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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 27, 2024, 10:00 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 2637, S.D. 1
Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony on this bill, which would require at least six days between the board meeting at which a permitted interaction group set up by a Sunshine Law board makes its report, and the subsequent meeting at which the full board discusses and potentially takes action on the report; and would allow a board to “expedite” deliberation concerning legislative testimony. The Office of Information Practices (OIP) **supports the intent of this measure to clarify how many days must elapse between the two meetings and offers comments and a proposed amendment regarding the legislative testimony provision.**

Subsection 92-2.5(b)(1) of the Sunshine Law allows a government board to set up what is commonly called a permitted interaction group, or PIG, of less than a quorum of members to work together outside the context of a board meeting to investigate an issue. This provision for an “**investigatory**” PIG **requires three separate board meetings:** the first to assign the PIG members and set the scope of their investigation and authority, the second to hear their report without

discussion (at which point the PIG is effectively dissolved), and the third for the full board to discuss and perhaps take action on the issue the PIG investigated.

Since an investigatory PIG can conduct its work without public meetings or testimony, OIP has long interpreted this provision to require a board to provide sufficient time between the second and third meetings for the public to digest the PIG's report and then testify on it before the full board's discussion and possible action on the issue at the next meeting. Otherwise, the statutory requirement for a third meeting would be pointless and the public could be fully shut out of the process. **While a full six days as proposed by this bill may not always be necessary to allow the public to respond to a PIG's report, a meeting on the same day or the day after the report is made (as boards have occasionally proposed) is clearly insufficient time to allow the public to respond. This proposal would set a clear standard for how much time must elapse** between the meeting where an investigatory PIG reports and the meeting at which the board discusses and acts on the report, so as to prevent efforts to circumvent the current law's requirement.

The S.D. 1 version of this bill added to the investigatory PIG section another proviso that a "board may expedite deliberations regarding testimony for legislative hearings, but not other board business[.]" **OIP believes this proviso in S.D. 1 would have limited applicability, since boards forming a group to work on legislative testimony more commonly use subsection 92-2.5(b)(2), HRS, which allows a different type of "negotiating" PIG to present, discuss, or negotiate a position previously adopted by the board and does not require a minimum of three meetings.** Thus, unlike the investigatory PIG created by subsection 92-2.5(b)(1), HRS, which S.D. 1 seeks to amend, a negotiating PIG can

more quickly act to submit legislative testimony if the board has previously adopted a position on the issue.

This is why OIP recommends the negotiating PIG authorized by subsection 92-2.5(b)(2) as one of the most useful permitted interactions for legislative work, as explained in more detail in OIP's Quick Review: Sunshine Law Options to Address State Legislative Issues and Measures, available at <https://oip.hawaii.gov/wp-content/uploads/2022/08/QR-SL-Legislative-Options-2022.pdf>. While a board could still opt to create an investigatory PIG under subsection 92-2.5(b)(1), HRS, to look into and make recommendations on a legislative matter during the interim, boards are less likely to do this during the session because an investigatory PIG is not well suited to quickly responding to legislative work, and using a negotiating PIG or a different type of permitted interaction is thus generally a better option.

Because boards have the existing option of using a different type of PIG – the negotiating PIG – that is better suited to doing legislative work, **OIP believes the proposed clause in S.D. 1 is unnecessary to allow a board to “expedite deliberations regarding testimony for legislative hearings” for an investigatory PIG. However, if this Committee wishes to keep it in the bill,** OIP recommends an amendment to clarify what is meant by expediting deliberations. Specifically, **OIP recommends replacing the phrase “may expedite deliberations” on bill page 3 lines 10-11 with the following (filling in the blank as the Committee prefers): “may shorten the six calendar day period to ___ calendar days.”**

Thank you for considering OIP's testimony and proposed amendment.



Senate Committee on Judiciary
Chair Karl Rhoads, Vice Chair Mike Gabbard

Tuesday, February 27, 2024, 10 am Public Hearing in Conference Room 016 on
SB 2686, RELATING TO PUBLIC AGENCY MEETINGS

TESTIMONY

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

Chair Rhoads, Vice Chair Gabbard, and Committee Members:

The League of Women Voters of Hawaii prefers SB2637 to SB2637, SD1.

We are comfortable with and support SB2637. After consulting the Public First Law Center about Sec. 92-2.5(h), we oppose the SD1 amendments.

Thank you for the opportunity to submit testimony.



Senate Committee on Judiciary
Honorable Karl Rhoads, Chair
Honorable Mike Gabbard, Vice Chair

RE: Comments on S.B. 2637 S.D. 1, Relating to Public Agency Meetings
Hearing: February 27, 2024 at 10:00 a.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. 2637 S.D. 1.

We strongly support the intent and original form of this measure. S.B. 2637 simply amends HRS § 92-2.5 to clarify that six calendar days is the minimum time required between the public disclosure of a permitted interaction group's (PIG) report and any subsequent board action on the report. This closes a potential avenue for misuse and promotes the original intent behind PIGs.

To use a PIG, existing law requires boards hold three different meetings: (1) to identify the members and scope of the investigative group; (2) for the group to report its findings; and (3) to discuss and act on the report. HRS § 92-2.5. Section 92-2.5 does not, however, specify the minimum time period between the second and third meetings. This ambiguity allows boards to circumvent the legislative intent that the public (and the board) have an opportunity to digest the report before any substantive discussion by scheduling back-to-back second and third meetings. Last year, for example, the City Council attempted to schedule a meeting for a group to report back on its investigation into real property tax bills with a "separate" meeting scheduled 30 minutes later to discuss and act on the report.

S.B. 2637, as originally drafted, would clarify that the third meeting must occur at least 6 days after meeting second meeting. This codifies an interpretation of the law that the Office of Information Practices has already adopted and ensures the public's right to understand what happened during these closed-door investigations *before* a board discusses and acts on the information.

We oppose the language added by Senate Draft 1, which provides, "the board may expedite deliberations regarding testimony for legislative hearings, but not other board business." This addition is unnecessary. HRS § 92-2.5(h) already provides boards with the ability to prepare legislative testimony on a more expedited basis.

Thank you again for the opportunity to testify with comments on S.B. 2637 S.D. 1.

