

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Intergovernmental and Military Affairs

From: Paul T. Tsukiyama, Director

Date: February 1, 2008, 1:15 p.m.  
State Capitol, Room 229

Re: Testimony on H.B. 1512, H.D. 1  
Relating to Information

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Thank you for the opportunity to submit testimony on H.B. 1512, H.D. 1.

The Office of Information Practices ("OIP") takes no position on this bill, which would add a new section to the Sunshine Law, part I of chapter 92, HRS. OIP is testifying to (1) suggest technical amendments to clarify the bill and prevent conflicts with other parts of the Sunshine Law, and (2) comment on the policy change this bill represents.

One technical problem throughout the bill is the use of the term "neighborhood board." The neighborhood boards are a creation of the City and County of Honolulu, not of the State, and the bill in its current form states that it applies specifically to the neighborhood boards of the City and County of Honolulu. Given that the Sunshine Law has statewide applicability, it is unclear how this term should be interpreted with respect to boards created by the other counties. OIP suggests that this committee either define neighborhood board in a manner that does not refer to a particular county or use a more generally applicable term.



Another technical problem is the apparent distinction the bill draws between deliberation and discussion of an issue: the bill (page 2, line 21 to page 3, line 4) would permit neighborhood board members to participate in discussions about a board issue at an outside meeting so long as they didn't deliberate on the issue. Deliberation and discussion are interchangeable terms under the Sunshine Law so it is by no means clear what sort of discussion would constitute deliberation under this section. If the intent is to allow discussion but not an agreement among board members as to how to vote, OIP recommends using the same qualifier found in section 92-2.5(a), HRS: "as long as no commitment to vote is made or sought."

Although it is not a technical problem, OIP wants to be sure the committee is aware that the provision allowing board members to receive public testimony without having a quorum of members present would not allow those members to ask questions of testifiers or otherwise discuss the testimony presented, because the provision specifically excludes discussion from what is permitted.

Finally, OIP wishes to comment on how this bill would change current law. Presently, a board may hear public input on items not on the agenda, but cannot discuss those items at that same meeting (unless the items are of minor significance and may be added by vote.) The board members may be frustrated by their inability to engage substantively with members of the public about the issues they have raised, and this bill would allow them to discuss the issues at the time they are raised. On the other hand, other members of the public who might be interested in the same issue would not have prior notice that the issue would be discussed and thus would miss out on the opportunity to be part of that discussion unless they happened to be at the meeting. Although notice would be required before a decision was made, the board members' minds might be made up on the issue after the initial discussion. Under the current law, a member of the public can be confident



that an issue of major significance will not be discussed at a board's meeting unless it is on the filed agenda.

With regard to the section allowing board members to attend informational briefings and presentations, board members currently may attend such briefings and presentations but are limited in their ability to discuss board business – discrete proposals that are before the board or likely to come before the board – at those events. Neighborhood board members (as well as other board members) are sometimes frustrated by this limitation when they wish to attend, for instance, a community meeting or developer presentation regarding a project up for approval that the neighborhood board will be voting on. This bill would allow board members to participate in discussions at such events, and thus alleviate such frustrations. However, members of the public who are interested in the issue might be frustrated when they came to the neighborhood board meeting where a project was listed on the agenda, only to learn that the board members had already discussed the issue at length at a developer presentation and had, in essence, made their minds up. It should be noted that the community meetings or presentations would not have to be open to the general public; this bill would require only that the events not be organized specifically for the neighborhood board members. Thus, the neighborhood board members' increased flexibility would come at the expense of the public's access to their discussions of neighborhood board business.

Thank you for the opportunity to testify.





NEIGHBORHOOD COMMISSION

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February 1, 2008

The Honorable Lorraine R. Inouye  
Chair, Senate Committee on Intergovernmental and Military Affairs  
Hawaii State Capitol, Room 201  
415 South Beretania Street  
Honolulu, HI 96813

Re: H.B. No. 1512, H.D.1, Relating to public meetings

Dear Chair Inouye and Committee Members:

I am writing this letter as the Chair of the Neighborhood Commission (Commission). The Commission respectfully requests that the Senate Committee on Intergovernmental and Military Affairs (IGM) pass H.B. No. 1512, H.D. 1.

H.B. No. 1512, H.D. 1 passed the House and was referred to IGM and the Senate Committee on Judiciary and Labor.

Neighborhood Boards are subject to the sunshine law, a "one-size fits all" law, which has prevented Boards from carrying out their mission.

The House Committee on Judiciary heard several bills and passed out H.B. 128, which proposed to amend the sunshine law for all boards and commissions; and H.B. No. 1512, which provided exemptions for Neighborhood Boards.

The following Neighborhood Boards and/or members from Neighborhood Boards testified in favor of these bills: Boards 2, 5, 7, 9, 10, 11, 13, 14, 16, 18, 25, 31, and 35. The Office of Information and Practices had only technical comments on the issue of exemptions for Neighborhood Boards.

H.B. No. 1512, H.D. 1, authorizes public input at noticed neighborhood board meetings and discussion but not decision-making on those issues; allows two or more neighborhood board members, but less than a quorum, to attend meetings relating to board business; and clarifies neighborhood board actions on unanticipated events. All of these provisions would allow citizens to be heard by the Boards and allow Boards to provide better advice to agencies and elected officials.

I understand that elected officials, including Senators Nishihara, Chun-Oakland, Sakamoto, Taniguchi and Ihara have personally observed the negative effect of the sunshine law on the boards and signed bills that would have provided exemptions from the sunshine law for Boards. For example under the current law, Boards cannot even receive reports from public safety officials and elected officials or discuss issues if a quorum is not present; Boards must either wait for a quorum or dismiss all attendees without hearing any reports or discussing any issues because there can be no "meeting" if a quorum is not present.



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The Neighborhood board system was created in 1972 by the Honolulu City Charter Commission as a means for individual citizens to be heard effectively and to provide a better sense of connectedness between citizens and our government. Neighborhood Boards provide advice to government agencies and elected officials. The changes proposed in H.B. No. 1512, H.D. 1 are necessary for the Boards to carry out this mission.

Thank you for the opportunity to testify on this bill.

Aloha,

A handwritten signature in black ink, appearing to read "Grant Tanimoto", written in a cursive style.

Grant Tanimoto

C: Joan Manke



Karen H. Iwamoto  
3443 Hardesty Street  
Honolulu, Hawaii 96816

Testimony on HB 1512, HD1, "Relating to Public Meetings"  
Committee on Intergovernmental and Military Affairs Hearing  
February 1, 2008, 1:15 P.M.  
Room 229

Chair Inouye, Vice Chair Tsutsui, and Members of the Committee:

I am Karen Iwamoto, former Chair of the City & County of Honolulu's Neighborhood Commission for 8 years (1995-2003), testifying in support of HB 1512, HD1, "Relating to Public Meetings." I apologize that I could not be present to testify in person today; however, I am required to be at another scheduled meeting today.

As the Chair of the Neighborhood Commission, I have the first-hand opportunity to see the major stumbling block to the Commission's and the Neighborhood Boards' effectiveness—the unclear provisions of the Sunshine Law. While the Sunshine Law was enacted to provide transparency in the deliberations of elected officials (including the Neighborhood Boards), it has prevented meaningful interaction and discussions among board members and members of the public. The provisions in HB 1512, HD1 are a major step forward.

My very first case of Neighborhood Board members charged with violation of the Sunshine Law was a contested case hearing of the People Against Chinatown Eviction against members of a neighborhood board. On the face of the charges, it seemed that this case brought out unintended consequences of a good law stretched to the extreme. The genesis of this case was the invitation of a Councilmember to members of that neighborhood board to attend a community meeting to discuss a proposed neighborhood park. The board members were not aware that the entire board was invited nor did they know who from their board would attend. Subsequently, more than 2 members of the board showed up, thus causing the charge of violating the Sunshine Law. This case was never really resolved.

Throughout my years as Chair of the Neighborhood Commission, there was much uncertainty over the interpretation of the law, thus causing the lack of action for fear of breaking the law. It is long overdue that the Legislature address the problems encountered in administering the Sunshine Law. The much needed permitted interaction group section will help to clarify when members may meet on a particular issue.

I would suggest that if it is not specifically addressed in this bill, that board members be permitted to attend community functions, such as health fairs or school fundraisers where they have an opportunity to interact with the community to hear their concerns, without fear of violating the Sunshine Law.

Thank you for the opportunity to express my views on this bill.



February 1, 2008

**LATE TESTIMONY**

Testimony on HB 1512, HD1: Relating to Public Meetings

Madam Chairman and Members of the Committee:

Madam Chairman and members of the Committee. My name is Richard Oshiro and I am the Chairman of the Waipahu Neighborhood Board No. 22.

The Waipahu Neighborhood Board supports amendments to the Sunshine Law that will remove current restrictions that inhibit efficient functioning of the Neighborhood Boards. The Neighborhood Boards are advisory in nature and comprised of citizen volunteers. Current interpretation of the Sunshine Law provisions have had the effect of reducing citizen participation in government, therefore, the Waipahu Neighborhood Board supports amendments that will remove those restrictions. HB 1512, HD1 helps to address our concerns by removing those restrictions.

The neighborhood board system on Oahu is a grassroots mechanism that encourages citizen participation in government. Citizen volunteers run for office and advise the city administration on issues important to their communities. Transportation, crime, community development are a few of the many issues which come before the neighborhood boards for review and discussion.

The purpose of the Sunshine Law is to open up the inner workings of government so that its deliberations will be open and transparent to the public. Over the years, the interpretation of this law has evolved to the point today that it has had the opposite effect of stifling the work of our neighborhood boards and and if left unamended, will discourage citizen participation in government in the long term.

Your favorable consideration and passage of HB 1512, HD1 is appreciated. Thank you for the opportunity to share our views.

Respectfully submitted,



Richard Oshiro, Chairman  
Waipahu Neighborhood Board No. 22

