



GOV. MSG. NO. 1404

EXECUTIVE CHAMBERS
HONOLULU

DAVID Y. IGE
GOVERNOR

July 12, 2022

The Honorable Ronald D. Kouchi,
President
and Members of the Senate
Thirty-First State Legislature
State Capitol, Room 409
Honolulu, Hawai'i 96813

The Honorable Scott K. Saiki,
Speaker and Members of the
House of Representatives
Thirty-First State Legislature
State Capitol, Room 431
Honolulu, Hawai'i 96813

Dear President Kouchi, Speaker Saiki, and Members of the Legislature:

I am transmitting herewith SB3172 SD1 HD2 CD1, without my approval and with the statement of objections relating to the measure.

SB3172 SD1 HD2 CD1

RELATING TO PUBLIC AGENCY MEETINGS.

Sincerely,

DAVID Y. IGE
Governor, State of Hawai'i

EXECUTIVE CHAMBERS

HONOLULU

July 12, 2022

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 3172

Honorable Members
Thirty-First Legislature
State of Hawai'i

Pursuant to Section 16 of Article III of the Constitution of the State of Hawai'i, I am returning herewith, without my approval, Senate Bill No. 3172, entitled "A Bill for an Act Relating to Public Agency Meetings."

The purposes of this bill are to (1) require any electronic audio or visual recording of a board meeting to be maintained indefinitely as a public record on the board's website or an appropriate State or county website, even if written minutes of the meeting are posted; (2) require that the written minutes contain time stamps linked to the recording, if the meeting was recorded; and (3) repeal the option for boards to provide recordings with accompanying written summaries with time stamps in lieu of written minutes.

This bill is objectionable because it ultimately reduces public access to timely information regarding board actions by eliminating the incentive, under current law, for boards to record their meetings. Under current law, if a board records its meeting, it has the option to post the recording together with a document summarizing the meeting discussions and containing time-stamps for each discussion item, or the board can prepare and post written minutes. If the board records the meeting to aid in the preparation of written minutes, the board is not required to retain the recording once the written minutes are posted.

Recordings consume considerable data storage space and most boards share a limited amount of data storage space on their department's website. This bill would require a board to maintain the recordings indefinitely, make the recordings publicly available on the board's website, and would also require the board to prepare and post written minutes containing time stamps linked to the recordings. The new

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SENATE BILL NO. 3172
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requirements under this bill would discourage rather than incentivize boards to record their meetings. The unintended result of this bill would be delays in posting of written minutes, particularly for boards with a small staff or for boards with no staff and only volunteers.

Finally, this bill is an unfunded mandate as it will result in increased personnel costs to comply with the new requirements, increased data storage and website configuration expenses to store all the recordings indefinitely, and the potential for increased litigation expenses relating to the indefinite period of the recording retention requirement as well as accessibility claims under the Americans with Disabilities Act about the format of the recordings posted on State websites. These anticipated increased agency costs were not funded in this bill.

For the foregoing reasons, I am returning Senate Bill No. 3172 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read "David Y. Ige". The signature is fluid and cursive, with a large, sweeping flourish at the end.

DAVID Y. IGE
Governor of Hawai'i

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 legislature finds that opening the
2 governmental process to public scrutiny and participation is
3 necessary to protect the public's interests. Therefore, the
4 discussions, deliberations, decisions, and actions of
5 governmental agencies in the formation and conduct of public
6 policy should be conducted as openly as possible.

7 The legislature further finds that members of the public
8 who are interested but do not have the ability to attend
9 meetings, or the time or technology to listen to recordings of
10 the meetings, are unnecessarily prevented from exercising their
11 right to participate. In many cases, the written summaries that
12 accompany any recordings of meetings are incomplete and do not
13 meet the standards for written minutes of a meeting as required
14 in section 92-9, Hawaii Revised Statutes, nor were such written
15 summaries intended to be a substitute for the meeting minutes
16 required by law.

17 The purpose of this Act is to:



1 (1) Require that any electronic audio or visual recording
2 of a board meeting be maintained as a public record
3 regardless of whether the written minutes of the
4 meeting have been posted;

5 (2) Amend the information that must be included as part of
6 the written minutes of board meetings; and

7 (3) Repeal the option for boards to provide recorded
8 minutes accompanied by written summaries as an
9 alternative to written minutes of board meetings.

10 SECTION 2. Section 92-9, Hawaii Revised Statutes, is
11 amended by amending subsections (a) and (b) to read as follows:

12 "(a) The board shall keep written [~~or recorded~~] minutes of
13 all meetings. [~~Unless otherwise required by law, neither a full~~
14 ~~transcript nor a recording of the meeting is required, but the]~~
15 If an electronic audio or video recording of the meeting is made
16 by or on behalf of the board, the recording shall also be
17 maintained as a public record; provided that the recording shall
18 be posted regardless of whether the written minutes of the
19 meeting have been posted pursuant to subsection (b) after the
20 meeting; provided further that only one recording is required to
21 be kept. The written minutes shall give a true reflection of



1 the matters discussed at the meeting and the views of the
2 participants [~~Written minutes~~] and shall include, but need not
3 be limited to:

- 4 (1) The date, time, and place of the meeting;
- 5 (2) The members of the board recorded as either present or
6 absent;
- 7 (3) The substance of all matters proposed, discussed, or
8 decided; and a record, by individual member, of any
9 votes taken; [~~and~~]
- 10 (4) If an electronic audio or video recording of the
11 meeting is available, a link to the electronic audio
12 or video recording of the meeting, to be placed at the
13 beginning of the minutes;
- 14 (5) If an electronic audio or video recording of the
15 meeting is available, a time stamp indicating when in
16 the recording the board began discussion of each
17 agenda item, to be placed at the beginning of each
18 agenda item discussion in the minutes; and
- 19 [~~(4)~~] (6) Any other information that any member of the
20 board requests be included or reflected in the
21 minutes.



1 (b) The minutes shall be made available to the public by
2 posting on the board's website or, if the board does not have a
3 website, on an appropriate state or county website within forty
4 days after the meeting except where such disclosure would be
5 inconsistent with section 92-5; provided that minutes of
6 executive meetings may be withheld so long as their publication
7 would defeat the lawful purpose of the executive meeting, but no
8 longer. ~~[A written summary shall accompany any minutes that are~~
9 ~~posted in a digital or analog recording format and shall~~
10 ~~include:~~

11 ~~(1) The date, time, and place of the meeting;~~
12 ~~(2) The members of the board recorded as either present or~~
13 ~~absent, and the times when individual members entered~~
14 ~~or left the meeting;~~
15 ~~(3) A record, by individual member, of motions and votes~~
16 ~~made by the board; and~~
17 ~~(4) A time stamp or other reference indicating when in the~~
18 ~~recording the board began discussion of each agenda~~
19 ~~item and when motions and votes were made by the~~
20 ~~board.] "~~



1 SECTION 3. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 4. This Act shall take effect on October 1, 2022.



S.B. NO. 3172
S.D. 1
H.D. 2
C.D. 1

APPROVED this day of , 2022

GOVERNOR OF THE STATE OF HAWAII

THE SENATE OF THE STATE OF HAWAI'I

Date: May 3, 2022
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Thirty-First Legislature of the State of Hawai'i, Regular Session of 2022.


President of the Senate


Clerk of the Senate

SB No. 3172, SD 1, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: May 3, 2022
Honolulu, Hawaii

We hereby certify that the above-referenced Bill on this day passed Final Reading in the House of Representatives of the Thirty-First Legislature of the State of Hawaii, Regular Session of 2022.



Scott K. Saiki
Speaker
House of Representatives



Brian L. Takeshita
Chief Clerk
House of Representatives