

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: January 30, 2024, 3:00 p.m.  
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 2517  
Relating to Public Agency Meetings

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Thank you for the opportunity to submit testimony on this bill, which would require a board (1) to establish, in an open meeting, a process requiring open deliberation and a timeline for hiring the head of a State agency, division, or subdivision; (2) to follow that process and timeline; and (3) to make any amendments to the process and timeline in an open meeting. The Office of Information Practices (OIP) offers **comments and suggested amendments**.

Under current law, a board is authorized to hold an executive session for the purpose of “hire, evaluation, dismissal, or discipline of an officer or employee . . . where consideration of matters affecting privacy will be involved.” Thus, a board generally has some legal justification for going into executive session to interview potential hires and discuss which candidate to hire. At the same time, when a board is hiring for a high-profile position, the public’s interest in and expectation of having information about at least a shortlist of candidates is a consideration for boards in deciding how to approach hiring for that position. Additionally, there is current litigation ongoing that seeks to test the limitations of a board’s ability to use a closed executive session for candidate interviews. **This proposal would thus**

**bring clarity** to an area that boards often find murky at present by making clear that **key question is whether the position is that of an agency or division head: if so, the entire hiring process must be done in open session.**

In the past, OIP has found that under the Uniform Information Practices Act (UIPA), exact salary information and performance evaluation information about certain prominent government employees is public based on a balancing test that weighs the public disclosure interest against the employees' reduced privacy interest as top government officials. On the other hand, the Hawaii Supreme Court has noted that the Sunshine Law's executive session purpose for discussion of personnel issues where privacy is involved does not incorporate the UIPA's balancing test.

This proposal would amend the Sunshine Law to bar a board from discussing hiring in executive session when the individual whose privacy is concerned has applied for a top job, and it would not require a balancing test as it would clearly recognize that an applicant to lead an agency, division, or subdivision does not have the same privacy expectation as an ordinary job applicant for a lower ranking position. **Note, however, that this Sunshine Law amendment may have an adverse effect upon recruitment as it is likely to make public the names of top candidates who are recommended for consideration by the board but not ultimately hired for the position (as opposed to applicants who are not selected or short-listed for further consideration by the board).** Nevertheless, this is a policy call for the Legislature to make.

**If this Committee proceeds with this measure, OIP suggests several amendments to clarify its intent.** First, since chapter 92 has a number of different parts, of which the Sunshine Law is only part I, OIP recommends clarification of whether the new provision is intended to be added to the Sunshine

Law (part I of chapter 92) or another part of chapter 92. **If the provision is intended to be part of the Sunshine Law, bill page 1, line 2, should be amended to read “. . . adding a new section to part I to be appropriately designated. . .”**

Second, OIP recommends this Committee clarify whether the new provision is only applicable to State agencies, or to the counties as well. **If it is intended to apply to the counties as well, OIP recommends that bill page 1, lines 5-6, be amended to read “. . . of the head of any agency or division of the State or its political subdivisions . . .”**

Finally, OIP recommends clarifying the open meeting requirement at bill page 1 lines 11-12 and 15-17. The current language stating that approval of the hiring process and timeline and deliberation and approval of any amendment to it be done “in the same manner as a public item” implies that these issues would not otherwise be “public items,” whereas discussion of a process for hiring, without consideration of individual candidates, is something that already could not be typically done in an executive session. **OIP recommends replacing “shall be in the same manner as a public item on the board’s agenda” with “shall not be done in an executive session.”**

Thank you for considering OIP’s testimony.



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**Senate Committee on Government Operations  
Tuesday, January 30, 2024 3:00 P.M.**

**Testimony by:**

**Yvonne Lau, Executive Administrator and Secretary of the Board of Regents**

**S.B. No. 2517 – RELATING TO PUBLIC AGENCY MEETINGS.**

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

These comments on S.B. No. 2517 are offered in my capacity as the 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, 2024.

Thank you for the opportunity to offer comments on S.B. No. 2517.

**PUBLIC FIRST**  
LAW CENTER

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

**RE: Comments on S.B. 2517, Relating to Public Agency Meetings**  
Hearing: January 30, 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 **with comments** on S.B. 2517. This bill is a good idea, but must go further to have any impact. S.B. 2517 would require boards and commissions to openly decide the selection process for hiring government officials and vote openly in the final selection. Nothing under the current Sunshine Law permits those stages of the hiring process to take place behind closed doors. In other words, this proposal would not change existing law.

Pending disputes about boards hiring government officials concern the *heart* of the hiring process – candidate interviews and board deliberations about the candidates. Some boards argue that interviews and deliberations about candidates for high-level government positions may occur in secret based on a Sunshine Law privacy exception. HRS § 92-5(a)(2). To provide clarity for boards and promote public oversight and participation, S.B. 2517 should be broadened to make the *entire* hiring process open.

The Hawai`i Supreme Court has made clear that personnel actions by boards, including hiring, should occur behind closed doors in very limited circumstances. *Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & County of Honolulu*, 144 Hawai`i 466, 478-480, 445 P.3d 47, 58-61 (2019). But legislative clarity will promote compliance.

The employees at issue here are *agency heads*. Individuals hired by boards and commissions include police and fire chiefs, the University of Hawai`i President, and a multitude of Executive Directors. These officials yield significant government power. They are entrusted with keeping our community safe, vibrant, and productive. And they control significant amounts of taxpayer funds. Without doubt, the public has a legitimate interest in understanding how and why boards and commissions make these high-level hiring decisions.



The selection of Maui Police Chief John Pelletier proves that openness works in this context. The Maui Police Commission hired Chief Pelletier in a completely open process. Final candidates were interviewed openly. The Commission deliberated in public, voted to hire Mr. Pelletier, and shared why he was selected. *See, e.g.,* <https://mauiNOW.com/2021/10/05/breaking-john-pelletier-selected-as-final-candidate-for-maui-police-chief/>; <https://www.mauinews.com/news/local-news/2021/11/commission-confirms-pelletier-as-new-police-chief/>.

Excessive secrecy contributes to the public's distrust of government and erodes the public's right to participate in important government processes. Openness builds trust and encourages participation. If this Committee is inclined to move S.B. 2517 forward, Public First respectfully asks that it be amended to extend the openness requirement to cover the entire hiring process for high-level government officials.

Thank you again for the opportunity to testify with comments on S.B. 2517.