



# common cause

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TESTIMONY OF COMMON CAUSE/HAWAII ON HOUSE BILL  
126 AT PUBLIC HEARING OF SENATE JUDICIARY COMMITTEE  
25 MARCH 1975.

I am Marie Wiley, testifying on behalf of Common Cause/Hawaii.

After tallying the results of a written survey and an interview of candidates prior to the election last fall, Common Cause had great expectations for a strong open meetings law to replace the weak provisions of Hawaii Revised Statutes, Ch. 92, on Public Agency Meetings and Records. Most of the elected responses to the questionnaire favored an extensive open meetings law. Such a law, Common Cause felt, would include:

- 1) a limitation of emergency and executive meetings to specific subject matter
- 2) prior publication of an agenda stating time, place, and items to be considered
- 3) enforcement and penalty clauses which are necessary for effective legislation
- 4) realistic yet practical deadlines for publication of minutes of meetings held
- 5) equal application of the law to all governmental agencies except the judiciary

Although the Eighth Legislature has opened its committee doors and has granted greater public accessibility through its internal rules, it has not guaranteed that such openness be required of all subsequent legislative sessions. Since the internal rules of an agency can change, we need an open meetings law to insure accountability of all of the government - including the legislature - to the people.

H.B. 126 appears designed to answer this need, but it falls far short of our expectations and of our need. Weakened by vague clauses, this bill leaves too much to individual interpretation and pays mere lip service to the philosophy and spirit

4/25/75  
9:00 a.m.  
HB 126





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of open government. For example, sub-section (b) of 92-3 uses the words "where possible" to stipulate the circumstances under which an agenda shall be filed.

who decides what is possible?

Further, both sub-section (c) of 92-3 and section 92-4 contain vague statements which fail to provide any backbone to an open meetings law: section 92-3 states that the "secretary, clerk, or responsible person of each board shall make reasonable effort to notify interested persons and the news media of the meeting."

Who determines "reasonable effort"?

Section 92-4 states that emergency meetings may be held without the usual notice if "unforeseen circumstances" require such action. We suggest that such vague language be replaced by stipulation that emergency meetings concern only matters of immediate public health or safety.

We have heard the argument that "what is to constitute 'reasonableness' must be handled on a case to case basis," but we point out that suits to clarify vague terminology "case by case" cost time, effort, and money, which losses might be avoided by the use of definite provisions in the law.

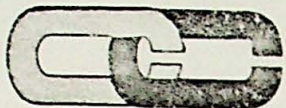
We make the following additional suggestions:

1) to Section 92-2, sub-section (3), which states that informal conversation of the should not constitute a meeting, we suggest the addition of a stipulation that informal conversation should not seek to circumvent the spirit of open government.

2) to Section 92-3 (b), which sets forth the requirements for the prepared agenda, we would like to add the requirement that time, date, and place be stipulated.

3) Again to Section 92-3 (b), which deals with notification for meetings, we suggest the change from seven days' notice to seventy-two hours. This will allow the legislature to adhere to the notification requirements of the law without undue strain. Since internal legislative rules require forty-eight hours' notice now, another twenty-





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four does not provide a drastic change or an unrealistic expectation.

Further, the present draft of H.B. 126 allows a change in the published agenda, allows an appointment of an emergency meeting, and allows the change from open to executive meeting upon the affirmative vote of 2/3 of members present. Such action would permit rule by the smallest minority if this minority happened to constitute the 2/3 of the membership present. We favor a return to the original conditions under which the three changes may be effected; that a 2/3 vote of the membership to which the board is entitled be required to change the agenda, initiate an emergency session, or change from open to executive meeting.

Section 92-6 of H.B. 126 we would like to see deleted. It essentially exempts the legislature from the provisions of the bill which come in conflict with the rules of the legislature. Moreover, it exempts the legislature from enforcement or penalty or sanction except as provided by its own rules. If the rules of a legislature provide no penalty or enforcement clauses, are legislators then exempt from those penalties which other governmental agencies must face for infraction of an open meetings law? Section 92-6 seems to suggest "yes."

Common Cause sympathizes greatly with the time restrictions under which a 60 day legislature operates, and we support the movement to lengthen the session. We do not, however, feel that time limitations should exempt the legislature from the various requirements of an open meetings law. With the increase in legislative staffing, and with the amendment to require 72 hour rather than 7 day notification of meetings, we feel that the legislature could easily conform to a statute applied equally to all but the judicial branch.

We see an immediate need for a required hard-and-fast legislative agenda. The legislature conducts business of serious concern to the public, but now the public



can encounter difficulty in finding time and place of decision making meetings. As a case in point, we cite the House Judiciary Committee decision making hearing on this bill before you, H.B. 126. The committee scheduled two decision making meetings during the week of 1 March at which time this bill was scheduled to come under discussion. At neither meeting did this take place, but it did take place at a later meeting of which no prior notification was given to interested parties. Suddenly a decision was made and changes were effected, or so it seems to the public.

As a final point - regarding the publication of minutes - we strongly suggest that sixty days after a meeting is far too lenient a requirement. By that time minutes are only marginally useful. In place of this stipulation, we suggest "within ten working days" as a fair schedule for the publication of minutes. This seems a realistic limitation.

To summarize our argument, we state that H.B. 126 in its present draft does not adequately fulfill the public's expectations for a minimal open meetings law.

- 1) it does not specifically limit executive and emergency meetings to prescribed areas of business.
- 2) it is plagued by vague and ambiguous language which allows too many individual and perhaps capricious interpretations, and opens the way for frequent and costly judicial clarifications.
- 3) it exempts the legislature from open meetings provisions which conflict with its internal rules.
- 4) it fails to set adequate standards for notification and agenda
- 5) it fails to set practical demands for the minutes of meetings.

We ask you then to give serious consideration to the changes we recommend.



STATE OF HAWAII



STATE ETHICS COMMISSION

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March 25, 1975

Honorable Donald S. Nishimura,  
Chairman, and Members of the Committee  
on Judiciary  
State Senate  
State Capitol  
Honolulu, Hawaii 96813

SUBJECT: H.B. NO. 126, H.D. 1, RELATING TO PUBLIC AGENCY  
MEETINGS AND RECORDS

The State Ethics Commission supports the passage of bills that aim to open up government processes to public scrutiny and participation. Thus, the Commission supports the passage of H.B. No. 126, H.D. 1.

The Commission previously recommended to a House Committee that certain amendments be made to H.B. 126 to preserve some of the confidentiality requirements of the ethics law. These proposed amendments were not incorporated in H.B. No. 126, H.D. 1.

The Commission recommends that an additional exception be allowed for executive meetings -- "to consider a matter which is required to be confidential under HRS ch. 84." (See attachment.) The exception would allow an executive meeting to be held by the Commission to consider a matter which is required to be confidential under the ethics law. The contemplated amendment would still require the Commission to reach a decision in public session. This can be accomplished by reference to the case or file number only.

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9:00 a.m.  
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Because of the confidentiality requirements of the ethics law, the Commission presently considers advisory opinions, disclosures, and charges in closed session. If the exception is not adopted, the Commission would no longer be able to preserve the confidentiality requirement of these proceedings.

The Commissioners believe that the advisory opinion proceeding, which is a voluntary proceeding, is an effective method of preventing ethics violations. In the Commission's opinion, many individuals may be reluctant to voluntarily request an advisory opinion if their request would not be confidential. The Commission, therefore, believes that the confidentiality requirement for this proceeding should be maintained.

The Commission also believes that the filing and review of disclosures of non-legislators should not be made public unless the disclosure requirement is also limited.

Finally, it is the Commission's opinion that charge proceedings should not be made completely public. The Commission would be in favor of making a charge proceeding public only after the Commission has filed a formal charge (Further Statement of Alleged Violation) against the employee. The Commission believes that investigations and preliminary hearings should be confidential.

For the reasons stated above, the Commission recommends that the exception proposed for the consideration of matters required to be confidential under the ethics law be incorporated in H.B. No. 126, H.D. 1.

Thank you for the opportunity to present this testimony.

STATE ETHICS COMMISSION



Gary S. Okabayashi  
Executive Director



PROPOSED COMMISSION AMENDMENTS TO H.B. 126, H.D. 1,  
RELATING TO PUBLIC AGENCY  
MEETINGS AND RECORDS

- I. On page 5 of H.B. 126, H.D. 1, add the following  
paragraph between subparagraphs (1) and (2):

"( ) To consider a matter which is required to  
be confidential under HRS Chapter 84."