

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Paul T. Tsukiyama, Director

Date: February 26, 2008, 9:30 a.m.
State Capitol, Room 016

Re: Testimony on S.B. No. 2174
Relating to Public Agency Meetings

Thank you for the opportunity to submit testimony on S.B. No. 2174. The Office of Information Practices ("OIP") offers the following comments regarding this bill.

The proposed amendment represents a major policy shift in the Sunshine Law because it will greatly expand the discussions allowed between board members about official board business outside of a public meeting. In essence, it allows less than a quorum of members to discuss board business in private. If this is your Committee's intent, OIP recommends that your Committee consider including safeguards to protect the public's right to know and also address what effect the proposed amendment would have on other parts of the statute, as discussed below.

Currently, the Sunshine Law requires boards to discuss and deliberate official board business in noticed public meetings, but provides limited exceptions to this requirement called "permitted interactions." Specifically, the Legislature has provided a list, in section 92-2.5, HRS, of specific circumstances in which designated numbers of board members are permitted to interact outside of an open meeting

about matters concerning their board's business. Some of these permitted interactions provide additional requirements to safeguard the public's right to know the reasons underlying the board's decisions on public policy.

The specific permitted interaction sought to be amended here currently 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 their board. Haw. Rev. Stat. § 92-2.5(a). This bill proposes to expand this permitted interaction to allow "two or more" board members to discuss board business outside of a public meeting as long as no commitment to vote is made or sought and the "two or more" board members do not constitute a quorum.

This bill represents a significant shift in policy because it will essentially allow any number of less than a quorum of board members to discuss any official board business in private with the only condition being that no commitment to vote be made or sought. If this is your Committee's intent, it is important that your Committee recognizes the effect this amendment will have on the remaining permitted interactions and safeguards provided.

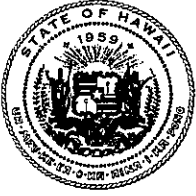
For example, another permitted interaction allows less than a quorum of members to be assigned to investigate a matter related to board business if: (a) the scope of the investigation and the scope of each member's authority are defined at a meeting of the board; (b) all resulting findings and recommendations are presented at a meeting of the board; and (c) deliberation and decisionmaking on the matter investigated occur at an open meeting held after the presentation of findings and recommendations. Should this bill be passed, this "assigned investigation" permitted interaction, which was crafted to include the described safeguards to protect the public's right to know, will hardly be used because the same board

members could choose instead to informally undertake the same investigation under the bill's proposed amendment and not be subject to these safeguards.

OIP understands that this bill may have been proposed as a quick fix to allow board members to attend meetings of a board committee when they have not been assigned as committee members. If so, this proposed amendment is overly broad and generally will not address the issue sought to be resolved because of the less than a quorum requirement. OIP believes that a specific permitted interaction would better address the issue relating to attending committee meetings.

Moreover, if this proposed amendment is meant to provide board members more flexibility in attending outside events together, such as community meetings, other bills have been introduced to more specifically and appropriately address that concern. Nonetheless, if your Committee elects to approve this bill, OIP recommends that safeguards should be added to the bill's proposed amendment in order to protect the public's right to know.

Thank you for the opportunity to testify.



HAWAI'I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 • HONOLULU, HI 96813-5095 • PHONE: (808) 586-8636 • FAX: (808) 586-8655 • TDD: (808) 586-8692

February 26, 2008
Conf. Rm. 016, 9:30 a.m.

To: The Honorable Brian T. Taniguchi, Chair, The Honorable Clayton Hee, Vice Chair, and Members of the Senate Committee on Judiciary and Labor

From: Sara Banks, Acting Chair, and Commissioners of the Hawai'i Civil Rights Commission

Re: S.B. No. 2714

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

S.B. No. 2714 amends H.R.S. §92-2.5(a) to allow two or more board members, but not a quorum, to discuss board matters, as long as no commitment to vote is made or sought. This amendment conforms subsection (a) with the language used in subsections (b), (c), and (e) of §92-2.5. The proposed change will not directly affect the HCRC, which has five commissioners, with three constituting a quorum.

The HCRC supports S.B. No. 2714, while recognizing the important policy value behind the open meeting and public decision-making requirements of the Sunshine Law.

Council Chair
G. Riki Hokama

Vice-Chair
Danny A. Mateo

Council Members
Michelle Anderson
Gladys C. Baisa
Jo Anne Johnson
Bill Kauakea Medeiros
Michael J. Molina
Joseph Pontanilla
Michael P. Victorino

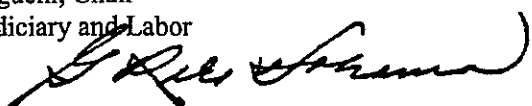


Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.maui-county.gov/council

February 25, 2008

TO: Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Labor

FROM: G. Riki Hokama
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 26, 2008; TESTIMONY IN SUPPORT OF
SB 2174, RELATING TO PUBLIC AGENCY MEETINGS**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to give council members and other public officials more flexibility to conduct public business in an efficient manner without violating the Sunshine Law.

This measure is in the Maui County's Legislative Package; therefore, I offer this testimony on behalf of the Maui County Council.

The County Council supports this measure for the following reasons:

1. Allowing more than two members, but still less than a quorum, to discuss official board business will give council members more flexibility when trying to efficiently carry out council business through such activities as investigation, coordination, information gathering, and dissemination of council-related information.
2. The proposed amendment does nothing to change the intent and spirit of the Sunshine Law.

For the foregoing reasons, the Maui County Council supports this measure.

Council Chair
G. Riki Hokama

Vice-Chair
Danny A. Mateo

Council Members
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Jo Anne Johnson
Bill Kauakea Medeiros
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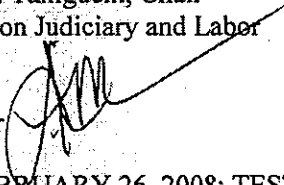


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February 25, 2008

TO: Honorable Brian T. Taniguchi, Chair
Senate Committee on Judiciary and Labor

FROM: Danny A. Mateo
Council Vice Chair 

SUBJECT: HEARING OF FEBRUARY 26, 2008; TESTIMONY IN SUPPORT OF SB 2174,
RELATING TO PUBLIC AGENCY MEETINGS

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to give council members and other public officials greater flexibility to conduct public business in an efficient manner without violating the Sunshine Law.

I am aware that Council Chair G. Riki Hokama, Maui County Council, has submitted testimony in support of this measure. As the Vice Chair of the Maui County Council I concur with the testimony submitted by Chair Hokama and urge you to support this measure.

LATE

testimony

From: Cyndi Ayonon [cayonon@kauai.gov]
Sent: Tuesday, February 26, 2008 9:55 AM
To: testimony
Cc: Shaylene Carvalho; Mel Rapozo; Dain P. Kane; riki.hokama@co.maui.hi.us; Cachola, Romy; bjacobson@co.hawaii.hi.us; Ron Kouchi; JoAnn Yukimura; Tim Bynum; Peter Nakamura; riki.hokama@co.maui.hi.us
Subject: SB 2174 Relating to Public Agency Meetings - Testimony

Chair Brian T. Taniguchi, Chair

Senate Committee on Judiciary and Labor

Subject: SB 2174, Relating to Public Agency Meetings

Hearing Date: February 26, 2008

Time: 9:30 a.m.

Location: Conference Room 016

Dear Chair Taniguchi and Members:

I submit this testimony in support of the intent of SB 2174 because it begins to address the difficulties the County Council's have experienced in balancing it's obligations in effectively and efficiently doing its job on the one hand, and its duties of transparency given the strict interpretation of the Sunshine Law by the OIP Office on the other.

I appreciate your efforts because this amendment to the law would allow us to be more proficient in performing our duties as elected officials.

Aloha,

Shaylene Iseri-Carvalho,

Councilmember

County of Kaua i

4396 Rice Street, Suite 206

Lihu e, Kaua i, HI 96766

Phone (808) 241-6371

Fax (808) 241-6349

2/26/2008

LATE



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 26, 2008

TESTIMONY TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

Senate Bill 2174 - Relating to Public Agency Meetings

The Disability and Communication Access Board (DCAB) supports Senate Bill 2174 Relating to Public Agency Meetings, which allows for two (2) or more members of a board to discuss business matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two (2) or more members do not constitute a quorum of their board. We prefer, however, SB 2295, which is more comprehensive and specific.

DCAB is a statewide board with seventeen (17) members appointed by the Governor, thirteen (13) of whom are persons with disabilities or family members. Our mission is to advocate and promote full integration, independence, equal access, and quality of life for persons with disabilities in society. Nine (9) Board members constitute a quorum to conduct business. Eight (8) of the seventeen (17) members are employed on a full time basis, and must arrange their schedules to participate in quarterly meetings. On occasion it has been difficult to obtain quorum to conduct official Board business.

The amendments in this bill will allow members present at a meeting to discuss official business without voting. Having this option will be cost effective, because four (4) of our Board members are flown to Oahu for meetings. This change will allow basic information to be provided to those present with voting to be conducted at a later time when there is a quorum.

Thank you for the opportunity to testify.

Respectfully submitted,

Handwritten signature of Patricia M. Nielsen in black ink.

PATRICIA M. NIELSEN
Chairperson
Legislative Committee

Handwritten signature of Francine Wai in black ink.

FRANCINE WAI
Executive Director