

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Judiciary & Hawaiian Affairs

From: Carlotta Amerino, Director

Date: April 2, 2025, 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 1651, S.D. 1, H.D. 1
Relating to Public Meetings

Thank you for the opportunity to submit testimony on this bill, which would amend the deadlines under the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes (HRS), for a board to make its board packet available for public review in its office and to notify persons on its mailing list of the packet's availability. The Office of Information Practices (OIP) offers **comments** and a proposed amendment.

The Sunshine Law's board packet law at section 92-7.5, HRS, currently sets a deadline of two business days before a meeting (or when a board packet is distributed to members, if distribution to members is earlier) for a board to make its board packet available for public inspection in its office. A board must also notify persons on its mailing list that the packet is available for public inspection, but the required time by which a board must send that notification was disputed and was the subject of a recent Sunshine Law appeal to OIP. In its recent opinion on that appeal, OIP concluded that the notification requirement is not subject to the same two business day deadline set for making the packet available for inspection. OIP further concluded that no specific deadline applies to the notification requirement, but for a notification to be effective and thus meet the statutory notification

requirement it must be sent early enough to allow those receiving it to obtain and review a board packet prior to the meeting. Thus, sending the notification, for example, three minutes before the meeting, or after the meeting, would not be reasonable.

The H.D. 1 version of this bill would amend the board packet law to set both the notification deadline and the deadline for making the packet available for public inspection at two “full business days” before a meeting. OIP has no objection to this bill’s intent of ensuring that a board packet is made available for inspection, and the board’s mailing list is notified of it, before the scheduled meeting time two business days earlier. However, OIP has two concerns about the language in the HD1 version of the bill: (1) because it deletes the “no later than” language from the current law (at page 2, line 8), it implies that a board no longer has the option to distribute the board packet at an earlier date than the deadline, and (2) OIP anticipates further disputes over what constitutes a “full” business day.

OIP therefore recommends that this Committee (1) restore the “no later than” language from the current law at page 2, line 8, and (2) clarify in its committee report what is meant by a “full business day” – is it sufficient to make a board packet available and notify the public six hours before the close of business? Or must this be done at least eight hours before close of business, or by the time the relevant office opens for the day?

Thank you for considering OIP’s testimony.



Hawai'i State Lesbian, Gay, Bisexual, Transgender, Queer Plus Commission



Advocating for the Hawai'i LGBTQIA+ Community

Mailing Address: LGBTQ+ Commission, c/o The Department of Human Services,
P.O. Box 339, Honolulu, Hawai'i 96809-0339

Email: hawaiistatelgbtqpluscommission@gmail.com
Web: <https://humanservices.hawaii.gov/lgbtq-commission/>

March 30, 2025

House's Committee on Judiciary and Hawaiian Affairs
Hawai'i State Capitol
415 South Beretania Street
Honolulu, HI 96813

Hearing: Wednesday, April 2, 2025, at 2:00 PM

RE: Support for Senate Bill 1651 SD 2 HD 1

Aloha Chair Tarnas, Vice Chair Poepoe, and committee members,

I am writing in opposition for Senate Bill 1651, SD 2 HD 1 on behalf of the Hawai'i State Lesbian, Gay, Bisexual, Transgender, Queer Plus (LGBTQ+) Commission, which was established by the 2022 Hawai'i State Legislature with the following purpose:

“...to improve the State's interface with members of the lesbian, gay, bisexual, transgender, queer, plus community; identify the short- and long-range needs of its members; and ensure that there is an effective means of researching, planning, and advocating for the equity of this population in all aspects of state government.”

As the volunteer Commissioner responsible for overseeing the assembly and distribution of the Hawai'i State LGBTQ+ Commission's meeting Board Packet, I have a unique firsthand perspective on this issue.

The current statute treats all Boards and Commissions the same, but we are not all the same. While none of these entities serve identical purposes or have the same powers, we also do not have the same resources or access to update our websites. This statute should be amended to address these differences; however, this bill may not be the appropriate vehicle for that change. A taskforce may be needed to review the statute and propose amendments to address these inequities.

We support the current version of this bill since it has been amended to restore the original language requiring materials to be available “two full business days before a public meeting.” This additional 24-hour period is critical for volunteers to gather reports and data necessary to fully address agenda items.

Proudly established pursuant to Hawai'i Revised Statutes Chapter 369, as enacted through Act 41, Session Laws of Hawai'i 2022

HI State LGBTQ+ Commission Testimony in Opposition of SB 1651 SD 2 HD 1

Using the Hawai'i State LGBTQ+ Commission as an example, the public already has access to our Board Packet for more than just the two business days—it also includes Saturday and Sunday, since we meet on Mondays.

We encourage you to keep the current time frame found in the House Draft 1 version of SB 1651.

If you or any member of your staff has any questions regarding my testimony you can reach me at hawaiistatelgbtqpluscommission@gmail.com.

Mahalo nui loa for your time and consideration,

Michael Golojuch, Jr. (he/him)

Vice Chair

[Hawai'i State LGBTQ+ Commission](#)



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Rm. 118 • Honolulu, Hawai'i 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • (808) 204-2466 (VP)

April 2, 2025

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

Senate Bill 1651 SD1 HD1 – Relating to Public Meetings

The Disability and Communication Access Board (DCAB) supports Senate Bill 1651 SD1 HD1 – Relating to Public Hearings. This bill would require board packets to be posted two full business days before a public meeting. Requires boards to provide notice to persons requesting notification of meetings at the time the board packet is made available for public inspection. Effective 7/1/3000 (HD1).

Ensuring board packets are posted with sufficient time for review is crucial for fostering public engagement and informed participation. By extending the posting and notification period to two full business days, individuals would have more time to access and review materials, particularly those with accessibility needs or who are unable to attend in person.

Thank you for considering our position.

Respectfully submitted,

KIRBY L. SHAW
Executive Director

House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Mahina Poepoe, Vice Chair

RE: Testimony in support of S.B. 1651 S.D. 1 H.D. 1, Relating to Public Meetings

Hearing: April 2, 2025 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency. Thank you for the opportunity to submit testimony in **support** of S.B. 1651 S.D. 1 H.D. 1.

This measure is necessary to carry out the intent of the Legislature in passing H.B. 1598, enacted as Act 11 (2024). Act 11 was intended to afford the public and board members *more* time to review meeting materials than the then-existing 48-hour deadline, by giving them at least two full business days to review the materials. *E.g.*, H. Stand. Comm. Rep. No. 672-24 at 1 (bill intended to “give the general public and the government agencies ample time to review materials prior to the meeting in situations where the meeting may take place following a weekend or holiday”).

Despite this clear intent, the Office of Information Practices (OIP) has interpreted the law to provide the public and board members *less* time to review materials. OIP’s interpretation creates situations in which board members have only one business day to review board packet materials. OIP has also taken the position that there is no deadline for boards to notify the public about the availability of a board packet. That means a board could provide notice that its board packet is available for inspection *after* the meeting to which it pertains.¹ This bill addresses both of these concerns, by setting a clear deadline for board packet availability and notice.

Board packets, and notice that they are available, are critical to informed public participation in Sunshine Law meetings. Without board packets, members of the public would have only the bare details of an agenda to inform testimony in advance of a meeting – that would be like drafting public testimony based solely on a bill title, like “relating to public meetings,” and not the bill itself. S.B. 1651 S.D. 1 is thus necessary to promote *meaningful* public participation.

¹ In testimony, OIP has asserted that the notice must be sent “early enough to allow those receiving it to obtain and review a board packet prior to the meeting.” OIP, however, has not identified any standards to determine what constitutes “early enough.”



House Committee on Judiciary & Hawaiian Affairs
April 2, 2025
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To ensure compliance with the intent of this measure, if enacted, we respectfully suggest confirming with OIP in testimony, or in the report of this Committee, that “two full business days” means – *at the latest* – 7:45 a.m. on the second business day before a meeting.

Thank you again for the opportunity to testify in support of S.B. 1651 S.D. 1 H.D. 1.



April 2, 2025

Rep. David Tarnas
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: Senate Bill 1651, SD1, HD1

Chairman Tarnas and Committee Members:

We support this bill, which would clarify when public inspection board packets have to be distributed – to two full business days before the meeting.

This bill would close a loophole that allows board to give the public less time than the 48-hour requirement under state law.

Please pass this bill.

Thank you,

Stirling Morita
Hawaii Chapter, Society of Professional Journalists

SB-1651-HD-1

Submitted on: 4/2/2025 6:44:54 AM

Testimony for JHA on 4/2/2025 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Carolyn Weygan-Hildebrand	Individual	Oppose	Written Testimony Only

Comments:

Greetings!

We, as a collective of the public, board members, professional staff of board members, volunteer supporters, and media, are united in our shared goal of providing board members and the public with more time to review meeting materials.

We must respect volunteer board members and support staff's work and ethics. The perception that the current law is being exploited overlooks that emailing meeting packets at least two business days before a scheduled Tuesday 9 a.m. meeting allows board members and all in the distribution list a minimum of three days to review packets - Saturday, Sunday, and Monday.

This can be starkly contrasted with the old law of 48 hours. Under the old law, when a meeting was scheduled for Tuesday at 9 a.m., meeting packets were emailed to board members and all in the distribution list by 8:59 a.m. on Monday. This gave board members and the interested public at least two days to review materials.

As a professional who has served as a support staff member of three boards and other activities that require public participation, I can offer a unique perspective. These three boards had varying mandates, contexts, and levels of staff and technological resources, each presenting its own set of challenges.

What will help is more training and consultation on how to do our work best. There are over a hundred boards and commissions, according to the online website <https://boards.hawaii.gov/boards-directory/>. I will encourage a study, like a survey, on the matter of addressing public engagement, including the matter of meeting packets. As a professional staff member of three different boards already, I know the hard work involved in preparing meeting packets and, like other testifiers, can share more stories about the balancing act shaped by context, purpose, and resources.

I have worked with a staff of 5-7 who are full-time on board matters, a staff of one who is full-time on board matters, and 2 staff who are less than quarter-time each on board matters. I offer this as one lens for viewing differing contexts.

Mahalo for considering this late testimony.

PETER L. FRITZ
Attorney at Law
EMAIL: PLFLEGIS@FRITZHQ.COM

Committee on Judiciary and Hawaii Affairs
Representative David A. Tarnas, Chair
Representative. Mahina Poepoe, Vice Chair

RE: **Testimony in Support of SB1651 SD1HD1**
Hearing: April 3, 2025

Dear Chair, Vice Chair and Members of the Committee:

I am testifying **in support** of SB 1651 SD1HD1 **with the attached proposed amendments. I have attached a draft proposed bill with suggested amendments.** The amendments are intended to clarify when a board packet will be available two business days prior to a meeting and specify where the board packet can be inspected.

I drafted the original bill because I am on the list of persons who are to be notified of the availability of a board packet for several agencies. Many board packets that I received for a Tuesday board meeting were sent at 8 PM or later on Friday. This meant that Monday, one day before the meeting, would be the only time to examine the packet before the Tuesday meeting. This was not the intent of the statute.

I filed an appeal with the Office of Information Practices (OIP) regarding the fact that board packets were being received less than 2 business days prior to a meeting. I also said that the legislative intent had been that the period would be 48 hours prior to a meeting and that the change to 2 business days was because the 48 hours might include a weekend when an office was closed. The amendment to business days was never intended to shorten the previous 48-hour period available for inspection.

The appeal created a conflict for OIP. OIP has previously opined that for purposes of days for Chapter 92, HRS, a day is counted as a full day if it includes any part of the day, even if the action occurs at 11:59 PM or 1 minute before the beginning of the next day. This is best illustrated by an example. An agency is required to post a notice/agenda on the state calendar 6 days prior to a meeting. However, because of OIP's interpretation, an agency can post a notice on the state calendar 5 days plus 1 minute prior to the meeting and still satisfy the 6 day advance notice requirement. My appeal created a conflict between the legislative intent of the board packet statute and OIP's interpretation of a day for purposes of Chapter 92, HRS.

Knowing that it could take up to 2 years to have this appeal resolved, I drafted a bill to address this problem and submitted it to members of the legislature for consideration and introduction. While the bill was being considered for introduction, OIP contacted me and other parties to notify me that OIP was likely to opine that because notice of the availability of a board packet did not specify when the notice had to be sent, therefore there was no violation of § 92-7.5, HRS. Under this interpretation, a notice could be sent after a meeting or 5 minutes before

a meeting. In my opinion, this interpretation is contrary to the legislative intent and an independent factfinder might agree. I redrafted the bill to address this questionable position.

RATIONALE FOR CHANGES IN THE PROPOSED DRAFT BILL

(Additions noted in red highlighted in yellow and underlined; deletions highlighted in green, and strikethrough.

I. Availability of a Board Packet. Page 19-20

The proposed draft bill is amended to provide that board packets will be available “no later than 7:45 a.m. on the second business day.” This change makes it clear that a board packet may be inspected during normal business hours on the second day. It eliminates any interpretation about what a “full” business day is and makes it clear that this is different from the standard that OIP has applied to notices/agendas and effectively provides that board packets will be available 2 business days prior to the meeting.

The proposed new section would read:

"§92-7.5 Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, but no later than 7:45 a.m. on the second ~~two full~~ business days before the meeting, the board shall also make the board packet available for public inspection in the board's office; provided that nothing in this section shall require creation of a board packet; provided further that nothing in this section shall prohibit the distribution of public testimony to board members before the meeting.

II Content of the Notice of the Availability of a Board Packet Page 1 Line 24-30

The purpose of this amendment provides that the notice about the availability of a board packet will include the physical location where the board packet can be inspected as well as a link to the board packet on the website.

Some meeting notices have only a PO Box for the agency. Trying to find more information on the Internet reveals that the webpage for the agency only has a PO Box and no phone number. OIP has opined that § 92-7.5, HRS, does not require an agency to provide information in the notice about where the board packet can be inspected. This means that somebody must wander around a building where they think the board may be located and knock on doors until they find the office where they can inspect the board packet. I do not think this is a reasonable position.

The proposed amended bill also provides that the notice of the availability of the board packet will include a link to the board packet materials. All of the board packets that I have received have all been electronic and included in the email sent to board members. I cannot imagine

someone handwriting a board packet. A hand written document would have to be mailed, hand delivered or sent by facsimile to a board member. Since the documents in the board packets are created electronically and board packets are sent electronically to board members, it should not be a hardship to include a link to the directory holding the materials on the board's website.

These amendments, in my suggested proposed House Draft 2 would read as follows:

At the time the board packet is made available for public inspection in the board's office, the board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that includes a list of the documents that were compiled by the board and distributed to the board members before a meeting for use at that meeting, and the physical address where that the board packet is available for inspection in the board's office, link to the board packet on its website and shall provide reasonably prompt access to the board packet to any person upon request.

Thank you for the opportunity to testify.

1 A BILL FOR AN ACT

2 RELATING TO PUBLIC MEETINGS.

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

4 SECTION 1. The legislature finds that the required notice period for posting board
5 packets before public meetings is not being implemented as the legislature intended. In 2024,
6 the legislature amended the requirement to post board packets to no later than two business days
7 before a public meeting to give the public ample time to review the board packet.

8 However, the legislature finds that some agencies interpret the existing law to mean that a
9 board packet can be posted at any time during the second business day before the public meeting.
10 These agencies post board packets late in the evening, effectively reducing the time the public is
11 able to review the board packet. The legislature finds this practice contrary to the original intent
12 of the notice period.

13 Accordingly, the purpose of this Act is to:

14 (1) Close the legal loophole being exploited by requiring board packets to be posted
15 two full business days before a public meeting; and

16 (2) Require boards to provide notice to individuals requesting notification of
17 meetings when board packets are made available for public inspection.

18 SECTION 2. Section 92-7.5, Hawaii Revised Statutes, is amended to read as follows:

19 "**§92-7.5 Board packet; filing; public inspection; notice.** At the time the board packet
20 is distributed to the board members, but no later than **7:45 a.m. on the second** ~~two full~~ business
21 days before the meeting, the board shall also make the board packet available for public
22 inspection in the board's office; provided that nothing in this section shall require creation of a
23 board packet; provided further that nothing in this section shall prohibit the distribution of public
24 testimony to board members before the meeting. ~~[The]~~ At the time the board packet is made
25 available for public inspection in the board's office, the board shall provide notice to persons
26 requesting notification of meetings pursuant to section 92-7(e) that includes a list of the
27 documents that were compiled by the board and distributed to the board members before a
28 meeting for use at that meeting, ~~and~~ **the physical address where** ~~that~~ the board packet is available
29 for inspection ~~in the board's office,~~ **link to the board packet on its website** and shall provide
30 reasonably prompt access to the board packet to any person upon request. The board is not

1 required to mail board packets. As soon as practicable, the board shall accommodate requests
2 for electronic access to the board packet and shall post the board packet on its website.

3 For purposes of this section:

4 "Board packet" means documents that are compiled by the board and distributed to board
5 members before a meeting for use at that meeting, to the extent the documents are public under
6 chapter 92F; provided that this section shall not require disclosure of executive session minutes,
7 license applications, or other records for which the board cannot reasonably complete its
8 redaction of nonpublic information in the time available before the public inspection required by
9 this section.

10 "Business day" shall have the same meaning as in section 11-1."

11 SECTION 3. Statutory material to be repealed is bracketed and stricken. New statutory
12 material is underscored.

13 SECTION 4. This Act shall take effect on July 1, ~~2025~~ 3000.

14

1 **Report Title:**

2 Public Meetings; Board Packets; Notice

3 **Description:**

4 Requires board packets to be posted two full business days before a public meeting. Requires
5 boards to provide notice to persons requesting notification of meetings at the time the board
6 packet is made available for public inspection. Effective 7/1/3000. (HD1)

7 *The summary description of legislation appearing on this page is for informational purposes only and is*
8 *not legislation or evidence of legislative intent.*