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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,  
ON H.B. NO. 96, HD 1, A BILL FOR AN ACT  
RELATING TO THE UNIVERSITY OF HAWAII**

**HOUSE COMMITTEE ON FINANCE**

**MARCH 3, 2015**

Chair Luke and Members of the Committee:

Thank you for the opportunity to present comments in support of H.B. No. 96, HD 1.

The purpose of this bill is to establish an Office of the Ombuds at the University of Hawaii at Manoa. The proposed office appears to be based on other existing ombuds offices at colleges and universities across the United States that follow the “organizational ombuds” model of practice. As such, the proposed office would not adversely impact or infringe upon the services provided by my office.

University ombuds offices have proven to be effective in resolving disputes between and among the faculty, students, administration, and other stakeholders of the university community. I believe that formally establishing an ombuds office for the University of Hawaii that is properly structured, empowered, and resourced will be beneficial to all of the stakeholders. However, as the function of an organizational ombuds office is different from the function of a classical ombudsman office, I would like to note that I would not support an effort to incorporate this function into my office.

As you may know, the original form of the ombudsman institution, which the legislature based my office on, has evolved into three major forms of practice: the traditional or classical form, like my office; the advocate ombudsman form, such as the federally mandated long-term care ombudsman; and the organizational ombuds form, most often used in universities, private corporations, and the federal government. While the models for the different forms of practice share the general characteristics of independence, impartiality, and confidentiality, there is a significant difference in the way the different forms operate. These differences are reflected in the standards of practice adopted by the professional organizations that support practitioners of each of these forms of practice. Without going into detail on the differences, I can say that typically, an organizational ombuds does not investigate complaints but handles disputes within an organization informally, using techniques such as coaching, facilitation, and mediation. A classical ombudsman, on the other hand, conducts informal inquiries as well as formal investigations of the actions and

decisions of agencies and officials to compare those actions and decisions against the laws and rules and the principles of fair administrative practice. Hawaii's Office of the Ombudsman has been a model for other state and municipal ombudsman offices in the United States, and I hope you agree that it is important to maintain the office's existing structure and function.

While it is clear to me that much thought went into the drafting of this bill, I believe that the current draft could be amended to strengthen the independence of the proposed office and I am willing to work with the appropriate committees to accomplish this. This is not to say that the current draft of the bill is insufficient or requires major revision before this committee should consider passing it. In fact, I believe this bill definitely warrants further discussion and consideration throughout this legislative session. I hope you agree and that you pass this bill.

Thank you for your consideration of these comments.



# **UNIVERSITY OF HAWAII SYSTEM**

## **Legislative Testimony**

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Testimony Presented Before the  
House Committee on Finance  
Tuesday, March 3, 2015 at 1:30 pm

By  
Robert Bley-Vroman, Chancellor  
And  
Clifton Tanabe, JD  
Executive Assistant, Office of the Chancellor  
University of Hawai'i at Mānoa

### **HB 96 HD1 – RELATING TO THE UNIVERSITY OF HAWAII**

Chair Luke, Vice Chair Nishimoto, and members of the committee:

The University of Hawai'i supports the intent of this measure provided that its passage does not replace or adversely impact priorities as indicated in our BOR Approved Budget. This measure will establish an office of the ombudsman at the University of Hawai'i at Mānoa and appropriates funds for the operating cost of the office.

It should be noted that the Office of the Ombudsperson already exists on the UH Mānoa organizational chart. What is required is funding for the Ombudsperson position, rather than establishment of the unit.

During the two years that the UH Mānoa had funding for the Ombudsperson office, of the nearly 700 visitors per year, an estimated 300-350 were faculty and staff and roughly 350 were students.

A former ombuds officer at MIT estimates that the savings from prevented lawsuits and prevented formal grievances, along with value of the retention of valuable employees who would have left the University due to conflicts and hostile workplace environments, are at least equal to the costs of operating the ombuds office.

Researchers have discovered that active administrators and managers typically can spend between an average of 40 percent of their time dealing with workplace conflicts.

Thank you for your time and consideration,



## HAWAI'I EDUCATIONAL POLICY CENTER TESTIMONY

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Presented by Jim Shon, Director  
Hawai'i Educational Policy Center  
March 3, 2015

HOUSE COMMITTEE ON FINANCE  
Rep. Sylvia Luke, Chair  
Tuesday, March 3, 2015 1:30 Room 308 AGENDA 2

RE HB 96 HD1 RELATING TO THE UNIVERSITY OF HAWAI'I

HEPC SUPPORTS PUBLIC POLICY EFFORTS TO IMPROVE TRANSPARENCY, COMMUNICATION, AND THOUGHTFUL CONFLICT RESOLUTION. OMBUDSMAN OFFICES ARE USEFUL MECHANISMS FOR THESE GOALS.

The purpose of this bill is to re-establish and expand the duties of the UH Manoa Ombudsman Office. The last UH Ombudsman was Dr. Neal Millner. Such an office does not replace or undercut the efforts of existing administrators, but rather complements their efforts. Busy UH officials cannot possibly devote enough time to the typical functions of an Ombudsman.

An institutional Ombuds Office at UH will require a full-time director and full time staff. It could either be attached to the UH Manoa Chancellor's Office, or, with the possibilities of expansion to serve other campuses, the UH President's Office.

The bill lists several areas of appropriate activities:

"(c) Issues that may be brought to the attention of the office of the ombuds shall include the following:

- (1) Communicating the views and voices of students, faculty, and staff to decision makers;
- (2) Harassment or discrimination;
- (3) Violations of University of Hawai'i at Manoa policy;
- (4) Professional and organizational disputes;
- (5) Ethical dilemmas;
- (6) Cultural misunderstandings;
- (7) Conflicts of interest;
- (8) Student employment issues and disputes;
- (9) Assistance to administrators and regents in analyzing and framing difficult issues;
- (10) Disputes between the university and the community at large;
- (11) Health and safety concerns;

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<http://manoa.hawaii.edu/hepc/>

(12) Availability and transparency of public information regarding university policies, finances, decisions, and programs;

(13) Academic freedom; and

(14) Threats or retaliation."

HEPC finds that all of these have been or are areas of concern for various stakeholders. Of particular note are items *#1 Communicating the views and voices of students, faculty, and staff to decision makers; #8 Student employment issues and disputes; and #12 Availability and transparency of public information regarding university policies, finances, decisions, and programs*. These three particularly address ongoing frustrations and criticisms. HEPC is especially interested in the possibilities of item #1. Current technology now allows us to survey students and faculty through web based methods at little to no cost. Recently HEPC conducted an informal poll of student in this manner. (see <http://web41.its.hawaii.edu/manoa.hawaii.edu/hepc/wp-content/uploads/Analysis-of-HEPC-Student-Survey.pdf>)

### Background and Information on Similar Offices

Currently Hawai'i has a state level Ombudsman (<http://ombudsman.hawaii.gov/>), and a Long Term Care Ombudsman (<http://health.hawaii.gov/eoa/home/long-term-care-ombudsman-program/>). At the Federal level, several agencies have established this function, including the U.S. Department of Education, the Environmental Protection Agency, the Food and Drug Administration, and the United State Navy.

Since 1967 at least five state legislatures and one territorial legislature have established and continued to employ a full-time ombudsman. These states are Hawai'i, Nebraska, Alaska, Iowa and Arizona, and the U.S. territory of Puerto Rico. Many other states have ombudsmen appointed by, and located within the office of, the governor.

WHAT is an Ombudsman?

The job description for state offices of ombudsmen invariably involve the trouble-shooting function of investigating citizen complaints concerning specific acts by government agencies. For example, in Nebraska the ombudsman's duties are as follows:

"To receive complaints from the public and from persons working in government; to investigate; and where appropriate to negotiate remedial action with the agencies involved. A secondary duty is to answer questions and assist people with problems relating to government."

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## HAWAI'I'S LONG TERM CARE OMBUDSMAN PROGRAM

The Long-Term Care Ombudsman Program (LTCO) was established by federal and state statutes. The LTCO identifies, investigates, and resolves complaints that are made by, or on behalf of residents, and related to action, inaction, or decisions that may adversely affect the health, safety, welfare, and rights of residents of long term care facilities such as nursing homes, adult residential care homes, assisted living facilities, and other long-term care facilities.

## LONG-TERM CARE OMBUDSMAN PROGRAM SERVICES

If you need information or assistance in the following areas, please call the LTCO at 586-7268 (Oahu).

- *Investigate and resolve problems or complaints* about the care or services provided in a long term care facilities;
- Alternatives to nursing home placement;
- Options for paying for long term care;
- Choosing a nursing home;
- *Help* with initiating a power of attorney or guardianship;
- When can long term care residents refuse treatment;
- What rights nursing home residents have;
- *Information, referral, and consultation on any long term care issues.*

## WHAT CAN THE HAWAI'I STATE OMBUDSMAN DO?

\* *Independently and impartially investigate* your complaint against state and county agencies.

1. If our investigation reveals that the complaint is substantiated, we can attempt to resolve the problem with the agency.
2. determine whether a complaint is substantiated by comparing an agency's actions against what the law requires as well as the principles of sound, fair, and reasonable administrative practice. We do not have the power to compel or reverse administrative actions but instead try to resolve substantiated complaints through recommendations and reasoned persuasion.
3. In addition to the resolution of individual complaints, if the office find possible areas for improvement to make government work better, it will make recommendations for changes to the law, administrative rules, or operating procedures.

## WHAT IS THE OMBUDSMAN'S JURISDICTION?

By law, the Ombudsman is authorized to investigate the administrative actions of state and county agencies. We cannot investigate complaints about the governor and lieutenant governor and their staffs; the legislature and its staff; the judiciary and its staff; the various

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county mayors and councils; the federal government; a multistate governmental entity; or a nongovernmental entity. We also cannot investigate public employee grievances covered by collective bargaining agreements.

The Office of the Ombudsman is established by Chapter 96 of the Hawai'i Revised Statutes. To view the law, please click [chapter 96](#).

§96-8 Appropriate subjects for investigation. An appropriate subject for investigation is an administrative act of an agency which might be:

- (1) Contrary to law;
- (2) Unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law;
- (3) Based on a mistake of fact;
- (4) Based on improper or irrelevant grounds;
- (5) Unaccompanied by an adequate statement of reasons;
- (6) Performed in an inefficient manner; or
- (7) Otherwise erroneous.

The ombudsman may investigate to find an appropriate remedy. [L 1967, c 306, §9; HRS §96-8]

On final thought. Notwithstanding the desire to be politically correct, the normal term is Ombudsman, understood to mean any gender. *Ombuds* sounds very strange and probably would confuse the public.

Mahalo for your thoughtful consideration of this testimony.

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Here are links to Ombudsman organizations, Ombudsman offices, and other State Government agency sites.

#### OMBUDSMAN ORGANIZATIONS

USOA – The United States Ombudsman Association

The United States Ombudsman Association serves public sector ombudsman offices across the United States, and member offices in Canada, Central America, and other parts of the world.

[www.usombudsman.org](http://www.usombudsman.org)

IOI – International Ombudsman Institute

The International Ombudsman Institute is a worldwide organization of public sector ombudsman offices. The University of Alberta, Edmonton, Canada, and its Faculty of Law support the IOI. The web page has links to member offices from around the world and other references.

<http://www.theioi.org/>

ALASKA OFFICE OF THE OMBUDSMAN

[WWW.STATE.AK.US/LOCAL/AKPAGES/LEGISLATURE/OMBUD/HOME.HTM](http://WWW.STATE.AK.US/LOCAL/AKPAGES/LEGISLATURE/OMBUD/HOME.HTM)

ANCHORAGE (AK) OFFICE OF THE OMBUDSMAN

[HTTP://WWW.MUNI.ORG/DEPARTMENTS/ASSEMBLY/OMBUDSMAN/PAGES/DEFAULT.ASPX](http://WWW.MUNI.ORG/DEPARTMENTS/ASSEMBLY/OMBUDSMAN/PAGES/DEFAULT.ASPX)

ARIZONA OFFICE OF THE OMBUDSMAN / CITIZENS' AIDE

[HTTP://WWW.AZLEG.STATE.AZ.US/OMBUDSMAN/DEFAULT.HTM](http://WWW.AZLEG.STATE.AZ.US/OMBUDSMAN/DEFAULT.HTM)

DETROIT (MI) OFFICE OF THE OMBUDSMAN

[HTTP://WWW.DETROITMI.GOV/CITYCOUNCIL/LEGISLATIVEAGENCIES/OMBUDSMAN/TABID/2528/DEFAULT.ASPX](http://WWW.DETROITMI.GOV/CITYCOUNCIL/LEGISLATIVEAGENCIES/OMBUDSMAN/TABID/2528/DEFAULT.ASPX)

IOWA OFFICE OF CITIZEN'S AIDE/OMBUDSMAN

[HTTPS://WWW.LEGIS.IOWA.GOV/OMBUDSMAN/](https://WWW.LEGIS.IOWA.GOV/OMBUDSMAN/)

JOINT OFFICE OF THE OMBUDSMAN (DAYTON, OH)

[WWW.DAYTON-OMBUDSMAN.ORG](http://WWW.DAYTON-OMBUDSMAN.ORG)

KING COUNTY (WA) OFFICE OF CITIZEN COMPLAINTS

[WWW.METROKC.GOV/OMBUDS](http://WWW.METROKC.GOV/OMBUDS)

NEBRASKA OFFICE OF THE OMBUDSMAN (PUBLIC COUNSEL)

[HTTP://NEBRASKALEGISLATURE.GOV/DIVISIONS/OMBUD.PHP](http://NEBRASKALEGISLATURE.GOV/DIVISIONS/OMBUD.PHP)

PORTLAND (OR) OFFICE OF THE OMBUDSMAN

[HTTP://WWW.PORTLANDONLINE.COM/AUDITOR/INDEX.CFM?C=26647&](http://WWW.PORTLANDONLINE.COM/AUDITOR/INDEX.CFM?C=26647&)

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Date: March 3, 2015  
Time: 1:30 PM  
Place: Conference Room 308

To: House Committee on Finance  
Representative Sylvia Luke, Chair  
Representative Scott Y. Nishimoto, Vice Chair

Re: Support of HB 96 HD1 Relating to the University of Hawai'i

My name is Michelle Tigchelaar, and I am writing on behalf and as the President of the University of Hawai'i at Mānoa (UHM) Graduate Student Organization (GSO). The GSO represents the approximately 5,000 graduate students at the UH Mānoa campus. I am writing in strong support of HB 96 HD1, which establishes the office of the ombuds at UHM.

Graduate students are often in a vulnerable position, both as students and as employees of the university. When problems arise, it can be hard to identify a person they can turn to for advice or to file a complaint. An ombuds office is an independent, impartial, confidential space, where students, faculty, and staff can go with issues ranging from harrassment and discrimination to conflicts of interest and workplace disputes. The ombuds office can offer information and advice, and may facilitate communication and mediation. Universities that have an ombuds office often see a significant drop in the number of formal grievances and lawsuits filed against them. Having a well-functioning ombuds office can thus save the university a lot of money and time that is currently spent on conflict management.

GSO is concerned however about the longterm financial sustainability of the UHM office of the ombuds in the current version of HB 96 HD1. Until 2009, UHM had an ombuds office that handled 300-350 cases each year. It was then shut down, presumably for budgetary reasons. HB 96 HD1 only funds the UHM office of the ombuds through fiscal year 2016-2017, and does not stipulate how it would be funded thereafter. GSO would suggest HB 96 HD1 get amended to include funding beyond 2017.

Aside from the financial reservations, GSO strongly supports the opening of an office of the ombuds at UHM, and therefore HB 96 HD1. We thank you for the opportunity to testify.

Michelle Tigchelaar  
UH Mānoa Graduate Student Organization, President

Email: [mtigch@hawaii.edu](mailto:mtigch@hawaii.edu)  
Phone: (808) 724-1392

March 1, 2015

To: Rep. Sylvia Luke, Chair  
Rep. Scott Y. Nishimoto, Vice Chair  
FINANCE COMMITTEE

From: Amy Hubbard  
Professor and Graduate Chair, Department of Communicology  
Affiliate Faculty, Spark M. Matsunaga Institute for Peace & Conflict Resolution  
University of Hawai'i at Mānoa

Re: Testimony in Support of HB96, HD1 (HSCR413) for March 3, 2015 Hearing at 1:30PM  
*RELATING TO THE UNIVERSITY OF HAWAII*  
*Establishes the Office of the Ombuds at the University of Hawai'i at Mānoa. Appropriates funds to establish and operate the office.*

Thank you Representative Luke, Chair, and Vice Chair Nishimoto of the FINANCE COMMITTEE as well as other distinguished members of the committee for considering HB96, HD1 (HSCR413).

I support HB96, HD1 (HSCR413), a bill for an act that will appropriate funds to establish and operate the Office of the Ombuds at the University of Hawai'i. As a faculty member at the University of Hawai'i at Mānoa for 20 years, I believe that such an office is an essential service to the University community. However, I believe the current draft of the bill that amends the effective date to 10 years in the future (July 1, 2525) is problematic because we need such an office now.

Conflicts are ever present in the daily lives of students, faculty, administrators, and staff at the University of Hawai'i. This is an inevitable occurrence because we live interdependent lives and are humans who sometimes think and behave differently than others. However, the resources to manage conflicts at the University of Hawai'i are scattered and hidden among different pockets in the system and on our campus at Mānoa. If someone is not savvy to figure out which resource, if any, is available, then conflicts can quickly escalate to better known avenues of address (e.g., the court system).

For instance, last semester, I taught a senior-level undergraduate course in conflict management with an enrollment of 47 students. One of the assignments I gave to students was to find and report on a conflict management resource that is available to a large group of people throughout Oahu. Many students wanted to discover resources on campus, but they struggled and felt frustrated when they attempted to find and identify such resources. With a central Ombuds Office on our campus, students and the rest of our university community can readily and quickly access a more comprehensive resource that can address disputes and conflicts at the University or can direct people to other appropriate resources.

We did have an Ombuds Office on our campus for a couple of years and it quickly became the "go to" place to seek help in dealing with disputes and conflicts. I even served as a neutral third party to assist in some of the cases that the Ombuds Office handled. I also referred students and faculty to this office. Consistently, people reported back to me that it was very helpful to have a central place to begin to address issues of conflict in our University community and many were disappointed when the Office of Ombuds disappeared from our campus.

I am also an affiliate faculty member with the Matsunaga Institute for Peace and Conflict Resolution. They offer mediation services to the University community and I have served as a mediator for disputes within the University of Hawai'i system. I believe that an Ombuds office would be a good complement to the services already offered and can serve as a clearinghouse and a catalyst for positive and optimistic change at the University.

**I urge your support of HB96, HD1 (HSCR413) to establish and operate the Office of the Ombuds.**

Thank you for considering funding for the Office of the Ombuds, an important and proven program that addresses and showcases the importance of productive methods for managing disputes and conflicts at the University of Hawai'i.

Date: Tuesday, March 3, 2015

Time: 1:30 PM

Place: Conference Room 308

To: House Committee on Higher Education  
Representative Sylvia Luke, Chair  
Representative Scott Nishimoto, Vice Chair

Re: Support of HB 96 Relating to the University of Hawai'i

My name is Bret Polopolus-Meredith and I am a graduate student at the University of Hawai'i at Mānoa (UHM). I am writing in strong support of HB 96, which appropriates funds to establish and operate an office of the ombudsman at UHM.

UHM once had an ombuds office that addressed student and faculty grievances. That office mediated hundreds of cases each year. In 2009 however, another round of budget cuts gave the administration justification for closing the office. Today, undergraduate students and graduate students have no anonymous and independent avenue for raising grievances against the university, an administrator, a faculty member, or an advisor.

Thank you for the opportunity to testify.

Respectfully submitted,

Bret Polopolus-Meredith  
bp32@hawaii.edu  
808-304-9334

Testimony of Bruce E. Barnes on HB No. 96:  
Re: Establishment of Office of the Ombuds at University of Hawai'i  
Testimony to the House Finance Committee  
Hearing date: March 3, 2015.

I am testifying as an individual in favor of HB no. 96 (HDI)

I am an employee of the University of Hawai'i and my testimony acknowledges that the University of Hawai'i supports the intent of this measure provided that its passage does not replace or adversely impact priorities as indicated in the B.O.R approved budget. I am an Associate Professor in the Matsunaga Institute for Peace and Conflict Resolution, and serve at Graduate Chair of our Graduate Certificate in Conflict Resolution with over 25 years of experience teaching conflict resolution, serving as Board president for 10 years for the Mediation Centers of Hawai'i, conducting ADR training internationally with professional mediation and facilitation practices. I chaired the committee responsible for hiring the two ombuds officers who assisted Ombuds Neal Milner in operating of the UHM Ombuds office for the 2+ years of the existence of that office.

**Proposed operating budget for ombuds office :** We consulted Susan Park, former UHM Associate Ombuds officer who has just completed her first year at U.C. Davis as their head ombuds officer, launching their first ombuds program. Her advice based on her experience at UHM was for us to begin with one head ombuds at 140k plus an associate ombuds at 90k (APT?) plus one support staff at 50K totalling 280K (consider fringe benefits?) This budget assumes that the Ombuds office would serve only UH Mānoa. Obviously different staffing patterns and budget numbers would apply if an Ombuds office was to serve the whole University, all 10 campuses.

**Estimated Cost Savings by Using of Ombuds Office:** The UH's outside spending (on outside attorneys) - related to its overall budget of 1.4 billion- topped the spending rates of several mainland public university systems for which comparable numbers were available. The University spent 3.8 million dollars on legal fees, or about \$86,000 per month, in the period of September 2006 through April 2010. (Legal fees spike at UH-Star Advertiser 4/14/2011). We researched a comparable R-1 University, the U of California San Diego, which is approximately the same size as UHM but does have an ombuds office. Marit Besses, the chief ombuds officer there reported that approximately 90% of the "visitors" to their Ombuds office replied "YES" to an exit questionnaire item that asked the following: "Without the assistance of the ombuds office, would you have possibly sought legal assistance outside of the university for your complaint?" Thus, the presence of an effective ombuds serves to prevent a significant numbers of lawsuits and formal complaints from ever being filed at that University. By comparing numbers and estimates of savings from prevented lawsuits, Mary Rowe (M.I.T.) Ombuds officer has calculated that the savings from prevented lawsuits and prevented formal grievances, plus the value of the retention of employees who would have left the University due continuing unbearable hostile work environments – all these savings are at least equal to the cost of operating the Ombuds office we propose.

Possible Future Adjustments to HB 96: We in the ADR community suggest consideration of the following adjustments to this bill, in the near future for an Ombuds presence in the UH System:

- The UH system be considered for ombuds services being provided to all campuses.
- That the IOA ( International Ombuds) standards be closely reviewed to assess the viability of having the UH Ombuds office report to the President of the University, as per IOA standards.
- That the Statute providing for the UH Ombuds clearly make the distinction between the Organizational Ombuds model adopted by the UH Ombuds office and the Classic Model of Ombuds adopted by the State of Hawai'i Office of the Ombudsman, reflecting that these two offices have different charges, with some specific areas that they could work together on. However the Office of the State Ombuds could not absorb all the different categories of conflicts that are designated to be undertaken by the University of Hawai'i Ombuds as laid out in its Charter with the University of Hawai'i.



finance1-Kim

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From: mailinglist@capitol.hawaii.gov  
Sent: Sunday, March 01, 2015 4:30 PM  
To: FINTestimony  
Cc: denniscallan@yahoo.com  
Subject: Submitted testimony for HB96 on Mar 3, 2015 13:30PM

**HB96**

Submitted on: 3/1/2015

Testimony for FIN on Mar 3, 2015 13:30PM in Conference Room 308

Submitted By	Organization	Testifier Position	Present at Hearing
Dennis Callan	Individual	Oppose	No

Comments: I oppose this

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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