



House Committee on Judiciary & Hawaiian Affairs
Honorable David A. Tarnas, Chair
Honorable Mahina Poepoe, Vice Chair

RE: Testimony in Opposition to H.B. 403, Relating to the Sunshine Law
Hearing: February 25, 2025 at 2:00 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 opposition to** H.B. 403. This bill proposes to amend chapter 92 to allow entire boards to attend entirely secret meetings.

The Kauai County Council's concern appears to be based on a misunderstanding of existing law. In introducing Resolution 2025-10, Chair Rapozo noted, "This proposal is to basically ask the Legislature to consider amending the Sunshine Law to allow us the opportunities to attend community meetings by more than two (2) of us." 12/18/24 Minutes at 23 (available at: <https://www.kauai.gov/files/assets/public/v/1/county-council/documents/council-meetings/minutes/2024-12-18-council-meeting-minutes.pdf>). Chair Rapozo explained further, "If we have a Kilauea Neighborhood Association meeting . . . I show up, and two (2) Members are there, I cannot go. I need to turn around and go home. I cannot even sit in there and listen, which is ridiculous."

HRS § 92-2.5(e) addresses the specific scenario raised by Chair Rapozo. It permits "[t]wo or more members of a board, but less than the number of members that would constitute a quorum for the board" to attend meetings organized by other entities, like community associations. For Kauai County Council, where four members constitutes a quorum, up to *three* members may attend these types of meetings.

But, more importantly, if the *full Council* wanted to attend a community association meeting, it could. That is precisely what HRS § 92-3.1(b) authorizes, subject to reasonable guardrails to ensure that the public remains informed.

Whatever legitimate concerns the Council has are addressed by the special exception that the Legislature granted county councils in 2016 through HRS § 92-3.1(b). It is not apparent that the Council has made any effort to use that exception. *See* HRS § 92-3.1(d) (requiring annual report regarding effectiveness of the council exception). Before the Legislature effectively guts the heart of the Sunshine Law across the State, the Council



should see whether it can address its concerns by using the special exception that already exists for county councils.

Moreover, the Council's proposal goes far further than needed to address any purported concern. This bill would create a gaping exception to the Sunshine Law for all government boards – not just county councils – to attend secret meetings with no accountability.

Public First has successfully worked with county councils in the past when concerns arose about specific issues. *E.g.*, 2022 Haw. Sess. Laws Act 264. We would welcome the opportunity to work with the Kauai County Council during the interim. But this bill is unsupportable.

Thank you again for the opportunity to testify in opposition to H.B. 403.