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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: March 16, 2017, 2:50 p.m.
State Capitol, Conference Room 224

Re: Testimony on H.B. No. 165, H.D. 1
Relating to Public Meetings

Thank you for the opportunity to submit testimony on this bill. The **Office of Information Practices (“OIP”)** supports this bill, which would **provide for electronic filing of notice of meetings under the Sunshine Law**, part I of chapter 92F, HRS, would require boards to **post minutes online within 40 days after the meeting.** and would **create a board packet working group of affected parties to work out the practical concerns with board packet disclosure** during the interim so that legislation accounting for those concerns can be introduced the next session.

Board Packets:

With respect to bill section 1, OIP believes that greater public disclosure of board packets will serve the Sunshine Law’s policy of opening up governmental processes to public scrutiny and participation. Among other things, it would allow for more meaningful public testimony by giving interested members of the public more of the information that is before a board at the time of its meeting. But at the same time, a requirement for boards to disclose board packets as

proposed in previous versions of this bill would create a new and potentially **substantial administrative burden for many boards**, as they will need to ensure that what could be hundreds of pages of board materials, including some provided by third parties, are **reviewed and redacted under chapter 92F**, the Uniform Information Practices Act (“UIPA”), prior to public distribution, which boards have not needed to do for the board packets they may be accustomed to sending now to board members. Boards have testified that they do not have the **staff to do the work** in the relevant timeframe.

OIP believes the working group created by the H.D. 1, which would include board representatives and other affected parties, is the best way to work out practical solutions during the interim so that board packet legislation adequately resolving administrative concerns can be introduced in the 2018 session.

Electronic Notice:

The Sunshine Law’s notice scheme is still essentially the same as it was when the law was first passed in 1975; it does not reference or take advantage of newer technologies such as the internet or e-mail. Pursuant to Executive Memo 11-11, however, state agencies have been posting their meeting agendas on the State Calendar, which can be found at <http://calendar.ehawaii.gov/calendar/html/event>. Bill sections 2 and 3 would amend the Sunshine Law to **make electronic notice, rather than paper filing, the required Sunshine Law method** for giving notice of a board meeting for all boards. OIP believes this switch from paper notice to electronic notice as the required and legally enforceable Sunshine Law notice is an important step to align the Sunshine Law with current technology.

The bill does not set technical standards for the file format in which an online notice is posted, thus appropriately leaving that issue to the state or county website administrators to provide for, based on the most current technical standards. **The H.D. 1 still requires boards to provide a copy of the notice to the Office of the Lieutenant Governor (OLG) or County Clerk, who would post the notices in a central location as is currently done, but a failure in this process would not require cancellation of the meeting.** The language of the amendments is also open-ended enough to allow the OLG or County Clerk to eventually post notices in a central location on a monitor showing the electronic calendar, rather than posting notices in paper format.

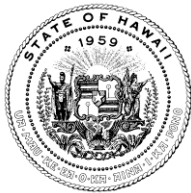
This bill would also add e-mail notice as an additional option for those people who ask to receive e-mailed copies of a board's notices and agendas, without taking away the option of receiving notices and agenda by postal mail, which is the only option the current law provides. Additionally, this bill includes provisions clarifying how the question of whether notice was timely posted online may be resolved in the event of a dispute, and adds electronic posting and notice into the notice provisions for holding an emergency meeting.

Minutes Online:

Bill section 4 requires that **board minutes be publicly posted online** rather than merely "available" to the public within 30 days after the meeting is something not required by current law. While online minutes are obviously much easier for members of the public to access, OIP notes that this requirement will **take time to implement** given that many boards do not have websites and would need to work with the State or the relevant county to figure out

where their minutes should be posted, and how they can do so in a timely way. In addition, since many boards will need to go through a departmental IT person or another third party to have minutes posted online, and take steps to ensure that such minutes are **made ADA accessible before posting online**, boards' effective deadline for preparing meeting minutes will be earlier than it is under current law because of the necessary delay between the date minutes are prepared and the date they are posted online. **The H.D. 1 recognizes that this change will effectively shorten the deadline for boards to have their minutes prepared; thus, to allow boards the same amount of time they currently have to prepare minutes, the bill sets the deadline for posting minutes online at forty days after the meeting.**

In summary, OIP recommends that this Committee pass this bill with an effective date "upon approval" for section 1, so that the working group can develop recommendations for next session. To give the OLG, County Clerks, and boards time to adjust to their notice procedures and posting of minutes online, the effective date should be July 1, 2018, for sections 2, 3, and 4. Thank you for considering OIP's testimony.



DAVID Y. IGE
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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS

TWENTY-NINTH STATE LEGISLATURE
Regular Session of 2017

Thursday, March 16, 2017
2:50 p.m.

TESTIMONY ON HOUSE BILL NO. 165, H.D. 1, RELATING TO PUBLIC MEETINGS.

TO THE HONORABLE DONNA MERCADO KIM, CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Professional and Vocational Licensing Division (“PVLD”) of the Department and Consumer Affairs (“DCCA”) appreciates the opportunity to testify on House Bill No. 165, H.D. 1, Relating to Public Meetings. My name is Celia Suzuki, Licensing Administrator of the PVLD/DCCA. The PVLD supports the measure in its current form.

The purpose of the bill is to: 1) establish a working group to develop solutions to the potential administrative burden of public disclosure of the board packet prior to the meeting; 2) require electronic posting of meeting notices, cancellation notices, and

Testimony on House Bill No. 165, H.D. 1
Thursday, March 16, 2017
Page 2

meeting minutes; and 3) establish notice and disclosure requirements for emergency meetings.

The DCCA looks forward to serving as a member of the working group to find solutions to the potential administrative burden that may be created by a public disclosure requirement of the board packet prior to the meeting.

Thank you for the opportunity to submit testimony on House Bill No. 165, H.D. 1.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
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CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
SUZANNE D. CASE
Chairperson**

**Senate Committee on
GOVERNMENT OPERATIONS**

**Thursday, March 16, 2017
2:50 PM
State Capitol, Conference Room 229**

**In consideration of
HOUSE BILL 165, HOUSE DRAFT 1
RELATING TO PUBLIC MEETINGS**

House Bill 165, House Draft 1 proposes to create a working group to develop board packet disclosure requirements that will meet the public's interest in greater disclosure of board meetings. In addition, SECTION 4 of the bill proposes to set requirements for the electronic posting of agendas, and extends the time to post minutes to 40 days. **The Department of Land and Natural Resources is willing to participate in the proposed working group.**

Thank you for the opportunity to comment on this measure.



HAWAII COMMUNITY
DEVELOPMENT AUTHORITY



STATEMENT OF

JESSE K. SOUKI, EXECUTIVE DIRECTOR
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE

SENATE COMMITTEE ON GOVERNMENT OPERATIONS

ON

Thursday, March 16, 2017

2:50 P.M.

State Capitol, Conference Room 224

in consideration of

HB165 HD1 – RELATING TO PUBLIC MEETINGS

David Y. Ige
Governor

Chair Kim, Vice Chair Ruderman and members of the committee.

John Whalen
Chairperson

This testimony reflects my view alone. The Hawaii Community Development Authority (HCDA) has not acted on this measure.

Jesse K. Souki
Executive Director

In my capacity as the HCDA Executive Director, I respectfully offer **comments** on HB165 HD1.

This bill has the laudable goal of making information on proposed board actions more available to the public.

The HCDA has adopted the practice of posting board packets to its website when it distributes the information to board members; however, provisions in earlier drafts of this bill to mandate packet distribution could have unintended consequences that could require additional resources and add burden to a citizen board. The working group and scope of inquiry outlined in HB165 HD1, is a prudent approach to balancing the need for open, public-making and the administrative burden that works against the public's interest in effective government.

In addition, we agree boards should have more time to make minutes available as HCDA's board approves its minutes as a matter of practice; however, since the board meets monthly, it is administratively difficult to meet the 30 day deadline.

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

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LEGISLATIVE REFERENCE BUREAU
State of Hawaii
State Capitol, Room 446
415 S. Beretania Street
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Written Comments

HB165, HD1 RELATING TO PUBLIC MEETINGS

Charlotte A. Carter-Yamauchi, Director
Legislative Reference Bureau

Presented to the Senate Committee on Government Operations

Thursday, March 16, 2017, 2:50 p.m.
Conference Room 224

Chair Mercado Kim and Members of the Committee:

Good afternoon Chair Kim and members of the Committee, my name is Charlotte Carter-Yamauchi and I am the Director of the Legislative Reference Bureau. Thank you for providing the opportunity to submit written comments on H.B. No. 165, Relating to Public Meetings.

The purpose of this measure is to:

- (1) Establish a working group made up of subject matter committee chairs of the House of Representatives, various state departmental directors, county officials, and a member of the public selected by the Speaker of the House of Representatives, to develop solutions to the potential administrative burden of providing prior public disclosure of the documents that would be distributed to a respective board for use at a meeting of the board;
- (2) Require the working group to report to the Legislature before the 2018 Regular Session;
- (3) Require the Legislative Reference Bureau to assist the working group with the drafting of the report and any proposed legislation;

- (4) Require, among other things, electronic posting of meeting notices, cancellation notices, and meeting minutes;
- (5) Establish notice and disclosure requirements for emergency meetings;
- (6) Clarify the requirements for the electronic posting of board notices and agendas;
- (7) Replace paper notices with electronic notices as the official filing method; and
- (8) Provide boards with forty days to post meeting minutes on the Internet.

The Bureau takes no position on this measure, but submits the following comments for your consideration.

The Bureau would like to note that, generally, in similar instances when the Legislature has seen fit to assign the Bureau to provide drafting services for a task force or working group, it is made clear in the enabling legislation that the task force or working group is to provide the Bureau with a draft report by a specified date (usually October 1st of the year prior to the convening of the next occurring Regular Session) so that the Bureau has sufficient time to finalize it prior to the reporting deadline. This provision has customarily been included to ensure that the task force or working group conducts its work in a timely manner so that the Bureau's research and drafting services are not overwhelmed with requests for service by both legislators and non-legislative entities at the end of each calendar year and the lead-up to session.

If the Committee desires the Bureau to assist the working group with report and bill drafting services, to facilitate completion of the requested report in the timeframe provided, the Bureau respectfully requests that the measure be amended to specifically require the working group to submit a draft of its report and any request for proposed legislation to the Bureau by no later than October 1st prior to the year in which the report and proposed legislation is to be submitted to the Legislature.

If the measure is amended to address the concern noted above, the Bureau believes that the services requested under this measure are manageable and that the Bureau will be able to provide the services in the time allotted; provided that the Bureau's interim workload is not adversely impacted by too many other studies or additional responsibilities, such as conducting, writing, or finalizing other reports, drafting legislation, or both, for other state agencies, task forces, or working groups that may be requested or required under other legislative measures.

Thank you again for your consideration.



March 16, 2017

Sen. Donna Mercado Kim
Committee on Government Operations
State Capitol
Honolulu, HI 96813

Re: House Bill 165, HD 1

Chairwoman Kim and Committee Members:

HB 165 was once a highly regarded way to modernize the state Sunshine Law but has been watered down to meet issues raised by small boards and commissions.

We offer lukewarm support of this bill because it has turned a proposal to require public view of board meeting packets into a study, for which there is no impetus to come up with solutions. We say this because there have been some boards and commissions that seem to care about public understanding of their work and have come up with packet disclosure on their own without resorting to myriad bureaucratic steps.

But there are still some provisions in the bill that will keep the public notified via the Internet about government meetings through electronic posting of meeting notices and of board meeting minutes.

We suggest that the committee may want to add more public representation to the working group and add an expert or experts familiar with the state and county computer systems and the Internet.

Thank you for your time and attention.

Stirling Morita
President, Hawaii Chapter SPJ



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Senate Committee on Government Operations
Thursday, March 16, 2017, 2:50 PM, Conference Room 224
HB 165, HD 1 Relating to Public Meetings
TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Kim and Committee Members:

The League of Women Voters of Hawaii supports HB 165, HD 1 which allows electronic public notice of board meetings, improves public access to board minutes, and creates a task force to study how to improve public access to board packets to be discussed at board meetings.

HB 165, HD 1 will resolve public complaints about boards which:

- are unwilling to provide timely electronic notice of board meetings.
- procrastinate preparation and/or disclosure of board minutes.

Unfortunately, HB 165, HD 1 will **NOT** resolve public complaints about boards which

- require the public to present testimony concerning board packets before the public has an opportunity to review those board packets.
- delay public disclosure of board packets until after completion of final board action on those board packets.

It is a waste of time to establish a task force to study when and how the public should be allowed to review board packets subject to public disclosure under UIPA. Instead, we suggest that the Senate Committee on Government Operations amend HB 165, HD 1 to:

1. Eliminate the proposed task force.
2. Define board packet to exclude licensing applications and all information protected from disclosure under UIPA.
3. Require public notice and public posting at the time a board packet is distributed to board members.
4. Encourage - - but not require - - timely accommodation of public requests for electronic access to posted board packets.

We understand that the Civil Beat Law Center will submit a draft SD 1 which incorporates these suggested amendment.

Thank you for the opportunity to submit testimony.