

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary
From: Paul T. Tsukiyama, Director
Date: February 15, 2008, 2:00 p.m.
State Capitol, Room 302
Re: Testimony on H.B. No. 2216
Relating to Public Agency Meetings

LATE TESTIMONY

Thank you for the opportunity to submit testimony on H.B. No. 2216.

The Office of Information Practices ("OIP") administers Hawaii's open meetings law, which is part I of chapter 92, Hawaii Revised Statutes, commonly called the Sunshine Law. OIP has significant concerns about this bill because it is a drastic departure from how the Sunshine Law currently operates.

Currently, the Sunshine Law requires boards to discuss and deliberate on official board business in duly noticed public meetings, but lists certain "permitted interactions," namely specific circumstances under which board members may discuss board business outside of a public meeting. In particular, one of the "permitted interactions" under the Sunshine Law allows two board members to discuss official board business outside of a public meeting so long as no commitment to vote is made or sought and the two members do not constitute a quorum of the board.

This bill proposes to amend this particular "permitted interaction" to allow any number of board members less than a quorum to discuss board business outside of a public meeting as long as no commitment to vote is made or sought. Effectively,

this bill exempts all board discussions involving less than a quorum of its members from all of the Sunshine Law's open meeting requirements. This is a significant change to the current law.

Under this bill, boards would no longer be confined to the Sunshine Law's existing "permitted interactions," which currently identify the only specific circumstances under which discussions can occur outside of a public meeting. Instead, despite the Sunshine Law's stated policy that the formation of public policy be conducted as openly as possible, this bill would permit boards to meet in private as long as their meetings are attended by any number of their members less than quorum. See Haw. Rev. Stat. § 92-1 (1993) (Sunshine Law's intent is to ensure the public's ability to observe and participate in the discussions and decisions of boards).

OIP understands that this bill may have been proposed as a quick fix solution to allow a board's members to attend the meetings of a committee of the board when those board members have not been assigned as committee members. However, as discussed above, the solution proposed in this bill has overbroad and far-reaching consequences that drastically changes the purpose and effect of the current "permitted interactions." If your Committee is interested in providing a solution to the issue of committee participation by board members not assigned to the committee, OIP believes that it would be more appropriate to address this issue with a specific provision concerning members' attendance of committee meetings instead of allowing closed meetings by any number of board members less than a quorum.

In any event, if the Legislature intends to make such a significant policy shift as called for in this bill, OIP believes that it should only do so after careful and deliberate consideration of the application of the proposed section in other circumstances and with consideration of its effect on the remaining permitted interactions.

Thank you for the opportunity to testify.



**THE LEAGUE
OF WOMEN VOTERS OF HAWAII**

**TESTIMONY ON HB 2216 RELATING TO PUBLIC AGENCY MEETINGS BEFORE
THE HOUSE COMMITTEE ON JUDICIARY**

Committee on Judiciary
Friday, February 15, 2008
2:00 p.m.
Conference Room 325

LIVE TESTIMONY

Testifier: Jean Aoki, League of Women Voters of Hawaii

Chair Waters, Vice Chair Oshiro, members of the Committee on Judiciary,

The League of Women Voters of Hawaii opposes HB 2216 which would increase the number of board members who could discuss among themselves matters relating to official board business as long as the number of board members involved in the discussion does not constitute a quorum.

Open meetings require that discussions, deliberations and decision-making occur during the official, noticed meetings. For any involved or substantive matter, we assume that the board members have been supplied with informational materials to study before the next scheduled meeting. We've gone along with allowing two members to contact one another because we felt that it may be necessary at times to ask about the meaning of a certain paragraph, or how to interpret a certain passage, etc. in order to direct one's thinking toward the best solution to a problem or the best policy for a given situation or issue. We have given these members who are performing a public service after all, the benefit of the doubt that they are observing the spirit of the law.

We have observed board meetings where discussions were spirited, positions were challenged, opinions changed through deliberations until some consensus was reached or majority vote achieved. And for those boards, generally that was the normal method of operating. The public attending those meetings felt included, knew the different considerations given an airing, the rationale for the final decision whether one agreed with it or not, and felt that the decision was certainly arrived at in public and not outside of the public meeting.

Then there are those meetings where beyond someone explaining the issue, hardly any opinions are exchanged, only a few questions are asked about some detail, and a vote taken. Either the decision had already been made in advance, or the members were depending on the advice of the "leader".

49 South Hotel Street, Room 314, Honolulu, Hawaii 986813 Ph. (808) 531-7448 Fax (808) 599-5669
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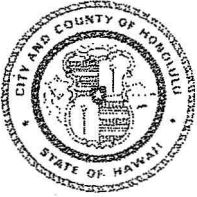
We've observed meetings where most of the deliberations and decisions must have been made outside, and that every concession to the public's desire for more inclusion and transparency of the process was made grudgingly after much effort on the part of the public.

We cannot encourage the flaunting of the open meetings law or only observing it as narrowly as tolerated by the public. There will always be the pushing and pulling to alter the parameters of the law. We must resist the push that this amendment will bring.

For the protection of the spirit of the open meetings law, we urge that this bill be held in committee.

We thank you for this opportunity to testify on HB 2216.

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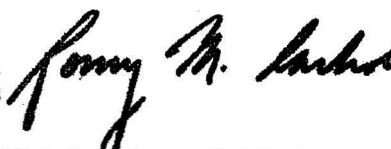
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February 15, 2008

LATE TESTIMONY

Memorandum

TO: The Honorable Tommy Waters, Chair
House Committee on Judiciary

FROM: Romy M. Cachola, Secretary
Hawaii State Association of Counties 

SUBJECT: Testimony in Support of House Bill 2216, Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony in support of House Bill 2216, Relating to Public Agency Meetings. The purpose of this measure is to give councilmembers and other public officials more flexibility to conduct public business in an efficient matter without violating the Hawaii state Sunshine Law.

I am aware that Council Chair G. Riki Hokama of the Maui County Council has submitted testimony in support of this measure, which is part of the 2008 Maui County Legislative Package. As the Secretary of the Hawaii State Association of Counties, I concur with the testimony submitted by Chair Hokama.

I urge you to support House Bill 2216.