



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

RE: Comments on S.B. 381, Relating to Public Agency Meetings
Hearing: January 28, 2025 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. 381. This bill represents a good idea, but we have concerns about its limited scope. It would require boards and commissions to openly decide the hiring process and timeline for high-level government officials and vote openly. As written, however, this measure does not address the *heart* of the hiring process – candidate interviews and board deliberations about the candidates.

To promote public oversight and participation, S.B. 381 should be broadened to make the *entire* hiring process open. Although this is largely what existing law requires – *see, e.g., Civil Beat Law Ctr. for the Pub. Interest, Inc. v. City & Cty. of Honolulu* (CBLC), 144 Hawai`i 466, 478-480, 445 P.3d 47, 58-61 (2019) – clarifying this law in statute may promote compliance.

Under existing law, board discussions about “personnel matters” – which includes hiring high-level government employees – “should presumptively be discussed in an open meeting.” *Id.* Openness is the default rule. There is a limited exception under HRS § 92-5(a)(2) for personnel discussions that “directly relate” to information that is subject to constitutional privacy protection – like a medical condition. *Id.* Government boards must engage in a case-by-case analysis of whether the information at issue is subject to constitutional protection and consider a variety of factors, including the nature of the position, level of fiscal discretion, existence of other laws requiring disclosure of the information, and the degree to which information is already public. *Id.*

Despite the plain language of HRS § 92-5(a)(2) and Hawai`i Supreme Court guidance, many boards flip presumption of openness on its head – conducting substantive portions, if not all, of the hiring process for high-level government employees behind closed doors. Our lawsuit challenging this widespread practice against two boards



remains pending. The Board of Regents' recent secretive hiring of the next University of Hawai'i President confirms that the practice continues.

The high-level employees at issue here are agency heads. They include Police and Fire Chiefs, the UH President, and a multitude of Executive Directors. These officials exercise 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 their high-level hiring decisions.

Maui Police Chief John Pelletier is proof that openness works in this context. He was hired in late 2021 by the Maui Police Commission in a completely open process—final candidates were interviewed openly and at the same time. (Candidates were all asked the same questions and rotated who answered first.) 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. 381 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. 381.