

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
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To: House Committee on Judiciary

From: Paul T. Tsukiyama, Director

Date: February 5, 2008, 2:00 p.m.
State Capitol, Room 325

Re: Testimony on H.B. 2730
Relating to Legal Requirements for Neighborhood Board Meetings

Thank you for the opportunity to submit testimony on H.B. 2730.

The Office of Information Practices ("OIP") has concerns about 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 issue throughout the bill is the use of the term "neighborhood board." Given that counties other than Honolulu may eventually reach a population of 500,000 or create small community boards, this Committee may want to 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 3, lines 1 to 6) 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

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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 (page 2, lines 5-13) 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 –

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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.

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NEIGHBORHOOD COMMISSION

NEIGHBORHOOD COMMISSION • 530 SOUTH KING STREET ROOM 400 • HONOLULU, HAWAII, 96813
PHONE (808) 527-5749 • FAX (808) 527-5760 • INTERNET <http://www.honolulu.gov>

February 5, 2008

The Honorable Tommy Waters
Chair, House Judiciary Committee
Hawaii State Capitol, Room 302
415 South Beretania Street
Honolulu, HI 96813

Re: H.B. No. 2730, Relating to Legal Requirements for Neighborhood Board Meetings

Dear Chair Waters and Committee Members:

I am writing this letter as the Chair of the Neighborhood Commission (Commission) and thank you for hearing this bill. The Commission respectfully requests that the House Judiciary Committee pass this bill.¹

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. 2730 would better allow the Boards to carry out their mission.

Neighborhood Boards are subject to the sunshine law, a "one-size fits all" law. Certain provisions in the law have prevented Boards from carrying out their mission. 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.

This bill 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.

This bill is very similar to H.B. No. 1512, H.D. 1, which passed the House (and this Committee) in 2007 and was referred to the Senate Committee on Intergovernmental and Military Affairs (IGM) and the Senate Committee on Judiciary and Labor.² H.B. No. 1512, H.D. 1 was heard on Friday, February 1, 2008 by IGM. The fate of that bill is uncertain as I write this testimony on Friday, February 1.

Thank you for the opportunity to testify on this bill.

Aloha,

Grant Tanimoto

¹ The companion to this bill is S.B. No. 2201.

² The following Neighborhood Boards and/or members from Neighborhood Boards testified in favor of H.B. 1512 and similar bills in 2007: 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.





*The Chamber of
Commerce of Hawaii*

Since 1850

Testimony to the House Committee on Judiciary and
Tuesday, February 5, 2008 at 2:00 p.m.
Conference Room 325, State Capitol

**RE: HOUSE BILL NO. 2730 RELATING TO LEGAL REQUIREMENTS FOR
NEIGHBORHOOD BOARD MEETINGS**

Chair Waters, Vice Chair Oshiro, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") does not support HB 2730.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

H.B. No. 2730 purposes to amend Chapter 92 HRS to prescribe procedure to be followed at certain neighborhood board meetings, such as the information that may be included in the written public notice, the information that the board may receive on a matter, and the deliberation and decision-making process.

The City Council of Honolulu created a Neighborhood Board Task Force to review the Neighborhood Board system and make recommendations to the Council. The Task Force met from November 2006 thru December 2007 and prepared a final report to the Council. The final report is available at the Neighborhood Commission website:

<http://www.honolulu.gov/nco/counciltaskforcefinalreport.pdf>

It may be prudent for the legislature to review the report and its recommendations prior to considering legislation. The Neighborhood Board System was created through the Honolulu City Charter with the specific purpose:

Section 14-101. Neighborhoods and Neighborhood Boards to increase and assure effective citizen participation in the decisions of government shall be established in accordance with a neighborhood plan.

The focus of the neighborhood board should be on creating a forum that allows for resident discussion on activities that impact their neighborhood. The focus should not be on the actions/recommendations of the neighborhood boards but on empowering the citizens to get involved to influence public policy makers (i.e. call your elected representative).

We would recommend that the legislature review the Task Force Report and solicit input from the Neighborhood Commission prior to considering legislation at this time.

Thank you for this opportunity to express our views.

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1132 Bishop Street, Suite 402 • Honolulu, Hawaii 96813 • Phone: (808) 545-4300 • Facsimile: (808) 545-4369



Feb., 5, 2008

House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 1512, HD 1
Re: HB 2730

Committee members:

We oppose this bill because we can see no need for the proposed exemptions other than a neighborhood board having through extra procedures and inconvenience. Changes to the Sunshine Law should be made on a limited basis with exceptional reasons.

Current law accommodates much of the sought-after changes – if not all.

Take, for example, the proposed section on permitted interactions to discuss matters at informational meetings. Under current law, a board may do all of these functions if the board designates – in advance – those members attending another meeting.

The proposed section on unanticipated events already is accommodated under the current law. All that is needed is a written reason for the board to take up the matter and a two-thirds vote of the members of which the board is composed. Then the board can consider the issue in an emergency meeting without the restrictions of posting notice.

Again, we ask you to make exemptions to the Sunshine Law only in exceptional cases as it is the only protection the public has against government secrecy.

Thank you for your time and attention,

Stirling Morita
FOI Committee Chairman
Hawaii Chapter SPJ

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Feb., 5, 2008

House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 1512, HD 1
Re: HB 2730

Committee members:

We oppose this bill because we can see no need for the proposed exemptions other than a neighborhood board having through extra procedures and inconvenience. Changes to the Sunshine Law should be made on a limited basis with exceptional reasons.

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Thank you for your time and attention,

Stirling Morita
FOI Committee Chairman
Hawaii Chapter SPJ

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Honorable Representative Tommy Waters,
House Committee on Judiciary Chair

Honorable Representative Blake Oshiro,
House Committee on Judiciary Vice Chair

RE: HB 2730 – relating to Legal Requirements to Neighborhood Board Meetings,
Public Input and Permitted Interaction Group – STRONGLY IN SUPPORT

Good Morning Chair Waters, Vice Chair Oshiro and Committee Members:

I'm Daisy Murai, a resident of Kapahulu and an active Community participant of the Neighborhood Board System. HB 2730 addresses concern that Neighborhood Board (NB) members and members of the public to conduct open Government participation regarding Community Matters. I have attended Neighborhood Board meetings in my own District of Kapahulu (NB No. 5 – Diamond Head/Kapahulu/St. Louis Heights) as well as Waikiki, Palolo, Ala Moana/Kakaako, Manoa, Kaimuki and McCully-Moiliili. Each Community has important issues pertaining to their own district as well as General Issues shared by other Communities and public input is very necessary.

There are times when the public have concerns and comments on important issues not listed on the printed agenda, but the decision to that issue will be made prior to the Neighborhood Board's following month's meeting date. This is what happens to Liquor Commission public notices reported to the Neighborhood Board during the month they are in recess. The resident's concerns and comments are not heard by the NB members or applicant. The applicant had fulfilled the requirements to notify the Neighborhood Board of that area, but any residential concerns, problems or opposition will not be heard by the NB, applicant or residents. Sometimes the decision on the matter will be decided within a week or less, too late for any response or decision by the Neighborhood Board members. This works to the Liquor License applicant's advantage – even though there are opposition by the residents.

Section 92B – relating to Permitted Interaction Groups (P.I.G.). This is a plus for NB members to be informed on the entire project(s) in their Community by both the applicant and residents, by being able to attend Community meetings – provided, less than a quorum is present. The presentations at the NB meetings are far too short to get the full impact of project(s). You are only getting the applicant's point of view to sell the project(s) to the Community. P.I.G. is an excellent procedure to implement. This way, more members of the NB are able to attend for informational purposes.

This is why I urge the passing of HB 2730

Thank you for the opportunity to speak.

Daisy Murai, *general public*
3039 Kaunaoa Street
Honolulu, HI 96815
February 4, 2008

Committee Clerk – please make 5 copies
Fax: 586 – 9456
House Committee on Judiciary
February 5, 2008
2:00 pm, Conference Room 325

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Testimony in support of HB 2730 - Relating to Legal Requirements for Neighborhood Board Meetings.

Rep. Tommy Waters
Chair, Committee on Judiciary

Rep. Blake K. Oshiro
Vice-Chair, Committee on Judiciary

Aloha Members of the House Judiciary Committee,

I respectfully submit the following testimony in support of HB 2730.

The following testimony represents my own personal views and does not represent the position of the Kaneohe Neighborhood Board #30 or of any of its members, although I happen to be the chair of that neighborhood board.

I ask the members of this committee to consider the position of neighborhood boards and the current interpretation of the state's Sunshine Law. Imagine trying to plan a party, making all the arrangements, sending out invitations, receiving RSVP's of guests both from nearby and faraway. Now imagine having to cancel the party on the day of the event because some members of the band don't show up. That is the situation that Honolulu neighborhood boards often face because of the prevailing interpretation of the state's Sunshine Law.

Many civic minded people, government officials and even members of the media expend a considerable amount of their time, effort and money planning and making arrangements in order to conduct neighborhood board meetings. Agendas are prepared and mailed out, speakers prepare presentations, elected and government officials make time on their busy schedules, members of the public take time off from work all in order to attend these community meetings. It happens all too often, when all assembled at the appointed time and place the meeting is cancelled because one too many board members got sick or could not attend the meeting for some reason. Aside from the time, money and effort that is wasted, the public suffers because the information exchange that is supposed to take place at these meetings does not occur.

I would like to remind committee members that neighborhood boards, unlike other governmental agencies subject to the Sunshine Law, are not decision-making bodies. Their purpose is purely advisory. Board meetings provide an important forum for the public discussion and promote the exchange of ideas on governance directly to our elected officials.

It is ironic that the Sunshine Law, which was enacted to ensure public participation in governmental decision making, is being implemented in a way that prevents that very thing from occurring.

Passage of HB 2730 would do much to address this problem and other problems that need to be addressed regarding the interpretation and implementation of the Sunshine Law as it applies to neighborhood boards and other advisory organizational meetings.

I would urge you to pass this measure on so that its provisions may be considered for adoption.

Respectfully submitted,

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Roy Yanagihara

Kaneohe, Hawaii 96744

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