

DAVID Y. IGE  
GOVERNOR

JOSH GREEN  
LT. GOVERNOR

**STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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P.O. BOX 541  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**Testimony of the Department of Commerce and Consumer Affairs**

**Before the  
House Committee on Judiciary & Hawaiian Affairs  
Monday, April 4, 2022  
2:00 p.m.  
Conference Room 325 and Videoconference**

**On the following measure:  
S.B. 3172, S.D. 1, H.D. 1, RELATING TO PUBLIC AGENCY MEETINGS**

**WRITTEN TESTIMONY ONLY**

Chair Nakashima and Members of the Committee:

My name is Ahlani Quiogue, and I am the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division. I apologize for not being able to attend this hearing. The Department offers comments on this bill.

The purposes of this bill are to: (1) require that any electronic audio or video recording of a board meeting be kept as a public record, but clarifies that only one version of any recording must be kept; and (2) remove the requirement that a written summary must accompany any minutes that are posted in a digital or analog recording format.

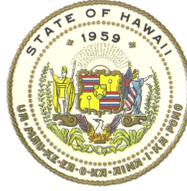
The Department's Professional and Vocational Licensing Division (PVL) has, on average, 25 board, committee, or commission publicly noticed meetings a month. The requirement to maintain, for an indefinite period of time, an audio or visual recording as

a public record for all meetings is unreasonable. PVL would have to maintain on average 300 or more recordings for public record annually. This would cause significant issues with storage on our server. Further, we have one employee who makes all updates to PVL's webpages. The posting and maintenance of such files has caused a significant increase in this team member's workload.

In general, PVL also finds that the recording of board, commission, or committee meetings have had a chilling effect on discussion amongst members. Many members have expressed their hesitancy in speaking freely or engaging in board discussion.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE  
GOVERNOR OF HAWAII



**STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**Testimony of  
SUZANNE CASE  
Chairperson**

**Before the House Committee on  
JUDICIARY & HAWAIIAN AFFAIRS**

**Monday, April 4, 2022  
2:00 PM**

**State Capitol, Conference Room 325 and Via Videoconference**

**In consideration of  
SENATE BILL 3172, SENATE DRAFT 1, HOUSE DRAFT 1  
RELATING TO PUBLIC AGENCY MEETINGS**

Senate Bill 3172, Senate Draft 1, House Draft 1 proposes to amend Section 92-9, Hawaii Revised Statutes (HRS), to clarify that written minutes are required as the true reflection of the matters discussed at the meeting and the views of the participants. The **Department of Land and Natural Resources (Department)** respectfully opposes this bill and offers the following comments and concerns.

The Department expresses its concern that requiring written of a meeting will significantly delay posting meeting results and will impair public transparency of government processes. The Department strongly suggests that a written summary plus a recording of the meeting be an allowable option in lieu of written minutes.

Section 92-9, HRS, was amended by Act 64, Session Laws of Hawaii 2017, to address the fact that many boards and commissions were not meeting the requirement to have minutes posted within 30 days and constituents were frustrated. The committee report of 2017 notes:

Your Committee finds that current law requires boards and commissions to keep written minutes of all meetings. Allowing boards and commissions the flexibility to make their minutes available through analog or digital means may reduce some expense for boards and commissions to comply with the law for public agency meetings. In addition, your Committee finds that allowing minutes to be kept by analog or digital means will enhance the public's ability to access board minutes.

The Board of Land and Natural Resources (Board) was among those boards and commissions that had trouble meeting the statutory deadlines, particularly due to its full agendas and frequent

**SUZANNE D. CASE**  
CHAIRPERSON  
BOARD OF LAND AND NATURAL RESOURCES  
COMMISSION ON WATER RESOURCE MANAGEMENT

**ROBERT K. MASUDA**  
FIRST DEPUTY

**M. KALEO MANUEL**  
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES  
BOATING AND OCEAN RECREATION  
BUREAU OF CONVEYANCES  
COMMISSION ON WATER RESOURCE MANAGEMENT  
CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
ENGINEERING  
FORESTRY AND WILDLIFE  
HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

and long meetings. The ability to post a written summary plus recordings of the meetings in lieu of minutes has allowed the Board to meet the statutory requirements for meetings without having to add additional staffing for the Board.

The Department notes that the summaries provide most of the information required in the minutes, and the recordings provide a true reflection of the matters discussed at the meeting and the view of the participants. The Department respectfully requests that this bill be held in committee.

Thank you for this opportunity to comment on this measure.

# 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: Cheryl Kakazu Park, Director

Date: April 4, 2022, 2:00 p.m.  
State Capitol, Conference Room 325 and Via Videoconference

Re: Testimony on S.B. No. 3172, S.D. 1, H.D. 1  
Relating to Public Agency Meetings

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Thank you for the opportunity to submit testimony on this bill, which would amend the Sunshine Law, part I of chapter 92, to (1) eliminate the option for boards to keep recorded minutes in the form of a recording accompanied by a written summary and instead require written minutes for every meeting, and (2) require a board that records its meeting for any reason to keep the recording indefinitely. The Office of Information Practices (**OIP**) **has concerns about the unintended consequences of this proposal and recommends an amendment** if this Committee wishes to simply return to the Sunshine Law's pre-2017 minutes requirement of full written minutes of every meeting.

## Current Law

For many years, the Sunshine Law required detailed written minutes for all meetings. But the law was changed in 2017 to allow boards to use recordings of its meetings with a written summary, in lieu of keeping detailed written minutes. Thus, **section 92-9, HRS, currently gives a board two separate options for how to keep its minutes: (1) it can keep traditional "written minutes," or (2) it can keep "recorded minutes" consisting of an audio or video recording of**

**the meeting and a written summary of key meeting information plus time stamps** for each agenda item, motion, and vote.

While there are common elements in written minutes and recorded minutes with written summaries (such as the meeting date, time, and place, members present or absent, and a record of votes), there are notable differences. **Written minutes** are required to include the “substance of all matters proposed, discussed, or decided” and any other information a member requests to be included in the minutes, which does not require a transcript, but does require at least a **detailed paraphrase of the discussion** that includes which members spoke and the gist of what they said. **Recorded minutes**, on the other hand, are not required to include this detailed paraphrase of the discussion because the recording shows exactly what occurred at the meeting, but the accompanying **written summary must instead have the time stamps** (which written minutes do not) pointing to where in the recording to find the discussion of each agenda item as well as each motion and vote.

**A board is not required to keep a recording of a meeting as a general rule** (with the exception of a recording of a remote online meeting, which must be posted online until replaced by the meeting minutes). Currently, some boards will use an oral or video recording of their meeting to help prepare the full written minutes and will subsequently delete or tape over that recording to take a new recording of another meeting. On the other hand, other boards prefer to use the recording of the meeting, especially long ones, as their recorded minutes so as to not have to paraphrase discussions and prepare detailed written minutes, but they must provide a written summary with timestamps showing where discussions and actions took place in the recording. Thus, a board that records its meeting can currently choose to either (1) use the recording to do traditional written minutes, in

which case it is under no obligation to keep or post the recording; or (2) use the recording as the basis for recorded minutes, in which case it must post the recording and the written summary online.

### **Proposed Changes**

**This bill would eliminate the option of “recorded minutes” accompanied by a written summary. Instead, if a board records the meeting, even if it was only a voice recording for temporary use in preparing written minutes with the intent to tape over or discard the recordings afterward, they would now be required to keep the recording indefinitely.** A board that does not record its meetings would be unaffected by this bill as it could continue to prepare written minutes and not make or keep recordings of its meetings.

**Because boards would now be required to post detailed written minutes of all meetings, this bill thus (1) removes the incentive for boards to record meetings, because they can no longer use the recording with a less detailed written summary as their “recorded minutes;” and (2) creates a potential disincentive for boards to record meetings, since doing so triggers a requirement to keep the recording indefinitely.** Indeed, if this Committee adopts the suggestion made by the Government Reform Committee to require a board **to include time stamps in its detailed written minutes whenever it has recorded a meeting, that extra work would provide yet another disincentive to record meetings.**

The bill poses **additional challenges**. If detailed written minutes are required and recorded minutes with a summary can no longer be used, **boards may have trouble timely posting their minutes**, as indicated by the testimony of the Board of Land and Natural Resources. Additionally, if boards are required to keep

**for an indefinite period** a recording of a meeting if one is made, some boards will need increased storage capacity to do so and **may prefer not to post the recordings online in any case since doing so would require addressing Americans with Disability Act (ADA) requirements, turning an analog tape recording into a digital file or resolving other technical challenges, and could create capacity issues on their servers**, as indicated by the Department of Commerce and Consumer Affairs. Although the State Archives has indicated in other bills that it has the capacity to retain all State board recordings, each agency would still have to comply with ADA requirements to post recordings on their own websites and will need technical support and sufficient capacity on their own servers to do so. Please keep in mind, too, that the **Sunshine Law also applies to county governments and boards of varying sizes that may have little or no administrative or technical support and will be charged by the State Archives to retain their recordings.**

If a recording is made and must be kept in addition to the written minutes, **boards may face increased legal challenges as to whether their minutes accurately reflect what occurred at the meeting, which could delay their ability to act, require additional meetings, or cast doubt on the finality of their actions for many years.** Because a suit to void any final action may be taken 90 days after the “final” action of the board, it could be years after the meeting that the accuracy of its minutes could be challenged in an attempt to void the board’s final action.

OIP notes that the purpose clause suggests this measure stems from a belief that recordings of minutes are too challenging for some members of the public to use, even with the availability of timestamps indicating when in the recording discussion began for each agenda item, vote, or motion. It is a policy question for

the Legislature to decide whether recorded minutes do not serve the public as well as traditional written minutes such that the Sunshine Law should be amended to return to traditional written minutes. **If the Legislature would simply like to return to traditional written minutes without also creating a potential disincentive for boards to record meetings, OIP has appended to its testimony language to amend subsections 92-9(a) and (b) to provide the same minutes format requirements that applied prior to the 2017 amendment, while retaining the requirement to post minutes online that was also added at that time. This amendment would eliminate the option of recorded minutes and require traditional written minutes for all meetings without also creating a new requirement to retain any recording made of the meeting, if that is the Committee's intent.**

**If, however, the Committee wants to require a board that records a meeting to keep the recording indefinitely, then additional amendments should be considered.** With respect to the bill's requirement that one version of a recording, if made, must be maintained, **this Committee should determine:**

- how long recordings must be kept;
- where to keep recordings – at the State Archives, even for county recordings?;
- whether an audio recording of a meeting must be kept, even if it was intended to be temporarily used by staff only for the purpose of creating written minutes;
- whether additional appropriations will be made to boards for increased costs of complying with the bill's new requirements; and

- whether the written minutes can be challenged years later as being inaccurate as compared to the recording, in an attempt to void the final action of the board.

Thank you for considering OIP's testimony and attached proposal.

(a) The board shall keep written [~~or recorded~~] minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes.

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

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

**LATE**

DAVID Y. IGE  
GOVERNOR



CURT T. OTAGURO  
COMPTROLLER  
  
AUDREY HIDANO  
DEPUTY COMPTROLLER

**STATE OF HAWAII**  
**DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES**  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY  
OF  
CURT T. OTAGURO, STATE COMPTROLLER  
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES  
TO THE  
COMMITTEE ON  
JUDICIARY AND HAWAIIAN AFFAIRS

APRIL 4, 2022, 2:00 P.M.  
CONFERENCE ROOM 325, STATE CAPITOL

S.B. 3172, S. D. 1, H. D. 1

RELATING TO PUBLIC AGENCY MEETINGS

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee, thank you for the opportunity to testify on S.B. 3172, S. D. 1, H. D. 1.

The Department of Accounting and General Services (DAGS) supports this bill and offers the following comments:

1. The State Comptroller has been given the Legislative authority per HRS §94-3 to determine the legal retention period for Executive Branch Public Records (including attached agencies and boards). As such, records of public boards have been determined to be of permanent value (General Retention Schedule 1.1), including recordings of board hearings.
2. We strongly suggest that all public boards be required to deposit a digital copy of all agendas, written testimony, recordings and minutes of public hearings with the Public Archives so that these important historical records may be preserved in the Hawaii State Digital Archives for the benefit of future generations. Relying upon commercial third

parties (such as website providers, YouTube, Facebook, etc.) to store these records is not in the best interests of the State, as these companies are not bound by the approved legal retention periods as authorized under HRS §94-3. Such materials deposited in the Digital Archives should be designated the official record copy, with boards encouraged to maintain a secondary, use copy of their own websites (when they exist) for as long as makes business sense to that board.

Thank you for the opportunity to submit testimony on this matter

THE CIVIL BEAT  
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701  
Honolulu, HI 96813

Office: (808) 531-4000  
Fax: (808) 380-3580  
info@civilbeatlawcenter.org

House Committee on Judiciary & Hawaiian Affairs  
Honorable Mark M. Nakashima, Chair  
Honorable Scot Z. Matayoshi, Vice Chair

**RE: Testimony Supporting S.B. 3172 S.D. 1 H.D. 1,  
Relating to Public Agency Meetings**  
Hearing: April 4, 2022 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony **supporting** S.B. 3172 S.D. 1 H.D. 1.

Audio or video recordings are helpful for the public, but are not a substitute for proper written minutes. The public should not be required to spend excessive time listening to recordings simply to understand what occurred at a public meeting.

In response to DCCA's concern that keeping recordings indefinitely would drain its resources, it appears that DCCA misread the bill. S.B. 3172 does not require a board to record meetings, only provide public access IF a recording is made. Also, S.B. 3172 does not require a board to keep a recording indefinitely. Retention of government records is a subject of policy set by the comptroller pursuant to Chapter 94 (e.g., HRS 94-3) or by the counties, not a question of public access under Chapter 92F. *See Molfino v. Yuen*, 134 Hawai'i 181, 186, 339 P.3d 679, 684 (2014) (public records law does not require that an agency retain government records).

We would ask that the Committee consider requiring that written minutes include a time stamp for discussions of each agenda item and motions and votes when a recording is made. Such an amendment would ensure that recordings can continue to be useful for the public without requiring individuals to watch hours of video for a single discussion.

Proposal: A new (5) to HRS § 92-9(a)

A time stamp or other reference, when the board has a recording of the meeting, indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

Thank you again for the opportunity to testify in **support** of S.B. 3172 S.D. 1 H.D. 1.

**Hawaii**  
*Holding Power Accountable*

Statement Before The  
**HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS**

Monday, April 4, 2022

2:00 PM

Conference Room 325 and Via Videoconference

in consideration of  
**SB 3172, SD1, HD1**  
**RELATING TO PUBLIC AGENCY MEETINGS.**

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the House Judiciary & Hawaiian Affairs Committee

Common Cause Hawaii supports SB 3172, SD1, HD1, which (1) requires that any electronic audio or video recording of a board meeting be kept as a public record, but clarifies that only one version of any recording must be kept and (2) removes the requirement that a written summary must accompany any minutes that are posted in a digital or analog recording format.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to reforming government and strengthening our representative democracy through promoting ethics, accountability, and transparency in our democratic form of government.

Common Cause Hawaii agrees that, for the public, having the ability to review recorded meetings, whether via audio recordings or visual recordings, is an important for transparency and accountability and good government. Complete minutes of meetings further enhances public transparency and accountability and good government. Thus, Common Cause Hawaii supports SB 3172, SD1, HD1, which requires that only one version of any electronic audio or visual recording of a board meeting must be maintained as public record and that written minutes must also be kept.

Common Cause Hawaii also suggests that all boards under part I of chapter 92, Hawaii Revised Statutes be required to livestream using audiovisual or audio technology their meetings. The recording of each meeting should be archived and made available to the public on the board's website or, if the board does not have a website, on an appropriate state or county website immediately after the meeting. The livestreaming of meetings will provide for more participation and greater governmental accountability and transparency.

Thank you for the opportunity to testify in support of SB 3172, SD1, HD1. If you have questions of me, please contact me at [sma@commoncause.org](mailto:sma@commoncause.org).

Very respectfully yours,

Sandy Ma  
Executive Director, Common Cause Hawaii



HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS  
Monday, April 4, 2022, 2 pm, State Capitol Room 325 & Videoconference  
SB 3172, SD1, HD1  
Relating to Public Agency Meetings

**TESTIMONY**

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Nakashima and Committee Members:

**The League of Women Voters of Hawaii supports SB 3172, SD1, HD1.** Lengthy recordings of disorganized, garbled conversations at board meetings are not an adequate substitute for properly written board meeting minutes.

Thank you for the opportunity to submit testimony.



**BOARD OF DIRECTORS**

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President

Jonathan Sudler  
Vice President

Kathy Whitmire  
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Paula Ress  
Secretary

Diane Harding  
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Winston Welch  
Executive Director

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Operations Director

Myles Ritchie  
Programs Director

Helping to keep Hawai'i  
clean, green, beautiful,  
livable and sustainable  
since 1912

April 3, 2022

RE: The Outdoor Circle Support of SB2172 SD1 HD1 Relating to Public Agency Meetings

Dear Committee Members,

The Outdoor Circle has for 110 years advocated for the protection, preservation and promotion of Hawaii's natural and scenic beauty. Our work often requires that we review meeting minutes and any laws and policies designed to better the public's ability to access government and meetings is most welcome.

The Outdoor Circle supports SB2172 SD1 HD1, which seems to correct previous versions of this bill and addresses the need for complete and accurate written meeting minutes for any meeting, whether or not accompanied by any video recordings and certainly not be replaced by such video recordings. The public does not have hours to wade through video testimony when searching for a topic of concern, and can much more easily search for complete written minutes of a meeting, perhaps supplemented by a video recording if made.

Thank you for this opportunity to testify.

Winston Welch  
Executive Director

**SB-3172-HD-1**

Submitted on: 4/2/2022 3:55:09 PM

Testimony for JHA on 4/4/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
J. David Beutel	Individual	Oppose	Written Testimony Only

Comments:

Dear Chair Nakashima, Vice Chair Matayoshi, and Judiciary & Hawaiian Affairs Committee Members,

I write in opposition to SB3172, including SD1 and HD1, because it would backfire, reducing the transparency of board meetings, and impose an undue burden on Neighborhood Boards. I am the current secretary of the Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board, testifying as an individual.

The description and stated purpose of all three versions fail to disclose this bill's primary action: eliminating the option that boards currently have, to keep **recorded** minutes, instead of **written** minutes. This is also an example of a problem with some written minutes: the paraphrasing fails to give a true reflection of the matter of the bill. Recorded minutes is the better option for some boards, and taking away that option will not improve transparency.

This bill does not clarify what must be written. HRS Section 92-9 already clearly distinguishes between the written **minutes**, and the written **summary** that it requires to accompany recorded minutes. It requires the written summary to include a timestamp on each agenda item, motion, and vote, among other records, which help to find them quickly in the recording. It does not require the written summary, but only the written minutes, to include "the substance of all matters proposed, discussed, or decided", which is naturally included in the recorded minutes.

In a perfect world, all boards could produce written minutes that conform to HRS 92-9, giving "a true reflection of the matters discussed at the meeting and the views of the participants." However, in the real world, frankly, some written minutes do not meet that high standard. Furthermore, some boards can only conform to HRS 92-9 by using recorded minutes, which is the better option for transparency and accuracy.

The video recording is the only option that everyone can agree is an unbiased, accurate, and complete record of the views expressed at the meeting. The more that is paraphrased into written minutes, the more contention there is over opposing views, with some participants perceiving their views as misrepresented. It would infringe upon the rights of those speakers, and not serve the public, to force the board to paraphrase all of the oral testimony, instead of having those who are interested hear the participants speak for themselves on the recording. It would be like requiring all of the written testimony to be paraphrased into the minutes, too. The public can access recorded minutes on a website by using the same technology that it uses for the written

materials (minutes, summaries, or testimony), and the written summary allows for fast access to items of interest in the recording.

This bill would eliminate an incentive for boards to record their meetings and publish those recordings on a website at all, let alone with a written summary. Will boards take on that extra expense, if they are required to produce and publish written minutes in any case, which could be contradicted by the video recording? So, this bill would curtail the public's timely access to the true record, and increase the contentious interpretation of that, instead.

Thank you for this opportunity to testify in opposition to SB3172, including SD1 and HD1.

Respectfully yours,  
J. David Beutel

**SB-3172-HD-1**

Submitted on: 4/3/2022 9:44:24 AM

Testimony for JHA on 4/4/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Lise Choucair	Individual	Support	Written Testimony Only

Comments:

Aloha,

I support this bill as a concerned citizen who lives in the Maunawili area.

The small touristic aircrafts are more than a nuisance but pollution to the air, my peace and quiet as I work from home and the risk of having an aircraft crash in our subdivision!

Please do something for the people you are assigned to protect!

mahalo

Lise Choucair

**SB-3172-HD-1**

Submitted on: 4/3/2022 12:53:35 PM

Testimony for JHA on 4/4/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Kathleen M Pahinui	Individual	Support	Written Testimony Only

Comments:

Aloha -

Please support SB 3172 in to protect good government in our state. This will assist with transparency and accuracy of records.

Mahalo,

Pathleen M. Pahinui

**SB-3172-HD-1**

Submitted on: 4/3/2022 1:03:52 PM

Testimony for JHA on 4/4/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Ryan Tam	Individual	Support	Written Testimony Only

Comments:

Dear Chair Nakashima, Vice-Chair Matayoshi, and Committee Members-

My name is Ryan Tam. I am Chair of the Ala Moana-Kakaako Neighborhood Board No. 11, but am testifying as an individual. I am in support of SB3172, SD1 HD1, and urge the committee to support it and have it take effect as soon as practicable.

The availability of on-demand recordings of audio-video teleconferences for neighborhood boards and other agency meetings has proven to be a very useful tool in making government much more accessible. This technology helps to provide a more accurate account of these meetings---including the nuances of deliberations and presentations which may not be captured in meeting minutes. Preserving these recordings along with meeting minutes can help the public better understand and influence government decisions while also enhancing historical records for posterity.

Please support SB3172, SD1 HD1.

Mahalo,

-Ryan Tam

TO: Members of the Committee on Judiciary & Hawaiian Affairs

FROM: Natalie Iwasa  
808-395-3233

HEARING: 2 p.m. Monday, April 4, 2022

SUBJECT: SB3172, SD1, HD1 Minutes for Public Meetings - **SUPPORT**

Aloha Chair Nakashima and Committee Members,

Thank you for holding this hearing and allowing the opportunity to provide testimony on SB3172, SD1, HD1, which would require that public agencies keep detailed minutes of their meetings as well as a video recording if one is made.

I absolutely support this bill. As noted in the bill, some people do not have access to technology to allow them to view video recordings. In addition, if someone is looking for one issue, it is much easier to use a search feature in a printed document.

Please amend this bill to allow it to become effective upon passage and vote **“yes.”**

TO THE HOUSE OF REPRESENTATIVES  
THE THIRTY-FIRST LEGISLATURE  
REGULAR SESSION OF 2022

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Rep. Mark M. Nakashima, Chair

Rep. Scot Z. Matayoshi, Vice Chair

NOTICE OF **HEARING SB 3172 SD1 HD1**

DATE: Monday, April 4, 2022

TIME: 2:00 PM

PLACE: VIA VIDEOCONFERENCE

Conference Room 325

State Capitol

415 South Beretania Street

POSITION: **STRONGLY SUPPORT SB 3172 SD1 HD1**

Aloha, Chair, Vice-Chair, and Committee Members.

I support the language and the intent of **SB 3172 SD1 HD1**, this bill promotes government transparency and retention of knowledge and institutional knowledge. Areas mentioned regarding government transparency, retention of knowledge, and institutional knowledge are instrumental toward good governance. When I was first appointed and then elected to the neighborhood board, I did not have an appreciation for those key areas, however, in retrospect being able to look at previous meetings aided in the understanding of community issues and concerns and ongoing issues. What I also learned is that typically, residents do not become upset for no reason; Typically, there was an antecedent(s) leading up to negative feelings or reactions toward the government.

Retaining and archiving recordings of all notes and video recordings will support the “hand-off “of information from one Board and Commission as new leaders and elected members steps back or a new person takes their place in the electoral process. Olelo video recordings audio and video recordings of Neighborhood Board meetings have been extremely useful for rebroadcast on the Olelo channel but importantly for the public to access the Neighborhood Commission website and review in detail what was said and by who during our previous board meetings.

During COVID working with my board members, we had the intent that it doesn’t matter how many people were present at the time of the meeting but that the information about relief programs and the role of government agencies. We would be broadcasted so that the community mine as well as others would benefit from the information being presented well beyond the date of the meeting.

Additionally, I would also support the inclusion of language in the current bill whereby, minutes include a timestamp for main agenda topics to include motions and votes. Please allow this bill to pass out of your committee reaffirming the resolve of democracy through a constitutional republic Thank you for taking the time in reading my testimony. I most strongly urge you to support and approve SB 3172 SD1 HD1.

Speaking in my personal capacity

Mahalo,

Ken Farm

## House Committee on Judiciary and Hawaiian Affairs

Rep. Mark M. Nakashima, Chair  
Rep. Scot Z. Matayoshi, Vice Chair  
**April 4, 2022 Public Hearing**  
**2:00 PM**

**LATE**

### **SENATE BILL 3172, SD1, HD1** **Relating to Public Agency Meetings** **Testimony in Full Support**

Aloha Chair Nakashima, Vice Chair Matayoshi and Committee Members,

Senate Bill 3172, SD1, HD1 constructively improves the Hawaii Sunshine Law, HRS 92, Section 9, relating to public agency transparency to fully inform the interested and affected public through complete meeting minutes together with any available meeting recording.

Senate Bill 3172 provides valuable clarifications given the advent of online teleconferencing and access to public meetings via digital platforms, from which audio and visual recordings of the meetings can be easily provided and digitally stored to ensure public transparency. The recent necessity to implement teleconferencing by way of electronic platforms has facilitated more efficient access to public agency meetings, with increased public participation. Further, public accessibility to digital recordings of public meetings *coupled* with complete meeting minutes demonstrates the essential emergence from the dark ages into full transparency with new technology.

#### **Complete Meeting Minutes**

Notably, the continued requirement for *complete* written meeting minutes remains as the necessary means for the public to quickly review the subjects, substance and outcomes of public agency, board and commission meetings:

***The written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants, and shall include but need not be limited to (1) The date, time and place of the meeting; (2) The members of the board recorded as either present or absent; (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and (4) Any other information that any member of the board requests be included or reflected in the minutes.***

(Emphasis added.)

#### **Digital Meeting Recordings**

The meeting recordings transparently compliment the complete meeting minutes by providing the necessary dimension and insights for the interested and affected public to fully comprehend the public issues and the outcomes of interest as presented, deliberated and decided upon at the respective public meetings:

***If an electronic audio or video recording of the meeting is made by or on behalf of the board, the recording shall also be kept as a public record; provided further that only one version of any recording shall be required to be kept.*** (Emphasis added.)

#### **Transparent Public Record**

HRS 92-9-(b) defines the public record for the purposes of agency, board and commission meetings as the complete minutes **posted on the agency's**(, board's or commission's) **website, or**, if the public agency(, board or commission) does not have a website, **on an appropriate state or county web site** within forty days after the meeting. Further, Attorney General Opinion 85-2 associated and noted with HRS 92-9 specifies that the agency(, board or commission) is responsible to make its minutes available to the public.\*

\* [https://www.capitol.hawaii.gov/hrscurrent/Vol02\\_Ch0046-0115/HRS0092F/HRS\\_0092F-0018.htm](https://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092F/HRS_0092F-0018.htm)

Today, public agencies have the website capabilities necessary to publicly display public meeting records, including complete written meeting minutes, digital meeting recordings and meeting materials, as directly related to their respective publicly-noticed meeting agendas, as well as those of any associated boards and commissions, for example:

State Department of Land and Natural Resources

<https://dlnr.hawaii.gov/meetings/>

[Department of Land and Natural Resources | BLNR Meetings 2021 \(hawaii.gov\)](#) minutes, video and audio recordings, materials

<https://dlnr.hawaii.gov/shpd/review-board-meetings-agendas/> minutes, audio recordings

[State Historic Preservation | Burial Council Meetings \(hawaii.gov\)](#) minutes, audio recordings

<https://dlnr.hawaii.gov/cwrm/newsevents/meetings/> minutes, video recordings, materials

Hawaii State Ethics Commission

<https://ethics.hawaii.gov/>

[https://ethics.hawaii.gov/category/commissionmeetings/comm\\_minutes/](https://ethics.hawaii.gov/category/commissionmeetings/comm_minutes/)

[https://ethics.hawaii.gov/category/commissionmeetings/comm\\_videos/](https://ethics.hawaii.gov/category/commissionmeetings/comm_videos/)

[https://ethics.hawaii.gov/category/commissionmeetings/cm\\_pub\\_mats/](https://ethics.hawaii.gov/category/commissionmeetings/cm_pub_mats/)

Honolulu Ethics Commission

<https://www.honolulu.gov/ethics>

<https://www.honolulu.gov/ethics/meetings.html>

<https://www.honolulu.gov/cms-corethics-menu/site-ethics-sitearticles/41237-2021-meeting-information.html>

Honolulu City Council

<https://www.honolulucitycouncil.org/>

<https://hnlidoc.ehawaii.gov/hnlidoc/>

<https://www.honolulu.gov/council-cal>

O'ahu Neighborhood Boards

<https://www.honolulu.gov/nco/boards.html> partial minutes, partial video recordings

<https://www.honolulu.gov/nco/commission.html> minutes

## Final Recommendations

While SB 3172, SD1 appropriately deleted the added layer and burden of creating a separate summary sheet for the meeting recording, the House Committee on Government Reform respectfully recommends in their Committee Report [HSCR1453-22](#) that the House Committee on Judiciary and Hawaiian Affairs consider the application of **recording time stamps** for each agenda subject section within the complete written meeting minutes. Clearly, this will assist all interested and affected members of the public, as well as the public agency, board or commission, to quickly reference presentations, discussions, deliberations and actions taken as transparently recorded during the respective public meetings.

In addition, the House Committee on Judiciary and Hawaiian Affairs is respectfully requested to correct the SB 3172 effective date to “upon approval.”

Michelle S. Matson, Testifying as an Individual Community Member

Affiliations:

DLNR Diamond Head Citizens Advisory Committee Member

Diamond Head/Kapahulu/St. Louis Heights Neighborhood Board Member

**LATE**

**SB-3172-HD-1**

Submitted on: 4/3/2022 8:36:37 PM

Testimony for JHA on 4/4/2022 2:00:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Testify</b>
Bill Hicks	Individual	Support	Written Testimony Only

Comments:

I am testifying in strong support of SB 3172. I am the Chairman of the Kailua Neighborhood Board, but am testifying as an individual.

SB 3172 would require that complete published minutes of public board meetings shall be maintained even when a video recording is available.

While I also support maintaining a video recording of a meeting where possible, a video recording by itself cannot function as a substitute for maintaining published minutes.

Published minutes must include essential information, including: (1) The date, time, and place of the meeting; (2) The members of the board recorded as either present or absent; (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and (4) Any other information that any member of the board requests be included or reflected in the minutes.

The posting of such published minutes allows interested citizens to quickly find relevant information regarding an issue.

A video recording by itself cannot substitute for complete minutes. Even when you attend and participate in a public board meeting and know that key testimony exists, it is often difficult to search the video recording and find that particular statement. A citizen who did not actually observe the meeting would have an overwhelming search challenge and be very hard pressed to find relevant information without the guidance of the published minutes.

SB 3172 is a straightforward common sense initiative to preserve existing practices for maintaining complete published minutes in the service of a public that deserves to know how decisions are made.

I urge the passage of SB 3172.