

THE SENATE
THE EIGHTEENTH LEGISLATURE
REGULAR SESSION OF 1996

RECEIVED
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CLERK'S OFFICE
STATE OF HAWAII

MAR 14 3 22 PM '96

COMMITTEE ON JUDICIARY
Senator Rey Gaulty, Chair
Senator Mike McCartney, Vice Chair

NOTICE OF HEARING

DATE: Wednesday, March 20, 1996
TIME: 9:30 a.m.
PLACE: Conference Room 229
State Capitol
415 South Beretania Street

A G E N D A

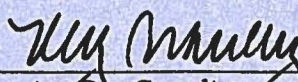
- | | | |
|--------------------|---|------------|
| HB 2731 HD1 | RELATING TO THE OMBUDSMAN | JDC |
| | Allows the Ombudsman to refer a matter to the appropriate authority when he suspects a person has committed a breach of duty or misconduct without having to notify the person. | |
| HB 1866 HD1 | RELATING TO PUBLIC AGENCY MEETINGS | JDC |
| | Increases the efficacy and efficiency of boards which conducts the public's business pursuant to the Sunshine Law. | |
| HB 2416 HD1 | RELATING TO THE CIVIL RIGHTS COMMISSION | JDC |
| | Limits search ability of the Civil Rights Commission. | |
| HB 3822 | RELATING TO THE STATEWIDE TRAFFIC CODE | JDC |
| | Clarifies to whom information contained in a traffic accident report may be disclosed. | |

DECISION MAKING TO FOLLOW, IF TIME PERMITS.

Persons wishing to testify should submit 30 copies of their testimony to the committee clerk, Room 227, State Capitol, 24 hours prior to the hearing. Testimony may also be faxed if less than 5 pages in length, to the Senate Sergeant-At-Arms Office at 586-6659 or 1-800-586-6659 (toll free for neighbor islands), at least 24 hours prior to the hearing. .

If you require special assistance or auxiliary aids or services to participate in the public hearing process (i.e., sign language interpreter, wheelchair accessibility, or parking designated for the disabled), please contact the committee clerk 24 hours prior to the hearing so arrangements can be made.

FOR FURTHER INFORMATION, PLEASE CALL THE COMMITTEE CLERK AT 586-6916.



Senator Rey Gaulty
Chair

TESTIMONY OF THE STATE ATTORNEY GENERAL

ON H.B. NO. 1866, H.D. 1

RELATING TO PUBLIC AGENCY MEETINGS

BEFORE THE SENATE COMMITTEE ON JUDICIARY

DATE: WEDNESDAY, March 20, 1996

TIME: 9:30 A.M.

PLACE: Conference Room 229
State Capitol
415 South Beretania Street

PERSON(S) TESTIFYING:

Margery S. Bronster
Attorney General

or

Charleen Aina
Deputy Attorney General

Deliver to Room 227, Committee Clerk's Office (30 copies)

TESTIMONY OF THE STATE ATTORNEY GENERAL

ON H.B. NO. 1866, H.D. 1

RELATING TO PUBLIC AGENCY MEETINGS

THE HONORABLE CHAIRPERSON AND MEMBERS OF THE COMMITTEE:

The Attorney General supports this bill.

The purpose of the bill is to amend the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes, to make it less rigid and thereby permit persons who serve on public boards and commissions to be more informed and to respond in more timely ways in the performance of their duties. The bill strikes new balances between the need for both an informed and actively involved public, and informed and actively involved board members.

Although we come to the same conclusion by separate analyses, the Attorney General's longstanding interpretation of the Sunshine Law coincides completely with Common Cause's position that under the Sunshine Law as presently written, two members of a state or county board cannot communicate by any means about a matter relating to the official business of their board, outside the context of a meeting for which the public has been given at least six days notice.

This advice has given board members pause, as they realize, albeit unwittingly, that they may have committed an act punishable as a misdemeanor when, in an effort to be more informed or to share their expertise with fellow board members, they have instinctively responded to, inquired of, or sought a clarification from a fellow board member about a matter relating to the board's business at a time other than during a duly noticed, open meeting of their board.

It has also been a source of consternation to state and county board members who have been willing to lend their time and expertise to do the public's business, but had to spend more time doing so than they are able to give, or believe is practically necessary.

Qualified and well intended board members have voiced their frustration with the law's seemingly cynical presumption that efforts at informed involvement are per se contrary to the public's interest. In some instances, the law has stood in the way of persons' willingness to serve as board members.

The provisions of this bill re-balance the sometimes competing interests of open government, and informed and effective governance under the Sunshine Law by:

- (1) Allowing interaction between board members about board business outside open meetings as long as the public is informed of and able to comment upon that interaction before decisions are made;
- (2) Permitting board members to work together outside the context of a board meeting to investigate and secure information for decisionmaking at a duly noticed public meeting of a board;
- (3) Permitting board members to disseminate a board's position on a particular issue or matter, once that position has been established at a duly noticed public meeting of a board;
- (4) Allowing unlimited discussions between and among board members about the selection of board officers;
- (5) Acknowledging that some board members serve in two capacities, as a member of a board as well as the head of an executive branch department

- or agency, and permitting them in their latter capacity to interact with the Governor about matters which also constitute official board business; and
- (6) Allowing board members to interact with the head of the department to which their board may be administratively attached for purposes of implementing Haw. Rev. Stat. § 26-35, which in part specifies that the department head represent the board or commission in communications with the Governor, submit the board's financial requirements as part of the department's budget, review for purposes of approving the purchase of supplies, equipment, or furniture, and the employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of board officers and employees, and allocate space for occupation by the board.

The bill excludes the above interactions from the Sunshine Law's definition of "meeting."

To allow for more timely and meaningful board responses, and thereby increase board efficiency, the bill expands the circumstances under which boards are permitted to call and hold emergency meetings to include an unanticipated event which requires action by a board in less time than permitted under the Sunshine Law's six-day notice requirement. To ensure against misuse of this provision, the bill requires two-thirds of the members of the board and the Attorney General to find that an unanticipated event requires a response from the board in less than six days' time.

After additional discussions with various members of boards and commissions, we suggest that the bill be further revised to

1. Limit permissible private interactions between board members to

interactions for the purpose of gathering information only, but without the present draft's requirement that the interactions be documented and included on the agenda of the board's next open meeting;

2. Permit the Governor to discuss board matters with two or more members of a board irrespective of whether the member is the head of a department or agency;
3. Amend Haw. Rev. Stat. § 92-7 to permit less than six days notice of meetings where the sole purpose of the open meeting is to take a vote on whether to go into executive session to discuss a matter permitted to be discussed in an executive session.

Comments from the Board of Water Supply suggested that the new subsection (b) added to Haw. Rev. Stat. § 92-8 be revised to allow the second opinion as to "unanticipated event" to be provided by a county attorney or corporation counsel rather than the Attorney General, when the board seeking an exception to the six-day notice requirement for an "unanticipated event" is a county board or commission. We would not oppose such a revision.

Because of my conviction that those who give of their time and resources to assist in our governance do so with every desire to act in accordance with law and with the greatest of deference to open and informed government, I urge your consideration of our suggested further revisions, and adoption of this measure.

H. B. NO. 1866
H.D. 1
S.D. 1 PROPOSED

A BILL FOR AN ACT

RELATING TO PUBLIC AGENCY MEETINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to increase the
2 efficacy and efficiency of boards which conduct the public's
3 business pursuant to the Sunshine Law, part I of chapter 92,
4 Hawaii Revised Statutes, without compromising the basic tenet of
5 that law that discussions, deliberations, decisions, and actions
6 of governmental agencies should be conducted as openly as
7 practicable.

8 The amendments to the Sunshine Law effected by this measure
9 acknowledge the fact that members of boards, like anyone else,
10 would be inclined to ask questions of one another, especially
11 when some of them possess expertise, or know the history of a
12 matter or the processes of the board better than others. On
13 occasion, new members of boards have been advised that it would
14 violate the Sunshine Law for them to receive orientation on the
15 practices and history of their boards from other, more
16 experienced board members.

17 These amendments also acknowledge that at times it is
18 inefficient to require that investigations occur in open
19 meetings, especially if the matter being investigated is complex

Page 2

H.B. No. 1866

H.D. 1

S.D. 1 PROPOSED

1 or highly specialized.

2 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
3 by adding to part I a new section to be appropriately designated
4 and to read as follows:

5 "§92- Permitted interactions of members. (a) Two or
6 more members of a board but less than the number of members which
7 would constitute a quorum for the board, may communicate or
8 interact privately amongst themselves to gather information from
9 each other about official board matters to enable them to perform
10 their duties faithfully, as long as no vote and no commitment to
11 vote is made or sought.

12 (b) Two or more members of a board may be assigned to

13 (1) Investigate a matter relating to the official
14 business of their board; provided that

15 (A) The scope of the investigation and the scope
16 of each member's authority are defined at a
17 meeting of the board;

18 (B) All resulting findings and recommendations
19 are presented to the board at a meeting of
20 the board; and

21 (C) No vote and no commitment to vote on the
22 matter investigated is taken or sought until
23 the meeting for which the investigation is
24 listed as an agenda item; or

25 (2) Present and discuss any position which the board

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H. B. NO. 1866

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S.D. 1 PROPOSED

1 has adopted at a meeting of the board, provided
2 that the assignment is made and the scope of each
3 member's authority is defined at a meeting of the
4 board.

5 (c) Discussions between two or more members of a board
6 concerning the selection of the board's officers may be conducted
7 in private without limitation or subsequent reporting.

8 (d) Discussions between the governor and two or more
9 members of a board may be conducted in private without limitation
10 or subsequent reporting, provided that the discussion does not
11 relate to a matter over which a board is exercising its
12 adjudicatory function.

13 (e) Discussions between two or more members of a board and
14 the head of a department to which the board is administratively
15 assigned may be conducted in private without limitation or
16 subsequent reporting, provided that the discussion is limited to
17 matters specified in section 26-35.

18 (f) Communications, interactions, discussions,
19 investigations, and presentations undertaken pursuant to this
20 section are not meetings for purposes of this part."

21 SECTION 3. Section 92-5, Hawaii Revised Statutes, is
22 amended by amending subsection (b) to read as follows:

23 "(b) In no instance shall the board make a decision or
24 deliberate toward a decision in an executive meeting on matters
25 not directly related to the purposes specified in subsection (a).

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H. B. NO. 1866
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1 [This part shall not apply to any chance meeting at which matters
2 relating to official business are not discussed. No chance
3 meeting or electronic communication shall be used to circumvent
4 the spirit or requirements of this part to make a decision or to
5 deliberate toward a decision upon a matter over which the board
6 has supervision, control, jurisdiction, or advisory power.]”

7 SECTION 4. Section 92-7, Hawaii Revised Statutes, is
8 amended by amending subsection (b) to read as follows:

9 “(b) The board shall file the notice in the office of the
10 lieutenant governor or the appropriate county clerk’s office, and
11 in the board’s office for public inspection, at least six
12 calendar days before the meeting. If the sole purpose of the
13 meeting is to take a vote on whether to go into executive session
14 and subsequently to go into executive session, then the notice
15 may be filed less than six calendar days before the meeting. The
16 notice shall also be posted at the site of the meeting whenever
17 feasible.”

18 SECTION 5. Section 92-8, Hawaii Revised Statutes, is
19 amended to read as follows:

20 “§92-8 **Emergency meetings.** (a) If a board finds that an
21 imminent peril to the public health, safety, or welfare requires
22 a meeting in less time than is provided for in section 92-7, the
23 board may hold an emergency meeting provided[:] that:

- 24 (1) The board states in writing the reasons for its
25 findings;

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S.D. 1 PROPOSED

(2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;

(3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and

(4) Persons requesting notification are contacted by mail or telephone as soon as practicable.

(b) If an unanticipated event requires or appears to require a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event, provided that

(1) The board states in writing the reasons for its findings, and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;

(2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;

(3) The findings and the agenda for an emergency meeting under this subsection are filed with the

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H. B. NO. 1866

H.D. 1

S.D. 1 PROPOSED

1 office of the lieutenant governor or the
2 appropriate county clerk's office, and in the
3 board's office;

4 (4) Persons requesting notification are contacted by
5 mail or telephone as soon as practicable; and

6 (5) The board limits its action to only that action
7 which must be taken on or before the date that a
8 meeting would have been held, had the board
9 noticed the meeting pursuant to section 92-7."

10 SECTION 6. Statutory material to be repealed is bracketed.
11 New statutory material is underscored.

12 SECTION 7. This Act shall take effect upon its approval.
13
14

LATE

Testimony on House Bill 1866 HD1
Presented to Senate Judiciary Committee

Submitted By:
Donald M. Thomas

Mr. Chairman and members of the Judiciary Committee, thank you for this opportunity to present testimony on House Bill 1866. My name is Donald Thomas; I currently serve as a member of the Board of Directors of the NELHA and am Chairman of the NELHA Research Advisory Committee that provides review and technical advice on proposals submitted to NELHA. I offer this testimony as an individual and resident of the Big Island and not as an official statement of the position of the NELHA Board or the Research Advisory Committee.

I support the intent of HB 1866 to provide more latitude to members of State boards and commissions to discuss issues before the board outside of regularly noticed meetings. My own experience on the NELHA Board has been that it is nearly impossible for those members of the Board who have technical expertise in a particular area to fully explain, within the confines of our monthly scheduled meetings, the issues underlying many of the decisions the Board members are expected to make. This substantially hampers the ability of the Board members to make fully **informed** decisions that protect the interests of NELHA or the State.

Thank you for this opportunity to present my concerns.

Submitted by: Donald Thomas
19-4610 Wright Road
Volcano, HI
967-8501

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



JAMES H. TAKUSHI
DIRECTOR

JAMES C. KIRCHHOFER
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

March 20, 1996

**TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY**

BY
JAMES H. TAKUSHI, DIRECTOR

H. B. NO. 1866 H.D. 1

Relating to Public Agency Meetings/

Mr. Chairman and Committee Members:

The Department of Human Resources Development (HRD) has a commission and a board which are affected by Chapter 92. The Civil Service Commission is administratively attached to HRD and, as director of HRD, I am the chair of the Board of Trustees for the State's Deferred Compensation Plan.

As the chair of the Board I can speak from personal experience of the obstacles to efficiency presented by the present "sunshine" law. The nature of the matters before the Board are complex and specialized, frequently requiring additional research and investigation. Such research and investigation is essential for the Board to make timely and informed decisions. An effective mechanism for conducting research and investigation is the formation of Board sub-committees. The advantages of sub-committees are efficiency, efficacy, and timeliness and flexibility in scheduling, meeting, and conducting research and investigation. The

HB 1866, HD 1
Page 2

requirements of Chapter 92, HRS, render the formation of such sub-committees ineffective and inefficient. In addition the restrictions regarding "private" discussions between Board members are so prohibitive that they inhibit the efficient functioning of the Board.

The amendments contained in HB 1866, HD 1 strike a good balance between maintaining the "openness" of discussions and decision-making while providing Boards or other State entities with needed flexibility in the process leading to those decisions or discussions. HRD and the Board of Trustees for the State's Deferred Compensation Plan recommends passage of this important measure.

**TESTIMONY OF THE
BOARD OF DIRECTORS OF THE HAWAII HURRICANE RELIEF FUND**

**TO THE
SENATE COMMITTEE ON THE JUDICIARY**

**THE EIGHTEENTH LEGISLATURE
REGULAR SESSION OF 1996**

**HOUSE BILL NO. 1866, H.D. 1
RELATING TO PUBLIC AGENCY MEETINGS**

March 20, 1996

**THE HONORABLE REY GRAULTY, CHAIRPERSON, AND
MEMBERS OF THE COMMITTEE**

My name is Amori Ogata. I am the executive director of the Hawaii Hurricane Relief Fund (HHRF).

This testimony is submitted on behalf of the board of directors of HHRF in support of House Bill No. 1866, H.D. 1.

This bill better balances the public interest in effective public boards with the public interest in keeping abreast of executive branch activities than existing law. For board members to make informed, considered decisions in the public's interest, it may be necessary from time to time to undertake limited discussions or investigations prior to a public meeting. In this regard, it may be appropriate to consider the historical differences in the nature of public participation in the executive and judicial, as opposed to the legislative, branches of government.

The board of directors of HHRF respectfully supports passage of H.B. 1866, H.D. 1.

PRESENTATION OF THE DEPARTMENT OF COMMERCE AND CONSUMER
AFFAIRS

TO THE SENATE COMMITTEE ON JUDICIARY

THE EIGHTEENTH LEGISLATURE
REGULAR SESSION OF 1996

March 20, 1996

STATEMENT ON HB 1866 HD1 SCR 789-96

TO THE HONORABLE CHAIRPERSON REY GRAULTY, AND MEMBERS OF
THE SENATE COMMITTEE ON JUDICIARY:

I wish to testify in support of HB 1866 HD 1 SCR 789-96 on behalf of the Hawaii Public Broadcasting Authority (HPBA) board of directors. HPBA is the governing body for Hawaii Public Television.

The HPBA board is comprised of thirteen members. Eleven are volunteers from the general public and two serve in ex-officio capacity representing the president of the University of Hawaii and the superintendent of the Department of Education.

Our current practice is to convene the board monthly, alternating meetings of the full board one month with meetings of our two committees (Management/Policy and Development) the next month. Notice of all these sessions and their agendas are provided in compliance with the Sunshine Law. Over the course of my ten years of involvement on this board, we have seldom had anyone from the general public present at our meetings.

HB 1866 HD 1 SCR 789-96 offers needed relaxation of Sunshine Law restrictions which presently stifle reasonable and productive discussions between

board members, staff and the general public. In our case, passage of this measure would allow two or more but less than a quorum of our board members to do such things as:

- discuss programming concerns with interested viewers;
- attend national or regional meetings of the Public Broadcasting System;
- meet with individuals, foundations or corporations to make appeals for underwriting or donations;
- facilitate dialogue with staff engineers regarding the range and quality of reception of our signal;
- obtain information to clarify minutes or other materials circulated to board members;
- participate on a speaker's bureau to promote the purpose of public television;
- determine the interest and availability of our members to serve in a position of board leadership; and
- assess the impact of national legislation or technological advancements on Hawaii Public Television's operations and plans.

These examples demonstrate that the amendments to the Sunshine Law which are contemplated in HB 1866 HD 1 SCR 789-96 would enable the HPBA board to more effectively perform the duties associated with our public trust; while maintaining appropriate safeguards for the public's right to know. We do not

HB1866 HD1 SCR789-96

- 3 -

believe that the Sunshine Law was intended to foreclose such reasonable activities by public officials. Therefore, we urge the committee to pass this legislation.

Thank you for the opportunity to present out testimony regarding HB 1866 HD 1 SCR 789-96.

STATE OF HAWAII
LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD

March 20, 1996
9:30 a.m., Room 227
State Capitol

TO: The Honorable Rey Gaulty, Chair
and Members of the Senate Judiciary
Committee

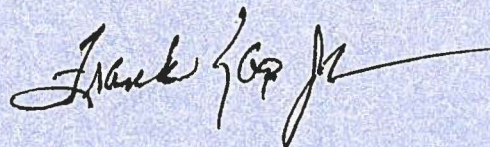
FROM: Frank Yap, Jr., Chairman
Labor and Industrial Relations Appeals Board

Re: H. B. No. 1866

H. B. 1866, H.D.1 proposes to add a new section to Part I of Chapter 92, Hawaii Revised Statutes, to increase the efficacy and efficiency of boards which conduct public business pursuant to the Sunshine Law.

The Labor and Industrial Relations Board supports the general intent H. B. 1866 H.D.1., although it has minimal applicability to the primary nature of the work conducted by this Board.

The primary work of this quasi-judicial Board is adjudicatory, not investigatory, in nature. Part I of Chapter 92, H.R.S., does not apply to the primary function of this Board, as Section 92-6, H.R.S. exempts this Board from its requirement.

A handwritten signature in black ink, reading "Frank Yap Jr.", with a long horizontal flourish extending to the right.



THE LEAGUE
OF WOMEN VOTERS
OF HAWAII

TESTIMONY ON H.B. 1866, HD1 RELATING TO PUBLIC AGENCY MEETINGS
BEFORE THE SENATE COMMITTEE ON JUDICIARY - March 20, 1996

Chair Gaulty, Members,

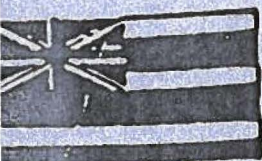
I am Joan Aoki, co-chair of the League of Women Voters
Legislative Committee.

The League of Women Voters has great concerns about the
amendments proposed for Chapter 92 of the Hawaii Revised Statutes.
The League actively supported the enactment of this chapter in
1975.

We feel that the potential for abuse and the added skepti-
cism of the public in the legitimacy of decisions made by the
boards, well founded or not, erode what confidence people may
have in their governments at all levels. Even now, there is the
perception that very often matters are decided before a meeting,
and that the public decision making is merely one of going
through the motions to satisfy the law. The amendments proposed
would almost certainly serve to deepen this perception.

We understand the frustrations of board members in not being
able to discuss matters at times, places and ways convenient to
them. However, we are not convinced that this outweighs the
benefits of our sunshine law.

After much deliberation, we have concluded that this chapter
should be left its present state.



COMMON CAUSE HAWAII



P.O. Box 235353 Honolulu HI 96823-3505 Tel/Fax (808) 533-6996

March 20, 1996

Testimony of Common Cause Hawaii to Senate Judiciary Committee on HB 1866 HD 1.

First, thank you to the Chair and committee members for the opportunity to speak. I'm Larry Meacham, Executive Director of Common Cause Hawaii, the citizen lobby for open, honest, accountable government. We have about 1,300 members locally and 260,000 nationwide.

This is a complex and difficult area. We need to keep meetings open to the public and also allow Boards to do their work. We have met with board representatives and the Attorney General for discussions and agree on some items in this bill.

With regard to page 1, line 11, we disagree. While there is no objection to purely social occasions, even proponents of this provision like Judge Kimura admitted that substantive discussions would constitute deliberations. Our solution for informational meetings, briefings and presentations is simply to give public notice like any board committee meeting.

In regard to page 2, line 6, we would agree to allow the board to designate members to investigate matters, but limit the number of people to two instead of two or more, which could be the entire board. We would also request the substituting the word "one meeting after" on page 2, line 20-21, so that a vote on a such a matter could occur only at the board meeting after the report is presented. Otherwise, the public may only have a very short time in which to try to obtain the report. It would also be beneficial to have the report put in the minutes.

In regard to page 2, line 23, we agree that boards should be able to designate members to present and discuss board decisions that have already been made.

In regard to page 3, line 4, meetings to decide on leadership have always been hidden. We concede to reality on this.

Page 3, line 7 and line 14, we would prefer that these meetings be public.

In regard to page 5, line 4, we agree that emergency meetings should be okay as long as the Attorney General approves them.

Again, thank you for the opportunity to speak. I will try to answer any questions you may have.



HAWAII CIVIL RIGHTS COMMISSION

888 MILILANI STREET, 2ND FLOOR HONOLULU, HI 96813 • PHONE: 586-8636 FAX: 586-8655 TDD: 586-8692

March 20, 1996
9:30 a.m., Rm. 229

To: The Honorable Rey Gaulty, Chair
and Members of the Senate Committee on Judiciary

From: Amefil Agbayani, Chairperson, and Commissioners
Hawaii Civil Rights Commission

Re: H.B. No. 1866, H.D. 1

The Hawaii Civil Rights Commission was created for the purpose of establishing a uniform procedure for the enforcement of the State's discrimination laws. The Commission carries out the Hawaii constitutional mandate that the no person shall be discriminated against in the exercise of their civil rights. Art. I, Sect. 5.

The Commission supports passage of H.B. No. 1866, H.D. 1, which will amend the Sunshine Law to allow limited exceptions so that boards and commissions can function more effectively. The bill balances the goal of open government with the equally important goal of effective government.

For example, the Sunshine Law makes it unlawful for two or more Commissioners to testify on this bill unless a meeting notice is filed with the Lt. Governor's office six days prior, even though the Commission voted at an open meeting to support the bill. It is also unlawful for two or more Commissioners to meet with the Governor or Labor Director to discuss budget matters even though the Commission voted at an open meeting to do so. Such limits make it difficult for the Commission to operate. Passage of this bill will alleviate some unnecessary barriers to effective government while keeping government deliberations out in the open.



Society of Professional
Journalists

HAWAII CHAPTER

P.O. Box 3141
Honolulu, Hawaii 96802

March 20, 1996

Sen. Rey Gaulty
Senate Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: H.B. 1866, H.D. 1

Chairman Gaulty and Committee Members:

This measure, identical to the proposed S.D. 1 for S.B. 1779 heard on March 1, would allow boards and commissions to meet secretly anytime they want by setting up a system of informal meetings. This bill would undermine the state Sunshine Law as long as boards and commissions said they would not take a vote or deliberate toward a vote.

But as we said in the previous hearing, once a board or commission has started the debate, that agency has started deliberating toward a vote.

You've heard our arguments before, and you don't have to be told the reasons for why the public should know the how and why of how they're tax money's being spent or how a law is enacted.

If two board members want to converse about issues when they run into each other at social occasions, we maintain the following language would do it, starting t line 16:

"(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). [This part shall not apply to any chance meeting at which matters relating official business are not discussed.] No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power."

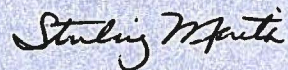
We believe this lets two board members to talk informally about matters, but still prevents the so-called serial or networking communication in the chairman or some other

high-ranking official could contact board members and tell them how to vote and the rationale behind the move. At the meeting the public would see no reasoning for the votes.

This is the public's protection that government will be open, and any changes should be made on the side of caution with the least damage to the public's right to know what it's government is doing.

Thank you for your time and attention.

Sincerely,


A handwritten signature in cursive script that reads "Stirling Morita".

Stirling Morita
FOI Committee Chairman

March 19, 1996

MEMORANDUM

TO: Members of the Senate Judiciary Committee
Senator Ray Graulty, Chair
Senator Mike McCartney, Vice Chair

FROM: Richard S. Miller, (Prof. of Law, Emer.) 
President, Honolulu Community-Media Council
Phones: (o)956-7191; (h)254-1796; Fax: 956-6402

SUBJECT: Testimony on H.B. No. 1866, H.D.1

With respect, I offer the following comments and suggestions on H.B. No. 1866, H.D. 1, relating to Public Agency Meetings:

Members of the Honolulu Community-Media Council are concerned that the Sunshine Law, which was passed with the strong support of the Council, is being significantly weakened at a time when the need for openness in governmental decision-making to combat public cynicism about the operation of government has never been greater.

We would prefer no amendment to the Sunshine Law, but we recognize the Law might be made more practical if particular exceptions to some of its provisions were allowed.

Particularly, we are aware of the problem faced by board members who meet casually at social gatherings or at other meetings unrelated to the purposes of the board and are not permitted to discuss board business. However, H.D.1, as written, would allow an entire board to privately discuss matters relating to the official business of the Board and to conduct a number of other activities in private.

It is therefore recommended that the language "two or more members of the board," which is disingenuous and clearly means any number including the entire board, be changed in sections (a), (b), (c), and (e) to read: "two or more members of the board, if they constitute less than a majority,".

We do not believe that the requirement of summaries is a sufficient alternative to the requirement of open meetings; the adequacy of a summary cannot be assured.

Your willingness to consider this testimony is very much appreciated.

TESTIMONY OPPOSING H.B. 1866, H.D. 1
PRESENTED TO THE COMMITTEE ON JUDICIARY
THE SENATE, STATE OF HAWAII
BY BEVERLY ANN DEEPE KEEVER

March 20, 1996, 9:30 a.m.

State Capitol, Conference Room 229

Senate Judiciary Committee Chair and Members:

My name is Beverly Ann Deepe Kever. I am a journalism educator. In 1982-1983 I served as coordinator of a coalition of such community groups as the League of Women Voters, Hawaii Council of Churches, Common Cause/Hawaii, Honolulu-Community Media Council and the Society of Professional Journalists.

Since 1983, like other members of some of these organizations, I have continued to try to strengthen Hawaii's laws related to open government.

I urge the Committee to kill this bill for four reasons:

- Secrecy hurts the least powerful, most disadvantaged in society;
- This bill permits -- even invites -- secret deal-making;
- This bill adds more meaningless paperwork -- not efficiency;
- This bill accelerates the trend of "Tuned Out, Turned Off" citizens.

1. SECRECY HURTS LEAST POWERFUL, MOST DISADVANTAGED IN SOCIETY

Secrecy in government works against the least powerful and most disadvantaged in society. Secrecy undermines public

confidence in government, thus fostering non-participation and cynicism.

2. THIS BILL PERMITS -- EVEN INVITES -- SECRET DEAL-MAKING

This bill permits -- indeed invites -- secrecy in government and should be killed. This bill means that secret deals can be struck in private places -- who needs a formal vote to seal the deals? It means that important land-use deals can be made -- and even sealed -- on the golf course by five or six city council members -- as was attempted in earlier years.

Other important deals relating to water rights, taxes, environment, property valuation, regulation of services and professions and multitudes of other issues directly affecting the public can all be made behind closed doors -- without public awareness and without any accountability whatsoever.

3. THIS BILL ADDS MEANINGLESS PAPERWORK -- NOT EFFICIENCY

The stated purpose of this bill -- to increase the efficacy and efficiency of government boards -- is an illusion, if not a joke.

Instead a real purpose seems to be providing for the convenience of upper-echelon decision-makers. But this convenience is a luxury requiring meaningless paperwork -- and the construction of yet another bureaucracy so complicated and arcane that only a few can comprehend it and fewer still can navigate it.

Rather than promoting efficiency of government, this bill is only promoting more government. And this government becomes a barrier that shuts out public awareness, participation and understanding.

4. THIS BILL ACCELERATES TREND OF "TUNED OUT, TURNED OFF" PUBLIC

This bill offers a dangerous and wrong approach for these uncertain times. Instead of withdrawing to make secret deals on the golf course, government officials should be reaching out to enhance citizen participation -- to make government more human when the revolution in technology is dehumanizing communication.

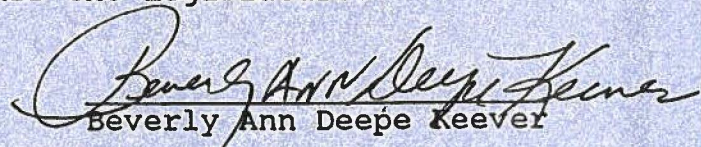
In short, this bill signals to citizens that they no longer matter to government -- and it comes at a time when government no longer matters to more and more citizens.

Citizens are simply "Tuned Out, Turned Off," according to a major poll conducted by the Washington Post and published last month. I will attach a copy of that article. Please note its dismal findings.

This bill accelerates a dangerous double trend:

- privileged insiders are isolating government from the people and
- the public is increasingly turned off by government.

This bill rolls back the clock 20 years and guts Hawaii's Sunshine Law. Please don't let it pass the Legislature.


Beverly Ann Deepe Keever

Attachment: "Tuned Out, Turned Off"

Tuned Out, Turned Off

Millions of Americans know little about how their government works

By Richard Morin
Washington Post Staff Writer

Edward Howey of Gordo, Ala., is one of democracy's bystanders. He doesn't know the name of the vice president of the United States. He can't name his representative in Congress or his two senators. He doesn't know whether the Republicans—or is it the Democrats?—control Congress these days.

"Politics doesn't interest me," says Howey, 45, who owns a soap-making plant. "I don't follow it, don't vote, don't care. Never had time for it. Always had to make a living."

Howey is not alone. Whether uninterested, uninformed or simply ignorant, millions of Americans cannot answer even basic questions about American politics, according to a new survey by The Washington Post, the Kaiser Family Foundation and Harvard University.

On the surface, it may seem regrettable but inconsequential that many Americans don't know that Republicans control Congress and most cannot name their representatives or senators.

But knowing basic facts about politics does matter. The survey suggests that information is one of democracy's golden keys: Without basic facts about the players and the rules of the game, Americans tune out politics and turn off to voting.

In addition to not voting, the survey found that these less informed Americans are far more likely to believe their country is in decline. They consistently say that the country's biggest problems have worsened in recent decades, including air and water quality that actually have improved. And they are less likely to know that the annual budget deficit and the number of federal workers have gone down—not up—in recent years.

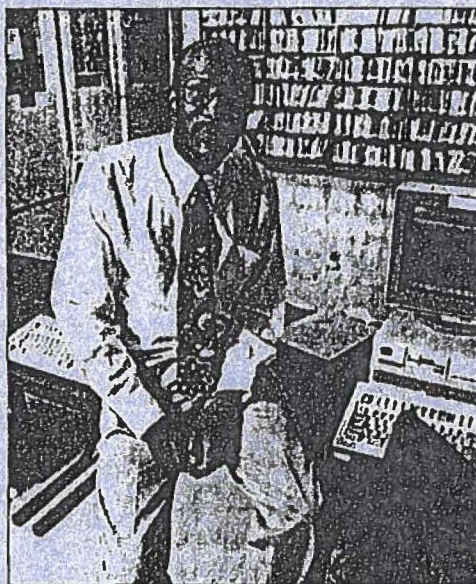
As a consequence, less knowledgeable Americans are much more likely to believe that actions by the federal government invariably make every problem worse, a rigid cynicism that the survey found transcends party identification or political ideology.

"Lack of knowledge has a practical short-term political effect," says Robert J. Blendon, a professor at Harvard's Kennedy School of Government and an adviser on the survey project. "It makes it more difficult for the president or Congress to get credit for efforts they have made; thus it supports the sense that neither group ever gets anything done."

Similarly, less informed Americans are more inclined to see the world as an especially cold and threatening place, a view that directly shapes their attitudes toward defense spending and America's place in foreign affairs. Less knowledgeable Americans also find it hard to sort through and decide which candidates and policies best reflect their own interests and beliefs. In the extreme, this confusion even leads some misinformed Americans to support candidates and policies that actually work against their own interests.

"Greater knowledge about the political process helps a person figure out what kinds of government policies are likely to be most beneficial to them, and then what political behavior on their part is most likely to further their interests," says political scientist Scott Keeter of Virginia Commonwealth University, who has studied the impact of information on political decision-making.

TO MEASURE HOW MUCH AMERICANS KNOW about politics and the political system, The Washington Post, the Kaiser Foundation and Harvard interviewed 1,514 randomly selected adults in November and December. These Americans were asked 18 general knowledge questions about how their government works and who their



BY STAN MONROE FOR THE WASHINGTON POST

"You really can't hold an intelligent conversation with people about elections or issues. I'm shocked that people are not more involved with their government and they don't read about issues, schools, the police, budgetary matters."

—KENNETH COTTON,
HIGH SCHOOL TEACHER,
THE BRONX, N.Y.

leaders are. An additional 21 political knowledge questions were asked in four other national Washington Post polls.

The surveys revealed a knowledge gap that is deep and wide.

Two-thirds of those interviewed could not name the person who serves in the U.S. House of Representatives from their congressional district. Half did not know whether their representative was a Republican or a Democrat.

Many Americans cannot name the people who hold some of the country's most important leadership positions in government.

Who's the vice president of the United States? Four in 10 Americans surveyed did not know, or got it wrong. Two out of three could not name the majority leader of the U.S. Senate (Robert J. Dole of Kansas, a Republican candidate for president). Nearly half—46 percent—did not know the name of the speaker of the U.S. House of Representatives (Newt Gingrich, whom Time magazine crowned "Man of the Year" for 1995).

It's not that Americans merely have trouble with names. Many do not know elementary facts about how the political system works. Nearly half did not know that the U.S. Supreme Court has the final responsibility for deciding whether a law is constitutional. Three out of four were unaware that U.S. senators are elected to serve six-year terms.

Many don't know basic facts about the political parties. Four in 10 Americans were unaware that Republicans control both chambers of Congress. Three in 10 did not know which party favored making greater reductions in the growth of Medicare spending, a pivotal issue in the ongoing budget debate.

AMERICANS ARE LARGELY MISINFORMED ABOUT HOW their federal government spends tax dollars. Nearly six in 10 incorrectly believed that the government spends more on foreign aid than on Medicare. And when asked to guess, they estimated that on average foreign aid accounted for 26 percent of the federal budget (military and development foreign aid amounts to less than 2 percent of the budget, while Medicare accounts for about 13 percent).

Ironically, when survey respondents were asked how much of the budget should be allocated to foreign aid, the average response was 13 percent, or fully six times more than what the government actually spends.

What do Americans know about politics and government? The overwhelming majority knew there is a limit on the number of terms in office a president can serve; they also knew that Richard M. Nixon was president during the Watergate scandal. Nearly nine in 10 knew that President Clinton belonged to the Democratic Party. And eight in 10 were aware that Congress had passed legislation requiring businesses to give family leave after the birth of a child or a family emergency.

Family leave is "the issue that touches people's lives directly, one that they're most likely to discuss with people in the cafeteria or in the workplace because many people have a older parent, a youngster, a mate that might be ill," Harvard Blendon says. "The dilemma is that many people only know or care about those issues that directly affect their lives and not those that are of broader importance."

Overall, the survey found that men know more about politics than women, a gender gap that persists even among college-educated twentysomethings interviewed in the poll. Whites know more facts about politics and government than do blacks. Rich people are more informed than the poor. Republicans are better informed than Democrats. And better educated Americans know far more than those with less formal schooling.

And with knowledge comes the power to influence what government does and does not do. "The evidence is very compelling in this area," Keeter says. "The better informed are more likely to participate in politics, more likely to vote, more likely to contribute money and the like. Whatever their opinions are, they're more likely to be heard and reflected in the political system."

Still, there are more theories than answers to explain why many Americans don't know more about their government. Some experts suspect that today's schools are teaching fewer basic facts about politics and government, a view supported by the survey.

OVERALL, SURVEYS INDICATE THAT AMERICANS know about as much about politics and government today as they did during the 1940s. But these results hide a more distressing trend: In the past 50 years, the average number of years an American spends in school has increased from less than nine to more than 12, yet political knowledge has not grown.

But education is only part of the explanation. Some experts suggest that demands of modern life have left many Americans with little time to follow politics, keep up with the news or participate in civic affairs.

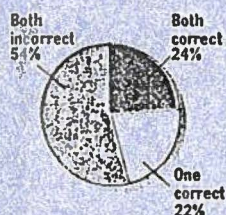
"It's time-consuming... nobody has the time to sit down and read Time every week to find out what the government's doing," says Jay McCracken, 34, a technical adviser and part-time college student living in Clifton, N.J., and one of 10 participants in focus group led by two Washington Post reporters. "People do have the time to sit down and deal with it every day."

Others blame the rise of television as America's primary

THE PEOPLE AND THEIR GOVERNMENT

How much do Americans know about their elected officials?

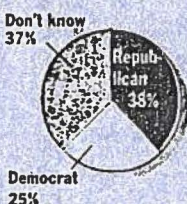
Q Do you happen to know the names of the U.S. senators from your state, or not? What are their names?



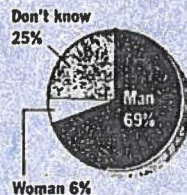
Q Do you happen to know the name of the person who serves in the U.S. House of Representatives from your congressional district, or not?



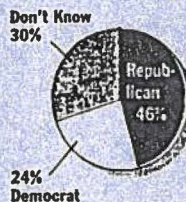
Q Do you happen to know whether the person who serves in the U.S. House of Representatives from your congressional district is a Republican or a Democrat?



Q Do you happen to know whether the person who serves in the U.S. House of Representatives from your congressional district is a man or a woman?

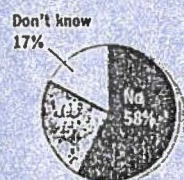


Q Do you happen to know whether the governor of your state is a Republican or a Democrat?

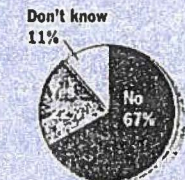


How much do Americans really know about what goes on in Washington?

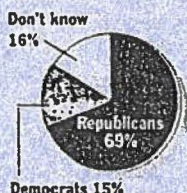
Q To the best of your knowledge, has the U.S. House of Representatives passed a plan to balance the federal budget, or not? (Answer: Yes)



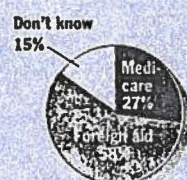
Q To the best of your knowledge, has the U.S. Senate passed a plan to balance the federal budget, or not? (Yes)



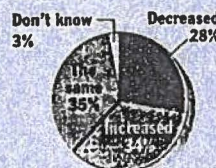
Q Can you tell me which party—the Democrats or the Republicans—favors making greater reductions in the rate of growth of Medicare and Medicaid spending? (Republicans)



Q As far as you know, is more of the federal budget now spent on Medicare, or is more spent on foreign aid? (Medicare)



Q During the past three years, do you think the number of people employed by the federal government has increased, decreased or stayed about the same? (Decreased)



These results are based on three Washington Post national surveys. The first, in which 1,005 randomly selected adults were interviewed by telephone, was conducted Nov. 3-7, 1995. The second, with 998 randomly selected adults also interviewed by telephone, was conducted Nov. 10-14, 1995. The third poll of 507 randomly selected adults, also interviewed by telephone, was conducted Jan. 17-21, 1996. The margin of sampling error for the first two polls is plus or minus 3 percentage points; the margin of error for the third poll is plus or minus 4.5 percentage points; the margin of error for subsample populations is larger. Sampling error is but one source of many potential errors in this or any other opinion poll. Interviewing was done by the ICR Survey Research Group of Media, Pa.

source of news and entertainment. Fifty-eight percent of those surveyed said they now got most of their information about national politics and government from television, while 24 percent relied primarily on newspapers. These television news watchers were consistently less likely to know basic facts about politics, government or current events than those who depended mostly on newspapers.

Whatever its causes, what are the consequences of America's knowledge gap? To find out, a random sample of 1,514 adults was asked 11 general knowledge questions about politics and government, and then divided into three groups on the basis of how many questions they answered correctly.

Thirty percent of the sample got eight or more questions right and were designated the "high knowledge" group. More than a third got five to seven questions correct, and were assigned to the middle group. A third got four or fewer questions correct; they were assigned to the "low knowledge" group.

THE SURVEY REVEALED THAT MORE-KNOWLEDGEABLE Americans often have fundamentally different views about their politicians, government and world.

One major difference may dismay political leaders: The more you know about government and politics, the more mistrustful you are of government. But at the same time, more-knowledgeable Americans expressed more faith in the American political system. They were far more likely to see their vote as a remedy for what they believed was wrong with government.

According to the survey, those in the highest third of the sample in terms of political knowledge were twice as likely to have voted in the 1992 presidential election as those in the lowest third.

And in the historic 1994 congressional election, seven in 10 of the most-knowledgeable respondents said they voted.

Who's the vice president of the United States? Four in 10 Americans surveyed did not know, or got it wrong. Two out of three could not name the majority leader of the U.S. Senate (Robert J. Dole of Kansas, a Republican candidate for president). Nearly half—46 percent—did not know the name of the speaker of the U.S. House of Representatives (Newt Gingrich, whom Time magazine crowned "Man of the Year" for 1995).

compared to one in four low-knowledge Americans.

Informed Americans also participate "more effectively in the political system," says political scientist Michael Delli Carpini of Barnard College.

His recent analysis of data collected in other national surveys produced a remarkable finding: There was "virtually no relationship" between the political issues that low-knowledge voters said "matter most to them and the positions of the can-

didates they voted for on those issues. It was as if their vote was random. But among the most informed, there was almost a perfect match between issues and candidates," suggesting to him that informed voters were better able to identify candidates that reflect their views and interests.

Not surprisingly, knowledge and interest in politics also are closely related: People who are interested in politics know more about politics and vote more often than people who do not.

But this unremarkable finding conceals the essential role that information plays as a catalyst in the political process: The survey found that knowledge, independent of political interest, acts as a bridge to participation.

ONE WAY TO SEE THIS relationship is to compare the voting records of high- and low-knowledge respondents in the survey who said they had little or no interest in politics.

Two-thirds of the uninterested but high-knowledge respondents said they voted in 1994, compared to one out of eight of the less-informed group. Likewise, more-informed voters who said they were "very interested" in politics were nearly twice as likely to vote than less-informed voters with a similarly high interest in politics.

"I can be interested in politics, but if I don't know the registration deadline, don't know where to go to vote and don't

really know where the parties or candidates stand... then I still won't be able to translate that interest into participation or to participate effectively," Delli Carpini says.

Information matters in other ways. Today, Americans are more likely to rely on their own judgments to guide their political decisions rather than on newspaper endorsements or the recommendations of party leaders, union officials or other interest groups, Blendon says. "Knowledge is more important now because we're less likely to trust other leaders in society whose judgment we might have relied on in earlier years," he says.

Knowledge also makes politics comprehensible. Overall, the Post/Kaiser/Harvard survey found that more than half of all Americans agreed with the following statement: "Politics and government are so complicated that a person like me can't really understand what's going on." But 69 percent of all low-knowledge respondents agreed, compared to 33 percent of those who ranked in the top third in terms of knowledge of politics and government.

"I think it's very confusing. Who has the time to read up on everything?" says Charles Burrelli, 46, a printer living in Rochelle Park, N.J.

"I think it's made to be confusing so that we stay a little confused," says Gaymelle Dorsey, 44, a placement counselor at a computer school who lives in Hackensack, N.J.

Recent studies suggest that many Americans are confused by politics because they simply don't know enough basic facts to follow a substantive political debate. They see and hear the conflict but miss the content, a process some critics say is exacerbated by the media, which they charge are increasingly drawn to reporting strategy and partisan skirmishes surrounding major policy debates, but not their substance.

"A lot of them just see food fights," says Samuel Popkin, a political scientist at the University of California at San

Diego. "They have a harder time absorbing information in a systematic way that would lead them to see differences" between political candidates and the parties. "So they say it's 'just politics.'"

"That's the saddest phrase in America," Popkin adds, "as if 'just politics' means that there was no stake."

Temera Porter, 33, an inspector in a computer chip manufacturing plant in Beaverton, Ore., has voted only once in her life and that was in 1992. "I think I voted for Clinton but I wrote on the ballot that [comedian] George Carlin should be president, I really did."

She paid little attention to the Senate race in Oregon to replace Republican Bob Packwood, who resigned. "It's a waste of my time. They're cutting each other down, just playing childish games. It's confusing nonsense, like two little kids on a schoolyard."

Kenneth Cotton, 33, sees the impact of political ignorance in his conversations with friends and co-workers.

"You really can't hold an intelligent conversation with people about elections or issues," says Cotton, a high school social studies teacher in the Bronx who was one of 137 survey respondents who answered all 11 knowledge questions correctly. "I'm shocked that people are not more involved with their government and they don't read about issues, schools, the police, budgetary matters. . . . It's absolutely mortifying listening to people who don't seem to know anything."

Information about politics matters in other ways. Those with little knowledge about politics or the political process see the world much differently than more informed Americans.

"Things in the world aren't going too good," says Eva Childs, 73, a retired cotton mill employee who works part time in a cafe in Pendleton, S.C. She acknowledges that she knows little about politics or current events. "I just pay no attention," she says. But what little she has seen on television makes her think the world is headed for a conflict even bigger than World War II. "That's the way it looks. Nobody can get these messes straightened out."

For millions of Americans like Childs, the end of the Cold War brought little relief. Nearly six in 10 high-knowledge Americans—58 percent—said the chances of a world war have decreased in recent years, a view shared by 26 percent of



BY TIM JEWETT FOR THE WASHINGTON POST

Politics is "a waste of my time. They're cutting each other down, just playing childish games. It's confusing nonsense, like two little kids on a schoolyard."

— TEMERA PORTER,
COMPUTER CHIP OPERATOR,
BEAVERTON, ORE.

those in the lowest third of the sample in terms of how much they knew about politics.

There are also political consequences.

The survey found that less-politically informed Americans, regardless of whether they were Republicans or Democrats, were far more fearful of war and less likely to support reductions in defense spending. Moreover, those with less knowl-

edge about politics also were more fearful of international involvement: 52 percent said it would be better for the United States to stay out of world affairs, a view shared by 22 percent of the most informed respondents.

Those results echo the findings of an earlier Post/Kaiser/Harvard survey on race, which found that people who knew the least about the relative economic positions of blacks and whites were far more likely to see no need for special efforts by government or the private sector to help minorities and to view such efforts as reverse discrimination.

■

THE INFORMATION GAP IS AFFECTING HOW POLITICS is practiced, dumbing down democracy and making political campaigns increasingly negative and character-based.

Political scientist Popkin argues that candidates now mount two campaigns: One designed to target informed voters in which politicians explain their stands on issues and showcase policies, and one in which strategists and consultants mount attacks on the character of the opponent to win support from less-informed voters.

For less-knowledgeable voters, Popkin says, all politics is reduced to character and caricature: Politicians are divided into "heroes and villains" and major policy debates become clashes between good and evil.

Popkin uses the current budget standoff as a case in point. Even as President Clinton and congressional Republican leaders have been searching for common ground on the budget, both sides have mounted massive public relations campaigns designed to demonize the other in the eyes of the public.

Such efforts exact a price, Popkin says. Once polarized, the public becomes less accepting of any compromise, which increases the pressure on politicians to fight to the death. Less-informed, more-mistrustful voters in particular are less tolerant of attempts to reach a negotiated settlement with the demonized opposition.

"When voters can only follow politics through their heroes and villains, and do not have knowledge about underlying conditions, like the cost of Medicare, it makes compromise much harder for politicians. . . . It takes a lot of knowledge to know when compromise is needed as opposed to fighting for the last inch. So there's much more hunkering down."

■

January 20, 1996

LATE

TO: Senate Judiciary Committee
RE: HB 1866, HD1 -- RELATING TO
PUBLIC AGENCY MEETINGS
Testimony from: Jean King

First, again thank you to Senator Rey Gaulty and to the members of the Senate Judiciary Committee for the opportunity to present this testimony.

And again may I express my appreciation to you for the tough job you're doing, trying to find the best balance between the public's right to know and the practical matter of agencies getting things done.

A democracy is not the most efficient form of government. It is the best one we know, and public participation and public knowledge of public matters are key.

Therefore, while no one would deny that given the Attorney General's opinion some changes need to be made to the Sunshine Act, it would behoove us to move with care in tampering with it.

May I therefore respectfully urge that, rather than piecemeal changes now, we await the cool and careful deliberations of the Interim Committee which I understand will be looking at the Sunshine Act and coming up with coherent, unified amendments for presentation to the 1997 session.

Thank you very much.

Jean King

BENJAMIN J. CAYETANO
GOVERNOR




LATE

ROY S. OSHIRO
EXECUTIVE DIRECTOR

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
HOUSING FINANCE AND DEVELOPMENT CORPORATION
677 QUEEN STREET, SUITE 300
HONOLULU, HAWAII 96813
FAX (808) 587-0600

IN REPLY REFER TO

TO: The Honorable Rey Gaulty, Chair
Senate Committee on Judiciary

FROM: *for* Clarence Mills, Chairman 
Housing Finance and Development Corporation Board of Directors

SUBJECT: H.B. 1866, HD 1 RELATING TO PUBLIC AGENCY MEETINGS

Hearing: Wednesday, March 20, 1996, 9:30 a.m.
Conference Room 229
State Capitol

This bill increases the efficacy and efficiency of boards which conducts the public's business pursuant to the sunshine law.

As chairperson of the HFDC Board, I support this legislation and the suggested amendments submitted by the Attorney General's Office. Although I am for a democratic, open government, the sunshine law as currently written, hampers many aspects of board business. For example, I sometimes find the need to appoint two^s to four board members to various subcommittees to investigate and assess the impacts of specific housing issues. These subcommittees come up with a range of recommendations and do not necessarily decide on any one course of action. After the subcommittee has reached some consensus, it must report its findings to the board as a whole. I feel that this is an efficient use of board expertise and I do not feel that the intent and spirit of the sunshine law is being violated.



Unfortunately, we have been advised by the Attorney General's office that any time two or more board members meet, the requirements of Chapter 92 must be strictly complied with. I believe that H.B. 1866, H.D. 1, as amended, will promote a more informative and efficient decision-making process.

Thank you for the opportunity to submit testimony.

LATE

PRESENTATION OF THE
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS

TO THE
COMMITTEE ON JUDICIARY

THE EIGHTEENTH LEGISLATURE
REGULAR SESSION OF 1996

March 20, 1996

STATEMENT ON HOUSE BILL NO. 1866, H.D. 1, S.D. 1 PROPOSED
TO THE HONORABLE REY GRAULTY, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Jan Yamane of the Department of Commerce and Consumer Affairs ("DCCA"). We thank you for the opportunity to testify on H.B. No. 1866, HD 1, relating to public agency meetings. We are aware of a "Proposed S.D.1" being submitted by the Attorney General, and if we may, provide testimony on the proposed S.D.1.

DCCA supports the proposed S.D.1 in lieu of H.D.1. We believe it ameliorates the Sunshine Law by recognizing that in the faithful discharge of its duties, the board as a whole and individual members of a board need to develop a knowledgeable base from which to work from to be effective and conscientious members. That base can be developed through permitting interaction with other board members (and the director) without unnecessarily utilizing the valuable time of an open forum of a board meeting to rehash matters of past precedence, historical perspectives, or just of matters of general board information. No service is done for the public if a board and its members must educate or reeducate each other at the expense of the public waiting for the actual deliberation and decision making to occur.

Statement on House Bill No. 1866, H.D. 1, S.D. 1 Proposed
March 20, 1996
Page 2

We believe that SECTION 2 of the proposed S.D.1 is reasonable in nature, permitting interaction of board members under limited circumstances. SECTION 1 of the bill describes situations each and every board has faced at one time or another, only to be frustrated time and time again by the Sunshine Law's inflexibility. In addition, we would point out that the Sunshine Law also negates a board's ability to narrow its focus by way of a task force or committee of its members. We believe that ability to appoint of such committees would greatly enhance a board's ability to carry out the public's business.

We firmly support SECTION 2 of the bill as we believe it strikes an appropriate balance by facilitating boards' business without compromising the "people's right to know."

With regard to SECTION 3 of the proposed S.D.1, we are of the opinion that Hawaii Revised Statutes section 92-5 should not be amended, leaving this section "as is". We understand that the intent of the bill is to identify permitted interactions of members, which are distinct from chance meetings. Repeal of the language relating to chance meetings may negate the underlying spirit and intent of the Sunshine Law and may be counterproductive. You therefore may wish to consider dropping SECTION 3 from the proposed S.D.1.

We can support SECTION 4 of the proposed S.D.1, although our experience, relative to the 30 boards and commissions placed within DCCA, have shown that compliance with notice requirements

Statement on House Bill No. 1866, H.D. 1, S.D. 1 Proposed
March 20, 1996
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has not been problematic for meetings convened solely for the purpose of an executive session. As such, we defer to concerns other agencies may have with this section of law.

We strongly support SECTION 5 of the bill and believe that emergency meetings will serve as a vital tool in the expeditious conduct of the public's business. For example, we all remember the statewide emergency created by the onslaught of Hurricane Iniki in 1992 and the hardships endured by many of our citizens. Iniki crippled the State.

At DCCA, Iniki struck on the eve of a biennial license renewal for a large pool of licensees. Many of DCCA's boards found themselves unable to react in a timely manner because of prohibitions in the Sunshine Law. Although well-intentioned, these provisions were not drafted in contemplation of a hurricane, let alone one of Iniki's magnitude. Outreach programs were stalled and many licensing decisions were delayed, much to the detriment of the public. Clearly, we can learn from the past and anticipate events that were once unanticipated. SECTION 5 gives boards the ability to react quickly to exigent and unforeseen circumstances and hopefully avoid unnecessary delays.

In conclusion, DCCA supports H.B. 1866, HD1, Proposed S.D.1, specifically SECTIONS 1,2 and 5. We have no objections to SECTIONS 3 and 4, but raise concerns for your consideration.

We request your Committee act favorably on the proposed S.D.1 so that reasonableness and practicality can return to the

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forefront.

Thank you for this opportunity to testify.

HONOLULU INFORMATION SERVICE

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March 20, 1996

LATE

Senator Rey Gaulty, Chair
 Senate Judiciary Committee, and members of the Committee

Testimony on House Bill 1866 HD 1

Hearing 9.30 am Wednesday, March 20, 1996

My name is Desmond Byrne and with my wife Jo Kamae Byrne, we own Honolulu Information Service. We perform business, economic, government and public record research in Hawaii, Nationwide and the Asia Pacific region.

Part of our research involves the monitoring and attendance at public meetings.

I wish to submit the following testimony.

1. Introduction

Basically, I do not support this bill, although some sections some sections are conceded.

Problems are acknowledged, but I am not so sure of what the best solutions are that do not seriously diminish the public's right to know.

I am very reluctant to see any change in the public meeting law (HRS Ch. 92), unless all aspects of the law are thoroughly reviewed, so that not only is state business conducted efficiently, which is the alleged purpose of this bill, but the public interest is also enhanced. Overall, this bill diminishes the public's right to know.

Members of this committee are urged to constantly keep in mind the declaration of policy and intent of this law (92-1)

Also , let's be clear that the whole of Ch. 92 is a pain and a nuisance to government efficiency, but a valuable contribution to government effectiveness

2. Overview

A. There is in our society both nationally and locally a growing public distrust of institutions in general and government and politics in particular. This was well documented in a recent study published in the Washington Post in a series entitled "Why don't Americans Trust The Government?" This is the context that we are reviewing this bill today. At present there is a lot of lip service to "open government" in theory, but day to day practice falls far short.

B. There is a considerable problem in Hawaii with board members who find it very difficult to discuss matters at public meetings in an open, full and candid manner. They prefer closed door meetings. Too many meetings are characterized by perfunctory discussions which give the definite appearance that the matter has been thoroughly discussed beforehand.

C. There is in Hawaii an attitudinal problem to open government. The laws are on the books and the campaign rhetoric raises expectations, but on a daily basis, citizen's have to fight against bureaucratic barriers for open records and open meetings. There needs to be an executive order entitled "This will be an open government" from the Governor translating the law into daily practice.

D. As one court observed "There is rarely any purpose to a non-public pre-meeting conference except to conduct some part of the pre-decisional process behind closed doors". (Sacramento Newspaper Guild v. Sacramento County Board of Supervisors 263 Cal.App.2d 41, 50, 69 Cal Rptr 480 (1968))

3. Specific comments on the bill

Permitted interaction of members:

Section 2

(a) We object to this whole section. At the very least it should be limited to not more than one third of the total board members.

Information meetings can be given proper public notice.

(b) (1) Investigations. Preferably treat like an ad hoc committee with proper notice, or next best limit to one third of board

(b) (2) Agree.

(c) Selection of board's officers. We concede to this as it has always been discussed behind closed doors.

(d) These meetings should be public.

92-8 Emergency meetings. (b) We agree as long as the AG approves them and this is duly noted on the agenda and minutes.

4. Suggested additions:

A. Minutes of the previous meeting must be available to the public at the same time as an agenda is sent out for the next meeting, but not later than 30 days. This is especially important for boards that have meetings twice a month. A subsequent meeting should not be held without the minutes of all previous meetings being available.

B. Agenda notices must note that all material available to the board are available to the public for inspection and copying.

C. All material relating to the agenda must be available to the public at a cost not to exceed 10 cents a page. DLNR charges 50 cents a page.

D. Any member of the public may address the board on a matter coming under the jurisdiction of the board. The board may limit a person to time but there shall be a 3 minute minimum. This is presently done by the BOE.

E. Members of the board must confirm in writing at each meeting that they have conformed with the public meeting law.

F. All public meetings will be taped and will be available to the public.

5. Role of the Attorney General.

The Attorney General is responsible for the public meeting law. However they have a dual role in that the AG is principally the government's attorney and also represents the public interest. It is this latter role that concerns us as I have not seen much evidence over the last decade that the AG has defined that role and communicated it to the public so that public confidence is enhanced.

6. Recommendations

A. It is strongly recommend that the public meeting law be put under the Office of Information Practices (OIP). This law compliments the public record law (Ch. 92F) which constitutes the sunshine laws. OIP can represent the public interest and let the AG represent the government's interest.

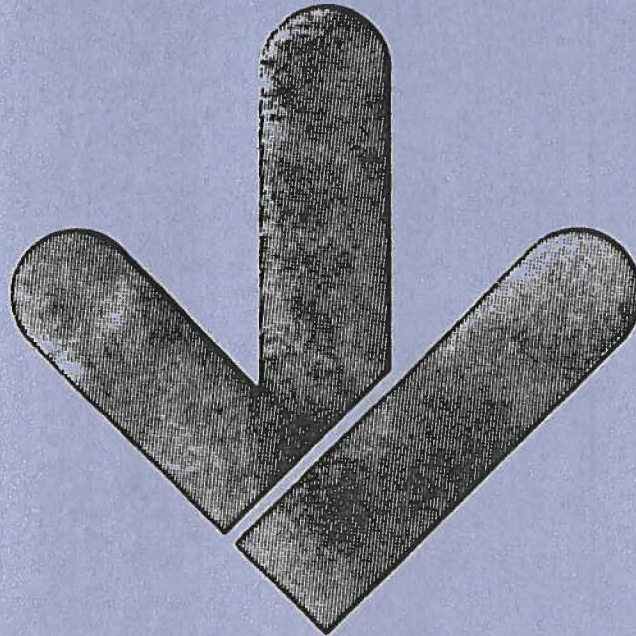
B. That the Attorney General ensure that education on the sunshine laws of new and continuing board members be upgraded so that the guidelines are available to board members, staff of agencies, Attorney General's staff and the public.

C. That a task force, under the umbrella of the Legislative Reference Bureau, be set up to make a comprehensive review of the public record law and make recommendations for the next legislative session. Reference is made to the Alm committee which reviewed the public record law.

If there is any further question please call me at 732-8778 or fax 732-8725.

A handwritten signature in black ink, consisting of a stylized 'D' followed by a horizontal line and a large, loopy flourish.

LATE



UNIVERSITY OF HAWAII

TESTIMONY

HB 1866 HD 1
RELATING TO PUBLIC AGENCY MEETINGS
(Sunshine Law)

Testimony Presented Before
Senate Judiciary Committee
March 20, 1996

by

Shunichi Kimura
Member, Board of Regents



**TESTIMONY PRESENTED BEFORE
SENATE JUDICIARY COMMITTEE
March 20, 1996**

by

Shunichi Kimura
Member, Board of Regents

H.B. 1866, HD1 RELATING TO PUBLIC AGENCY MEETINGS

Mr. Chairman and Members of the Committee:

Thank you for this opportunity to testify on House Bill No. 1866, HD1 relating to public agency meetings. My name is Shunichi Kimura and I am representing the Board of Regents of the University of Hawaii.

H.B. 1866, HD1 seeks to amend Chapter 92, Hawaii Revised Statutes, to increase the efficacy and efficiency of (public) boards without compromising the tenet that discussions, decisions and actions of governmental agencies should be conducted as openly as practicable. The Board of Regents supports the intent and purpose of this bill. We further respectfully request the Committee's assistance in addressing additional issues related to the University of Hawaii's Board of Regents. While we believe that some of the provisions in Section 1 might prove impractical and hamper the efficiency of the Board, we remain in support of the bill's intent.

If passed, H.B. 1866, HD1 would allow for meaningful interaction among board members. As currently interpreted, Chapter 92 prohibits two regents from visiting a community college campus together; it prohibits a new regent from seeking advice from a senior regent with expertise in certain disciplines; and currently prohibits two regents from even discussing the merits of this very bill. The Board of Regents, therefore, in testimony before this Committee, had requested that boards be granted the ability to access and gather information necessary to making sound decisions. We had asked that information-gathering processes be allowed under Chapter 92 and exempt from the "notice" provision of the law.

H.B. 1866, HD1 would also allow for discussions among board members relative to the selection of its officers. The Board appreciates this modification due to its importance to the organization and leadership of boards. This bill further proposes to delete a section of Chapter 92 that has been especially troublesome for the Board. This section contains the specific language that, when interpreted, has prohibited nearly any interaction between two or more regents outside of a formally "noticed" meeting. The Board, therefore, is especially supportive of this amendment for it will help boards function more efficiently through a more reasonable and practical approach to open government.

The Board of Regents had earlier testified in favor of another legislative measure that would have permitted the Board of Regents to meet in executive session to conduct preliminary discussions on matters involving security; program continuation; orientation/education sessions of the Board; and the presidential selection process. The Board of Regents wishes to request the Committee's consideration in addressing these additional issues.

Mr. Chairman, members of the Committee, the Board of Regents has been diligent in its adherence to the Sunshine Law. Our concern is with its interpretation. The Board understands that the Attorney General is, to an extent, compelled to render its narrow interpretation of the Sunshine Law given its current language. We therefore request the Legislature's assistance in modifying and clarifying Chapter 92 to assure that boards have the ability to serve their respective agencies and this State in a more efficient and practical manner.

Thank you very much for this opportunity to testify in support of H.B. 1866, HD1 and to request the Committee's assistance in addressing our additional concerns.



Convention Center Authority

1833 KALAKAUA AVENUE, SUITE 800 HONOLULU, HAWAII 96815
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TESTIMONY BY
ALAN HAYASHI, EXECUTIVE DIRECTOR
CONVENTION CENTER AUTHORITY
BEFORE THE SENATE COMMITTEE ON JUDICIARY
ON
HOUSE BILL NO. 1866, H.D.1
RELATING TO PUBLIC AGENCY MEETINGS

March 20, 1996

Mr. Chairman and members of the committee, my name is Alan Hayashi and I am the executive director of the Convention Center Authority. I am pleased to be able to testify on H.B. No. 1866, H.D. 1, Relating to Public Agency Meetings.

The Convention Center Authority supports the intent of this bill which will increase the efficacy and efficiency of boards which conduct the public's business pursuant to the Sunshine Law, part I of chapter 92, HRS, without compromising the basic tenet of that law that discussions, deliberations, decisions, and actions of governmental agencies should be conducted as openly as practicable.

The CCA defers to the testimony of the Attorney General's office, as this matter falls under their purview.

Thank you for this opportunity to testify.

LATE

Mikilua Poultry Farm Inc.

1612-A Kilohi Street
Honolulu, Hawaii 96819

Testimony

The Senate Committee on Judiciary
March 20, 1996

Re: HB 1866 HD 1 RELATING TO PUBLIC AGENCY MEETINGS

Chairperson Grawty and Members of the Committee on Judiciary:

I have been a Member-At-Large for the Board of Agriculture since July 1, 1989 and I support HB 1866, HD 1 which would improve the efforts of board members to contribute their practical knowledge and expertise to their board and the State of Hawaii.

I believe the proposed bill does not compromise the Sunshine Law and the public's right to information. To the contrary, this bill would improve the efficacy of the workings of State Boards especially during periods of new board appointments by a new administration. In the past 2 years, the Board of Agriculture experienced 8 new members of its 10 member board. The current law limits the ability of new members to receive orientation and briefing by experienced members of historical actions which are already public record. This is important when dealing with issues such as, agricultural emergency loans, milk control quotas and price regulations, permit conditions and regulation of domestic and non-domestic plants and animals to cite examples.

HB 1866 HD 1 would expedite the process to gather information from (1) farm site visits by some board members for agricultural loan applications prior to board meetings. It is very informative to hear from members from different counties who report on their observations which enhance the applicant's financial statements. Currently, if two or more board members are present at a farm visit, there is little ease for thorough discussion with the

Senate Committee on Judiciary
HB 1866 HD 1
March 20, 1996

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farmer because of the fear of violating the Sunshine Law. (2) The bill expedites the workings of adhoc committees composed of some board members, staff and farmers who meet prior to board meetings to make recommendations to the full board. This would have benefited our board in the past with farm housing issues on state ag park lots. (3) The bill permits board members to discuss administrative matters relating to the board with the head of the department. Members could assist the department with increased communication with its chairperson on precedent boards actions which are later handled administratively. Board member are good resources and should be allowed to share their knowledge when the opportunity arises rather than waiting for one or two months for the next board meeting.

Please give your favorable consideration to HB 1866 HD 1 which provides practical open discussion, deliberation, decision and action for efficient service to our State.

Respectfully yours,

Phyllis S. Shimabukuro-Geiser
Phyllis S. Shimabukuro-Geiser
Member-At-Large
Board of Agriculture

LATE

**TESTIMONY OF THE CHAIRPERSON
OF THE BOARD OF LAND AND NATURAL RESOURCES**

**on H.B. No. 1866 House Draft 1-Relating to Public
Agency Meetings**

BEFORE THE SENATE COMMITTEE ON JUDICIARY

MARCH 20, 1996

House Bill No. 1866 House Draft 1 increases the efficacy and efficiency of boards which conduct the public's business pursuant to the Sunshine Law.

Members of the board of land and natural resources have been confronted with problems or complaints on their particular island from their constituents. To address these problems or complaints, the members of the board, have had to adhere to the Sunshine Law. Under the current laws, any inspection of an area by two or more board members requires a public notice. This frustrates members and discourages them from interacting and gathering information that would help resolve a problem or complaint.

Members of the board are often faced with complex issues. They should have the opportunity to gather information, dialog amongst themselves and seek out other professionals. Any such informal gathering under this bill would be disclosed to the public.

The Department of Land and Natural Resources supports House Bill No. 1866 House Draft 1 with the amendments proposed by the Attorney General.