

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 12, 2019, 2:50 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 335
Relating to Public Meetings

Thank you for the opportunity to submit testimony on this bill, which would amend the newly effective public notice scheme of the Sunshine Law, part I of chapter 92. The Office of Information Practices (OIP) does not object to the proposal to require Sunshine Law notices to give instructions for requesting disability accommodations but **has serious concerns regarding other provisions in the bill and urges that they be removed.**

The Sunshine Law's notice requirements were substantially reworked by Act 64 of 2017, which only became effective July 1, 2018. Prior to that date, the Sunshine Law required paper filings with the Lieutenant Governor or the appropriate County Clerk, and postal mail notice to persons on the board's mailing list, by the deadline of six days prior to the meeting, with the meeting required to be canceled if the board failed to timely file or mail out the paper notice. (The Sunshine Law also required, and still requires, posting a copy of the notice at the board's office and, if practicable, at the meeting site.) The Sunshine Law did not require any form of electronic notice, either on a state or county calendar or through an email list, so although boards commonly did post online notice and keep email

lists, any failure to timely post online or email the notice was not enforceable under the Sunshine Law.

Act 64 changed the primary form of Sunshine Law notice from paper filing to electronic filing on a state or county online calendar, and added email notice to postal notice as a legally enforceable option for persons on the board's mailing list. The failure to timely post online or timely send email or postal mail notice to the mailing list now requires cancellation of the meeting. Act 64 kept the requirement for boards to provide a copy of the notice to the Lieutenant Governor or County Clerk, but to avoid essentially doubling the number of ways a board could be tripped up and required to cancel its upcoming meeting, it also specified that a failure to meet the paper filing requirement would not require cancelling the meeting (although it would still be a Sunshine Law violation). The year's delay in the effective date for Act 64 was intended to give boards time to learn the new notice requirements and other new Sunshine Law requirements before they became legally enforceable, and boards have now been following these new requirements for the past seven months.

This bill proposes to make further substantial changes to the Sunshine Law's notice scheme and to write disability access requirements for meeting notices into the Sunshine Law itself rather than using the enforcement mechanisms available under the Americans with Disabilities Act (ADA) and similar laws on the state level. **While OIP has no objection to the first proposal described below, it has serious concerns with the remaining proposals.**

First, this bill (at page 3, lines 4-6) would require Sunshine Law meeting notices to include instructions regarding accommodations for persons with disabilities. OIP has no objection to including this requirement in the Sunshine Law, as it does not appear to place the issue of the adequacy of the accommodations

themselves into the Sunshine Law, but only the adequacy of the instructions as to how to request an accommodation. Thus, OIP does not have concerns about its ability to determine whether a notice included such instructions, nor does it see this requirement as burdensome for boards given that notices commonly include such instructions already.

Second, the bill (at page 3, line 19) requires boards' notices posted online to be "in an accessible format." OIP has serious concerns about this proposal, as it would make compliance with current accessibility standards a Sunshine Law requirement, in addition to a requirement under the federal Americans with Disabilities Act and applicable state law as is currently the case. OIP administers the Sunshine Law and in that capacity is required to advise boards and the general public and accept and make determinations on complaints of Sunshine Law violations. **OIP does not currently have technical or legal expertise in accessibility standards for electronic documents, but under this bill it would be required to advise boards and the public and make binding legal determinations on that subject in the course of its duty to advise and make determinations regarding the Sunshine Law. OIP does not have the resources to hire additional personnel with expertise in this area, and learning this new area and then advising and making determinations regarding it would take significant time away from OIP's administration of the current provisions of the Sunshine Law as well as chapter 92F, HRS, the Uniform Information Practices Act (UIPA), which it also administers. Moreover, OIP's involvement in this area would conflict with the duties of the Disability and communications Access Board (DCAB), which, among other things, "[s]erve[s] as the designated state agency to coordinate the efforts of the State to comply with the requirements of the Americans with Disabilities Act for access to**

services, employment, telecommunications, and facility and site design.” HRS § 348-3 (7). Given that DCAB already exists to administer laws such as the ADA that specifically address accessibility, **OIP sees the insertion of such a requirement into the Sunshine Law as both unnecessary and a prospective drain on OIP’s ability to perform its primary duties** under the Sunshine Law and the UIPA.

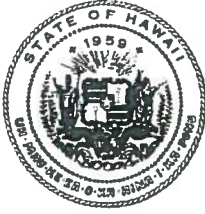
Third, the bill (from page 3 line 21 through page 4, and pages 6 lines 3-5 and 7 lines 10-13) changes the new Sunshine Law notice scheme that has been in effect for seven months to basically recreate the previous scheme, but without removing the current requirement for electronic filing, and also adds in a requirement to obtain a proof of filing from the Lieutenant Governor or County Clerk to be included in the electronic posting, postal mailed and emailed notices, and postings at the board’s office and the meeting room. **These changes will effectively create a form of double jeopardy wherein a board trying to hold a meeting may be forced to cancel due to a problem with any one of the multiple filing methods. As a practical matter, this bill also would move the filing deadline about half a day earlier**, as boards will have to finish preparing the notice and agenda in time to file with the Lieutenant Governor or County Clerk the day before the deadline or at least early enough on the deadline day to allow the Lieutenant Governor or County Clerk to process the filing and provide a proof of filing to the board, so that the proof of filing can be included in the mailed and emailed notices and the electronic filing by the six-day deadline. **In addition to these concerns regarding the administrative challenge for boards, the proposed changes would also create considerable confusion for boards**, which after a year’s worth of education and preparations have now been following the new notice requirements for seven months but would be expected to suddenly

learn and follow yet another notice scheme. **OIP does not recommend that this Committee revamp the Sunshine Law's notice scheme again until the newly effective notice scheme has had time to be used so that the Legislature can better assess how well it is working in practice.**

Finally, OIP notes that this bill's purpose clause misstates the Sunshine Law's requirements as to the deadline for mailing notices prior to July 1, 2018: OIP read and enforced it as requiring notices to be postmarked before the six notice deadline applicable to filing notice, not as requiring notices to be postmarked by the date the notice was filed even if the filing was done well before the filing deadline. Thus, **it is not accurate to say that prior to Act 64 boards were required to postmark mailed notices on the same day the notice was filed. Further,** given this bill's proposed requirement that mailed notices must include a copy of a proof of filing, *i.e.* that mailed notices can be sent only after the paper filing, **it would introduce yet another level of challenge for boards if the law were to require that they do the paper filing before anything else (to get the proof of paper filing for all the other forms of notice) but must still have the mailed notices postmarked on the same day as the paper filing no matter how long before the six-day deadline.**

OIP recommends that this bill be amended to leave only the proposed amendment to subsection 92-7(a), which would require that a board's notice include instructions on how to request an auxiliary aid or service or an accommodation due to a disability, and that the remaining amendments proposed by this bill be removed.

Thank you for the opportunity to testify.



DISABILITY AND COMMUNICATION ACCESS BOARD

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February 12, 2019

TESTIMONY TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

Senate Bill 335 - Relating to Public Meetings

The Disability and Communication Access Board (DCAB) offers comment on one portion of Senate Bill 335 - Relating to Public Meetings insofar as access to persons with disabilities is specifically addressed.

DCAB supports the proposed language that would require Sunshine Law meeting notices to include wording that provides instructions regarding a program's obligation to provide auxiliary aids or accommodations for persons with disabilities to allow them to participate in the noticed meeting. This requirement is simply to place appropriate language on the agenda and does not obligate the Office of Information Practice to determine whether or not the host agency, in fact followed through with the provision of, appropriateness, or adequacy of the accommodation that was requested.

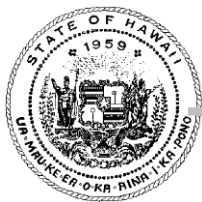
DCAB has already provided guidance on such language and such language is already referenced, at least on the web, by the Office of Information Practices.

Thank you for the opportunity to provide testimony on this bill.

Thank you for this opportunity to offer comments.

Sincerely,

FRANCINE WAI
Executive Director



HAWAI‘I CIVIL RIGHTS COMMISSION

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February 12, 2019
Rm. 225, 2:50 p.m.

To: The Honorable Laura H. Thielen, Chair
The Honorable Lorraine R. Inouye, Vice-Chair
Members of the Senate Committee on Government Operations

From: Linda Hamilton Krieger, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 335

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services (on the basis of disability). The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

S.B. No. 335 requires public meeting notices to include instructions regarding accommodations for persons with disabilities, and also requires boards to post public meeting notices in an accessible format on an electronic calendar, retain a copy of proof of filing, and post a notice in the board’s office for public inspection. The bill has further requirements regarding posting and repeals an earlier provision. Further requirements regarding emergency meeting agendas are included.

The HCRC supports Section 2 of the bill requiring postings to include instructions on requesting an auxiliary aid or service. All community members should have equal access to open government meetings and forums. The HCRC also supports accessible postings. The HCRC defers to other government agencies, such as DCAB and OIP, regarding the other requirements of the measure.

The HCRC supports the accessibility requirements of S.B. No. 335.

PETER L. FRITZ

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THE SENATE THE THIRTIETH LEGISLATURE REGULAR SESSION OF 2019

COMMITTEE ON GOVERNMENT OPERATIONS

Testimony on S.B. 335
Hearing: February 12, 2019

RELATING TO PUBLIC MEETINGS

Chair Thielen, Vice Chair Inouye and members of the Committee. My name is Peter Fritz. I am an attorney and an individual with a disability testifying in **support of S.B. 335**.

A purpose of this bill is to conform the Sunshine Law to the non-discrimination requirements in the Americans With Disabilities Act (“ADA”) and restore provisions that provided equal accessibility for individuals with disabilities.

Chapter 92, Hawaii Revised Statutes states that “[i]n a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of governmental agencies—shall be conducted as openly as possible.

Transparency in government requires that individuals with disabilities be able to participate in state government, not just those that can use a computer which excludes many individuals with disabilities. I offer the following for the Committee’s consideration:

Instructions for Requesting an Accommodation.

As a practical matter, including instructions for persons with disabilities to request an accommodation is no different than requiring a board to include the date, time and place of a meeting and facilitates. Including such information is consistent with the ADA and promotes inclusion of individuals with disabilities at meetings.

Accessible Notices

Posting notices in an accessible format is required by the ADA and can be enforced by the Hawaii Civil Rights Commission and/or the Department of Justice.

Cancellation of Meetings if a Notice is not Filed with the Lieutenant Governor

Individuals with disabilities that rely on the Lieutenant Governor for notice of upcoming meetings should be entitled to the same right to have the meeting canceled if Lieutenant

Governor does not timely receive a notice of the meeting. At the present time, a meeting is canceled only if a notice is not timely posted by a board on the state calendar.

Cancellation of meetings should be the same for documents posted on the state calendar as for documents filed with the Lieutenant Governor. While failure to post a notice on an electronic calendar, at least six days prior to the meeting, is grounds for cancellation of a meeting, the Sunshine Law's current provisions do not require cancellation if an agency failed to file a notice with the Lieutenant Governor. This means that individuals with disabilities that do not have computer access and need to review notices posted by the office of the Lieutenant Governor cannot insist upon cancellation of a meeting if the notice is not filed timely filed with the Lieutenant Governor.

Mailing of Notices

Notices for individuals that have requested to be notified of meetings by mail should be sent at the same time as a notice is posted on the state calendar to provide an equivalent advanced notice time period. Currently, the Sunshine Law requires it notices are to be mailed no less than six days prior to a meeting. Many agencies post notices for meetings 14 days in advance. If notices are mailed out only six days prior to the meeting, individuals that request that notices be mailed to them will not have the same amount of advance notice as individuals that are able to read such notices under state calendar. This discriminates against individuals with disabilities that cannot use a computer and read notices on line This bill restores the provisions of prior law that require that notices be mailed when filed with the Lieutenant Governor. This bill restores those provisions.

Thank you for the opportunity to testify.

Respectfully submitted,


Peter L. Fritz