

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Paul T. Tsukiyama, Director

Date: February 7, 2008, 9:00 a.m.  
State Capitol, Room 016

Re: Testimony on S.B. 2201  
Relating to Legal Requirements for Neighborhood Board Meetings

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Thank you for the opportunity to submit testimony on S.B. 2201.

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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

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 –

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

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 7, 2008

The Honorable Brian Taniguchi  
Chair, Senate Committee on Judiciary and Labor  
Hawaii State Capitol, Room 219  
415 South Beretania Street  
Honolulu, HI 96813

Re: S.B. No. 2201, Relating to Legal Requirements for Neighborhood Board Meetings

Dear Chair Taniguchi 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 Senate Committee on Judiciary and Labor pass this bill.<sup>1</sup>

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 S.B. No. 2201 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 in 2007 and was referred to the Senate Committee on Intergovernmental and Military Affairs (IGM) and the Senate Committee on Judiciary and Labor.<sup>2</sup> 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 Monday, February 4.

Thank you for the opportunity to testify on this bill.

Aloha,



Grant Tanimoto

<sup>1</sup> The companion to this bill is H.B. No. 2730, which was referred to the House Judiciary Committee and scheduled to be heard on Tuesday, February 5 at 2:00 pm.

<sup>2</sup> 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 Senate Committees on Judiciary and Labor  
Thursday, February 7, 2008 at 9:00 a.m.  
Conference Room 016, State Capitol**

**RE: SENATE BILL NO. 2201 RELATING TO LEGAL REQUIREMENTS FOR  
NEIGHBORHOOD BOARD MEETINGS & SENATE BILL 2295 RELATING TO  
PUBLIC MEETINGS**

Chair Taniguchi, Vice Chair Hee, and Members of the Committee:

The Chamber of Commerce of Hawaii ("The Chamber") does not support SB 2201 and 2295.

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.

S.B. No. 2201, which is similar to 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.

S.B. No. 2295 proposes to allow two or more board members to discuss their individual positions or attend meetings or presentations relating to board business under certain circumstances. It would also allow members to be polled on official board business outside of meetings under certain circumstances.

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. We believe 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).

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February 7, 2008

The Chamber of Commerce of Hawaii Testimony

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.

**COALITION OF HAWAII ENGINEERING AND ARCHITECTURAL  
PROFESSIONALS**

Email to: testimony@capitol.hawaii.gov

Hearing Date: Thursday, February 7, 2008 9:00am, CR 016

Honorable Senator Brian T. Taniguchi, Chair, Senator Clayton Hee, Vice  
Chair and Members of the Senate Committee on Judiciary & Labor

**Subject: SB 2201 - Relating to Legal Requirements For  
Neighborhood Board Meetings**

Coalition of Hawaii Engineering & Architectural Professionals represents several professional Engineering and Architectural organizations including American Council of Engineering Companies Hawaii; American Institute of Architects; Hawaii Chapter of the American Society of Civil Engineers; American Public Works Association Hawaii Chapter; Structural Engineering Association of Hawaii; and the Hawaii Society of Professional Engineers.

Our coalition is in SUPPORT of SB 2201 Relating to Legal Requirements for Neighborhood Board Meetings. This bill will help to clarify the issue facing Neighborhood Boards relating to attendance at outside meetings or presentations and being able to discuss issues that affect our neighborhoods. This proposes to allow more than two members of boards (but less than a quorum) to meet or to attend other meetings and to allow NHB's without a quorum to receive information or testimony on official board business provided that the NHB does not make any decision on the matter.

We feel that Neighborhood Board's (NHB) serve an important function in our community and that this Bill will allow more interaction, fact finding and education to occur within the community. We support this Bill because several of our members are part of Neighborhood Boards, myself included, and find it very difficult to serve effectively under the current restrictions.

We urge you to Support SB 2201 - Relating to Legal Requirements for Neighborhood Board Meetings. Mahalo for this opportunity to express our business concerns and for your consideration of this important bill.

Sincerely,

Coalition of Hawaii Engineering & Architectural Professionals  
Lester H. Fukuda, P.E., FACEC



Robert Finley  
2222 Aloha Drive #704  
Honolulu, HI 96815

February 5, 2008

COMMITTEE ON JUDICIARY AND LABOR  
The Twenty-Fourth Legislative Regular Session  
Senator Brian Taniguchi and Committee Members

Aloha Senator Taniguchi

Testimony in support of SB2201.

This letter is written as personal testimony and while it represents support for similiar bills as HB1512, HB1137, HB1510 that all have been voted on at the Waikiki Neighborhood Board we have not had SB2201 on our agenda.

The current "Sunshine Law" has made the Neighborhood Board System less effective and your SB2201 will allow us to participate in the issues that face the Neighborhood without violating the ordinance.

The Legislature wisely exempted certain provisions of the "Sunshine Law" from itself. Meeting only 60 days with thousands of issues would make it impossible to do any business if Agenda and Quorum issues were enforced. The Waikiki Neighborhood Board meets in open session for about 36-48 hours a year, by not allowing the WNB to have more than 2 members present at any meeting that addresses an issue that will be on our agenda severely limits our members ability to make logical and correct decisions on major issues.

Should a contractor propose a 350 foot mega million dollar project and correctly hold several public presentations of this project we the people who have 10 minutes to support or oppose it are not allowed to attend and ask questions. This is certainly not the intent of the law or of the Neighborhood Plan.

Your and the support of any committee members considering this change to the law will go far to support the ability of the Neighborhood Board System to support the communities it is designed to represent.

Sincerely,

  
Robert J Finley



## testimony

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**From:** Hawaii HIHITECH [hihitek@hotmail.com]  
**Sent:** Wednesday, February 06, 2008 3:54 PM  
**To:** testimony  
**Subject:** Testimony in support of SB 2201, SB 2295, SB 3105

Testimony in support of SB 2201, SB 2295, SB 3105

Senator Brian T. Taniguchi  
Chair  
Committee on Judiciary and Labor

Senator Clayton Hee  
Vice Chair  
Committee on Judiciary and Labor

Aloha Members of the Senate Committee on Judiciary and Labor,

I respectfully submit the following testimony in support of the aforementioned bills.

I am the chair of the Kaneohe Neighborhood Board however the following testimony is being submitted as my own and not as the official position of Kaneohe Neighborhood Board.

As you consider the bills before you I ask that you recall that the purpose of neighborhood boards is to provide community input and advice to decision makers. Over the years, neighborhood board meetings have also become an important forum for the discussion of issues and as a means to disseminate information to the community. The purpose of the state's Sunshine Law on the other hand is to ensure that important decisions made by government officials are not made in secret or at least without public input. Neighborhood Boards and the Sunshine Law are complimentary in purpose and function, one provides a forum for the expression of the public's views and the other ensures that the public input will be received.

In recent years much has been done to strengthen the Sunshine Law. Unfortunately, interpretation of that law and how it applies to neighborhood board is affecting the ability of neighborhood boards to carry out its function to conduct public meetings and disseminate information. Each of the measures before you represents an attempt to modify the current interpretation of this law in order to enable the neighborhood boards to function as they were intended to do so.

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 in 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 that neighborhood board meetings can be held. 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 these measures would do much to address the problems that are now being experienced without compromising the intents of the Sunshine Law.

I would urge you to pass these measures on so that their provisions may be considered for adoption.

Respectfully submitted,  
Roy Yanagihara  
45-139 Mahalani Circle  
Kaneohe, Hawaii 96744

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**THE LEAGUE  
OF WOMEN VOTERS  
OF HAWAII**

9 SOUTH HOTEL STREET, ROOM 314 HONOLULU, HAWAII 96813 PHONE: (808) 531-7448 EMAIL: voters@lww-hawaii.com

Testimony on S.B. 2201 Relating to Legal Requirements for Neighborhood Board Meetings

Committee on Judiciary and Labor  
Thursday, February 7, 2008  
9 a.m. Conference Room 016

Testifier: Jean Aoki, Legislative Team member, League of Women Voters of Hawaii

Chair Taniguchi, Vice Chair Hee, and members,

The League of Women Voters of Hawaii has concerns about one section of this bill, but can accept some sections with some amendments.

In regard to Section 1 of this bill, Chapter 92-A, (c) beginning on line 15 of the first page addresses the issue of public input on matters not on the agenda. We have never had a problem with that. Quite a few of our members have served on neighborhood boards and many others are serving today. Many of us have sat through hours of testimony, discussions, and reports and appreciate the opportunity afforded ordinary citizens to air their views or to bring their concerns about problems in their immediate neighborhoods to the attention of their boards. We suggest that at the subsequent meeting testimony be allowed even by those who have testified at the first meeting. We would like an amendment to propose that all testimony be allowed at the following meeting. This allows people who may have concerns about the issue raised to comment on the matter before the board takes action.

We are proposing an amendment to the last paragraph in chapter 92-A which ends on line 13 on page two of the bill. The last sentence reads, "A neighborhood board may receive information or testimony on a matter of official board business without a quorum; provided that the board shall not make a decision on the issue." We propose an addition to that sentence to read, "and provided that those testimonies on the issue will be allowed again at the following meeting at which time the decision will be made."

We have no problem with chapter 92-B (a). However, we are quite concerned about 92-B (b) allowing members to participate in discussions, especially among themselves, despite the stated restriction that there be no deliberation or commitment relating to a vote on the issue.

There are

all kinds of ways to come to some understanding among themselves without explicitly voicing agreement. This is unacceptable.

Chapter 92-C addresses unanticipated events which demand attention by the board, even if they are not on the agenda of a scheduled meeting. It is true that this might occur from time to time. To be sure that only that which really demands immediate attention is addressed at such meetings, we would like line 16, page 3 to be changed by adding the word "urgently" between the words "is" and "necessary" and an explanation at the end of the sentence so that it reads, "...action on the matter is urgently necessary for public health, welfare, and safety" followed by the words "if time does not allow for it to be addressed by an emergency meeting scheduled pursuant to section 92-8."

We realize that the neighborhood boards have advisory powers only, but the boards must appreciate their importance to the governance of the city and the democratic process in our community. The boards' decisions on whether to approve certain development projects or zoning changes, etc. are given a great deal of weight by the City Council and do matter. The people have learned to bring their concerns to their respective boards and have them addressed.

The League of Women Voters together with different organizations have quite often asked to be placed on the agenda of all the boards to ask their support for some legislative efforts or support for or rejecting of some constitutional amendment. We do it because we know the value of their support.

The extent to which our community continues to have trust and faith in the neighborhood board system and the individual boards depends a great deal on the openness of their deliberations and decision-making. Once the boards begin to operate behind closed doors, the trust and faith in them will begin to erode. Our hope is for the continued health of the neighborhood board system and the strengthening of the weaker boards.

From its inception, the neighborhood board system was and still is a great conceptual system designed to empower citizens in our democratic form of government.

With the proposed changes, we would be comfortable with this bill, except for Chapter 92-B (b). Thank you for the opportunity to testify on S.B. 2201.



**MILILANI/ WAIPIO/ MELEMANU NEIGHBORHOOD BOARD NO. 25**

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

**Testimony of  
DICK POIRIER, CHAIR  
MILILANI/WAIPIO/MELEMANU  
NEIGHBORHOOD BOARD NO. 25  
before the  
COMMITTEE ON THE JUDICIARY AND LABOR  
on  
SB 2201 – RELATING TO LEGAL REQUIREMENTS FOR  
NEIGHBORHOOD BOARD MEETINGS  
held at  
9:00 a.m.  
on  
February 7, 2008**

Chair Taniguchi and Members of the Committee,

On behalf of Neighborhood Board No. 25, I want to express our support for SB 2201 which is being heard by you today.

We have spent far too much time and energy in recent years on debating process and procedures, most of which do little to enhance the public's right to know or facilitate our Board's mission to advise and recommend on public sector matters of neighborhood concern.

SB 2201 will help in addressing the ongoing issues that have affected neighborhood boards either because of what we believe to be onerous or unnecessary provisions contained in the so-called "Sunshine Law," or by conflicting or untoward interpretations of these provisions by the Corporation Counsel and/or the State Office of Information Practices.

Thank you for the opportunity to testify.

