality of discussions held in board executive sessions, and report after to the Director regarding Sunshine Law compliance; and (2) *creates a new exception* to the open meetings requirement for a broad range of public business, so long as a trusted public representative is assigned to observe (confidentially) the closed meeting.

Given the nonpublic nature of executive session, we support the intent of providing an external, extra-judicial check and balance on a board’s decision to enter closed session. As written, however, S.B. 3307 erodes significant rights of the public to observe and participate in important government processes and policy-making. *We oppose* the creation of a brand-new exception to the Sunshine Law’s open meetings requirement.

Section 3 of this measure would allow boards to conduct important board business – “business regarding interviews of prospective officers or employees, strategic planning retreats, consultation meetings on procurement projects, and planning of community collaboratives and public-private partnerships” – much of which is required to be open under existing law, in closed session. This exception would render the trusted representative role meaningless.

All that is required to close the doors on the public is the presence of a “trusted public representative.” The representative’s mere presence, however, provides no benefit to the public in this context because they must confidentially maintain the substance of board discussions. Instead of promoting public access to and participation in important government activities, Section 3 of S.B. 3307 opens a new and sizeable gateway for the public’s business to be conducted secretly.



In addition, Section 2 of this measure defines “trusted public representative” as “a resident of the State who is widely trusted and respected by others, has a reputation of integrity and caring for the community, and is committed to maintaining the intent and spirit of chapter 92 for the purpose of observing board meetings closed to the public.” This language is highly subjective. For a potential solution, this Committee may wish to consider the approach taken in Oregon, where members of the media are allowed to attend most closed sessions, on the condition that the board may require specified information be undisclosed. Or. Rev. Stat. Ann. § 192.660(4). Or consider adding a provision for transparency in the selection process and guidelines for the OIP Director to consider in selecting representatives.

Thank you again for the opportunity to testify in opposition to S.B. 3307 as written.