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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: February 14, 2023, 3:10 p.m.
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 1513
Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony on this bill, which would require a government board holding a closed executive meeting to report its discussion and any final action when the board reconvenes the public portion of the meeting, in a way that is consistent with the executive meeting's purpose. The Office of Information Practices (OIP) **supports** this measure, which OIP believes would promote public access without undermining boards' ability to use executive sessions when authorized to do so.

The Sunshine Law, part I of chapter 92, HRS, allows government boards to go into a closed executive session for a limited list of purposes, but the minutes of an executive session can only be withheld to the extent necessary to protect the purpose of the executive session. Even in the limited circumstances in which a board properly voted in executive session, such as to protect the privacy of a board employee whose termination was being considered, any action taken by the board must be disclosed in response to a request for minutes or other records. *E.g.*, OIP Opinion Letter Number F22-03 at 11-12. The Sunshine Law itself, though, does not require a board to summarize its discussions for the public, report actions

taken, or indeed say anything about what happened in its executive session when it reconvenes in public. OIP's understanding is that some boards do routinely summarize for the public what happened during an executive session, while many others do not.

Since this proposal allows the information reported in a board's summary of its executive session to be limited to preserve the purpose of the executive session, **OIP does not believe the proposal would undermine boards' ability to use executive sessions as authorized in the Sunshine Law, and it clearly serves the Sunshine Law's purpose of increasing public access** to the discussions, deliberations, decisions, and action of government boards. **The effect would be that rather than having to make a request for a redacted copy of the minutes to learn the gist of what happened in an executive session, the public would be informed as soon as the board reconvened in public session. OIP therefore supports** this proposal and recommends this Committee pass it out.

Thank you for considering OIP's testimony.



UNIVERSITY
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**Senate Committee on Government Operations
Tuesday, February 14, 2023 3:10 P.M.**

Testimony by:

Jamie Go, Interim Executive Administrator and Secretary of the Board of Regents

S.B. No. 1513 – RELATING TO PUBLIC AGENCY MEETINGS.

Chair McKelvey, Vice Chair Gabbard, and members of the Committee:

These comments on S.B. No. 1513 are offered in my capacity as the Interim Executive Administrator and Secretary of the Board of Regents.

The Board of Regents of the University of Hawai'i (Board) has not yet had the opportunity to discuss this measure. Discussion is expected to occur at the Board's next meeting on February 16, 2023.

Thank you for the opportunity to offer comments on S.B. No. 1513.

THE CIVIL BEAT
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Senate Committee on Government Operations
Honorable Angus L.K. McKelvey, Chair
Honorable Mike Gabbard, Vice Chair

RE: Testimony Commenting on S.B. 1513, Relating to Public Agency Meetings
Hearing: February 14, 2023 at 3:10 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 governmental transparency. Thank you for the opportunity to submit testimony **commenting on S.B. 1513**.

The bill proposes to require that a Sunshine Law board report on its closed-door meetings so long as the report is not inconsistent with the purpose of the executive session.

The Hawai`i Supreme Court has affirmed opinions of the Office of Information Practices holding that boards may not linger in executive session when not directly related to the specific purpose that permits the board to meet in secret. *Civil Beat Law Ctr. for the Public Interest v. City & County of Honolulu*, 144 Hawai`i 466, 479, 445 P.3d 47, 60 (2019) (“it should discuss the courses of action in public, and vote in public, unless to do otherwise would defeat the lawful purpose of having the executive meeting.”); *see also* OIP Op. No. 03-07 at 5 (“votes should only be held in executive meetings when to do otherwise would defeat the lawful purpose for holding an executive meeting in the first place.”). The only time that boards should be deliberating or voting behind closed doors is when it is consistent with the purpose of the executive session, and thus it would be rare that a board would have anything to report afterward without breaching that executive purpose.

The Law Center appreciates the intent of this bill. In our experience, however, the larger issue with closed sessions is boards’ aggressive interpretation of the executive purposes to maintain secrecy. It is less a matter of amending the law and more a matter of enforcing the existing law. **If this bill proceeds, the Law Center respectfully requests that the Committee clarify in the committee report that this amendment is intended to create an added requirement for boards, not to diminish any of its existing responsibilities.**

Thank you again for the opportunity to comment on S.B. 1513.