

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: March 14, 2024, 3:00 p.m.
State Capitol, Conference Room 225

Re: Testimony on H.B. No. 1598, H.D. 1
Relating to the Sunshine Law

Thank you for the opportunity to submit testimony on this bill, which would require board packets (if used) to be distributed at least two business days before the meeting rather than 48 hours before the meeting, but would make an exception for public testimony, allowing it to be distributed even within the two-business day period. The Office of Information Practices (OIP) offers comments.

The Sunshine Law's board packet provision currently requires a board packet, *i.e.* materials compiled and distributed to board members before a meeting for their use at the meeting, to be distributed at least 48 hours prior to the meeting. Board packets must also be made available to the public at that same time. Since written public testimony is among the materials compiled and distributed to board members for their use at a meeting, and it usually comes in within the last day or two before a meeting, boards have had to use work-arounds to avoid violating the 48-hour deadline, such as waiting to distribute the testimony until the meeting itself (so that it is not distributed **before** the meeting and thus is not technically a "board packet"). This measure would provide helpful clarity and

assist boards in distributing written public testimony to their members in time for those members to read it before the meeting.

The bill's change for other board packet materials to be distributed--from the current 48 hours to the proposed two business days--before the meeting will make it easier for both the general public and for government agencies to review materials prior to a meeting held a day or two after a weekend or holiday. However, OIP recognizes that an unintended consequence may be that board staff will not be able to compile other meeting materials in time to meet what will often be an earlier deadline than the present 48-hour standard, thus possibly impeding board members' ability to fully review and consider what could be extensive reports and analyses that were not included in a board packet before the meeting. OIP views the question of whether to make this change as a policy decision best made by the Legislature.

Thank you for considering OIP's testimony.



March 14, 2023

Angus McKelvey
Senate Government Operations
State Capitol
Honolulu, HI 96813

Re: House Bill 1598, HD 1

Chairman McKelvey and Committee Members:

We support this bill, which would clarify when public inspection board packets have to be distributed -- from 48 hours to two business days before the meeting.

This bill would clarify when packets would be available when weekends and public holidays come into play. For example, if a packet was posted Friday and the meeting was Monday, the time limit would give the public little if any time to see it.

The measure allows for distribution of public testimony to board members within two business days of the meeting.

Thank you for your time and attention,

Stirling Morita
President
Hawaii Pro Chapter SPJ



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

RE: Testimony in Support of H.B 1598 H.D. 1, Relating to the Sunshine Law
Hearing: March 14, 2024 at 3:00 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 strong support** of H.B. 1598 H.D. 1.

This measure amends HRS § 92-7.5 in two ways. First, it allows board members to receive, in advance of a meeting, public testimony submitted less than 48 hours before a board meeting. Second, it clarifies that board packets must be available to the public two *business* days before a meeting, instead of 48 hours.

H.B. 1598 H.D. 1 carves out “public testimony” to permit that category of documents to be sent to boards less than 48 hours before a meeting. This would clear up present confusion about whether testimony submitted less than 48 hours before a meeting can be given to board members in advance of the meeting. (The Office of Information Practices interprets existing law as prohibiting this.)

H.B. 1598 H.D. 1 also clarifies that the board packet must be made publicly available on a business day, not a weekend or holiday, before the meeting. Using “business days” ensures the deadline does not fall on day when board offices are not open.

Simply clarifying the original legislative intent, this measure ensures the public’s right to access materials critical to understanding board activity and be heard on those matters, while accounting for boards’ operational practicalities.

Thank you again for the opportunity to testify in support of H.B. 1598 H.D. 1.

