

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Paul T. Tsukiyama, Director

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

Re: Testimony on S.B. No. 2295
Relating to Public Meetings.

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") takes no position on the substance of the bill, which (1) would allow less than a quorum of board members to present individual testimony on matters of board business at other board meetings or legislative hearings; or to attend community meetings, seminars, and other outside meetings and report back at a future board meetings; and would allow polling of the full board in writing, which writing would be available to the public. OIP does suggest a clarification and offers comments.

The bill appears to draw a distinction between deliberation and discussion of an issue at page 4, lines 7 to 11, in that it would permit 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. Since the bill already contains the limitation that "no commitment to vote on official board business shall be made or sought," OIP would suggest that this Committee simply delete the restriction on

deliberation if it intends to allow board members to talk about matters of board business at outside meetings. The bill would then read: "provided that the discussions occur during and as part of the meeting or presentation[~~, the members do not deliberate on these matters,~~] and no commitment to vote on official board business shall be made or sought."

The bill section allowing written polling of a board requires that the documentation of that polling be made available to the public "pursuant to rules adopted by the board." (Bill page 4, lines 15-18.) OIP would suggest that the section instead be modeled on the Sunshine Law's treatment of meeting minutes, and read "provided that the documentation [~~is made available to the public pursuant to rules adopted by the board.~~] shall be a public record and shall be available within X days after the polling."

OIP notes that this bill would broaden the situations in which board members may discuss board business outside a meeting. However, the bill also includes safeguards for the public's access interest: it requires reporting back to the board by the members (less than a quorum) who attend an outside seminar or community meeting, and it ensures that any polling of board members that occurs will be in writing and available to the public. This Committee must decide, as a matter of public policy, the question of whether this extension of board members' ability to discuss board business outside a board meeting is warranted.

Thank you for the opportunity to testify.

Date of Hearing: Thursday, February 7, 2008

Committee: Senate Committee on Judiciary
and Labor

WRITTEN TESTIMONY ONLY

Board: Education

Person Testifying: Donna Ikeda, Chairperson, Board of Education

Title of Bill: S.B. No. 2295, Relating to Public Meetings

Purpose of Bill: Allows two or more board members to discuss their individual positions or attend informational meetings or presentations relating to official board business under certain circumstances. Allows board members to be polled in writing on their individual positions on matters relating to official board business under certain circumstances.

Board's Position: Chairperson Taniguchi, Vice Chairperson Hee, and members of the Senate Committee on Judiciary and Labor, thank you for this opportunity to provide written testimony on S.B. No. 2295.

The Board of Education (Board) has not taken an official position on this measure at this time; however, we would like to offer the following comments:

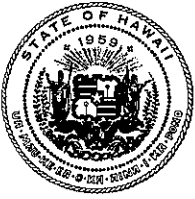
- S.B. No. 2295 broadens the scope of permitted interactions among board members and the scope of allowable actions by board members under the Sunshine Law to enable

boards to carry out their responsibilities reasonably and efficiently in serving the public.

- S.B. No. 2295 amends existing law to include provisions that ensure transparency and accountability in the formation of board policies and in board decision-making. For example, while board members may participate in discussions conducted at meetings or presentations, the discussions must occur during and as part of the meeting or presentation, members may not deliberate on those matters, and no commitment to vote on official board business may be made or sought. These provisions still enable public scrutiny into government decision making.
- The provision in the bill allowing two or more members of a board, but less than the board's quorum, to discuss their individual positions and provide testimonies or presentations relating to official board business at another board meeting or at a legislative public hearing, will support the work of boards in carrying out their responsibilities efficiently and effectively in adhering to the time demands and requirements of the legislative process.

- The provisions in S.B. No. 2295 are reasonable and will assist boards in fulfilling their responsibilities and carrying out the public's business efficiently and effectively without compromising the public process.

Thank you for the opportunity to comment on S.B. No. 2295.



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 7, 2008

Rm. 016, 9:00 a.m.

To: The Honorable Brian Taniguchi, 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. 2295

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. 2295 allows two or more board members, but not a quorum, to discuss their individual positions on board issues when discussing or testifying on those positions before another board or a public hearing of the legislature, and to attend other informational meetings, presentations, seminars, conventions and community meetings at which matters related to board business are discussed. The bill also allows board members to be polled in writing regarding their individual positions on matters relating to board business, provided that the documentation is provided to the public pursuant to rules adopted by the board. Such polling will not constitute a vote on the matter by the board.

The HCRC supports S.B. No. 2295.

Currently, nothing precludes an individual board member from discussing his or her views and positions on matters relating to board business, but the Sunshine Law does not allow interaction between board members regarding their positions on board business, outside a duly noticed public meeting. The first proposed substantive change, a new HRS 92-2.5(f), would allow such a discussion involving two or more board members, but not a quorum, under certain proscribed circumstances. This would encourage and allow public discourse without circumventing the open meeting and public decision-making requirements of the Sunshine Law.

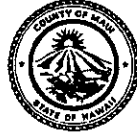
The second proposed substantive change, a new HRS 92-2.5(g), would allow board members to be polled in writing regarding their positions on board business, provided that the documentation is made available to the public and the polling is not considered a vote by the board. The HCRC has not considered all of the ramifications of the proposed change, which allows polling of members constituting a quorum, and how it would affect open decision-making. Up until 2004, the HCRC used a polling process similar to that proposed by this bill, polling members on their positions on legislative matters that arose during the session, determining the HCRC position, and ratifying by a vote at the next meeting of the Commission. In OIP Opinion Letter No. 04-04, the Office of Information Practices (OIP) responded to an HCRC request for an opinion regarding that procedure, and the OIP opined that staff assigned to a board may not ascertain the position of individual board members on board matters outside of open public meetings. The OIP made several recommendations to assist the HCRC in ascertaining its position in a timely manner for preparation of legislative testimonies. The HCRC has followed those recommendations and adhered to the OIP interpretation of the Sunshine Law, refraining from its prior practice of polling members, and has been able to comply without difficulty.

The HCRC supports S.B. No. 2295, 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

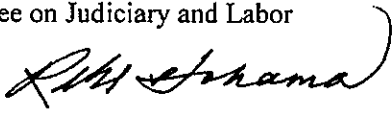


Director of Council Services
Ken Fukuoka

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

February 5, 2008

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

FROM: G. Riki Hokama
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 7, 2008; TESTIMONY TO PROVIDE COMMENTS ON SB 2295, RELATING TO PUBLIC MEETINGS**

Thank you for the opportunity to provide comments on this measure. This measure purports to give county council members and other public officials covered by the Sunshine Law more flexibility in their interaction with other members; however, the complicated and convoluted procedures mandated by this measure would actually result in even greater State interference in the work of the county councils than currently exists. Therefore, I cannot support this measure in its current form.

May I suggest that this measure be amended to replace its current provisions with the text of Senate Bill No. 2174 (2008), relating to Public Agency Meetings, which is part of the Maui County Council Legislative Package. The purpose of Senate Bill No. 2174 is to give council members and other public officials more flexibility to conduct public business in an efficient manner without violating the Sunshine Law. Senate Bill No. 2174 proposes to amend Section 92-2.5(a), Hawaii Revised Statutes, to allow two or more members of a board, rather than just two members, to discuss matters related to official board business as long as no commitment to vote is made or sought, and the members do not constitute a quorum. May I respectfully suggest that this is a simpler, more effective, and more appropriate means of achieving the goal of increased flexibility than that provided by Senate Bill No. 2295 (2008). Senate Bill No. 2174 is attached for your ease of reference.

The Maui County Council supports Senate Bill No. 2174 for the following reasons:

1. Council members need more flexibility to efficiently carry out council business through such activities as investigation, coordination, information gathering, and dissemination of council-related information.
2. The proposed measure is consistent with the intent and spirit of the Sunshine Law because it prohibits a member from committing to vote or soliciting a commitment to vote. It also limits the number of members to less than a quorum.
3. The current law prevents council members from effectively fulfilling their duties to the people of their respective communities by limiting their ability to interact without fear of allegations of Sunshine Law violations.

Thank you for your consideration of my testimony.

ocs:proj:legis:08legis:08testimony:sb2295_paf08-039b_dmr

Attachment



**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).

Page 2

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 2295 - Relating to Public 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 2295 Relating to Public Meetings. This bill will help to reduce the problem that many Neighborhood Board Members and other Boards have been facing relating to attendance at outside meetings or presentations and being able to discuss issues that affect our neighborhoods or other board business. This proposes to allow more than two members of boards (but less than a quorum) to meet or to attend other meetings.

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 restriction.

We urge you to Support SB 2295 - Relating to Public 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



testimony

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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Isaac W. Choy, CPA
2733 E. Manoa Road
Honolulu, Hawaii 96822

Before the Committee on Judiciary and Labor
Thursday, February 7, 2008 at 9:00 am
Conference Room 325

In Opposition of SB 2295

Chair Taniguchi, Vice Chair Hee and other committee members.

I am testifying in opposition to this legislation.

As you know I have been attending the Hawaii State Board of Public Accountants meetings for the past six year. This board has a very hard time conforming to the sunshine laws as it is and does not need more latitude to keep secrets from the public. The board does not know how to properly notice a meeting, does not have accurate minutes, and goes into secret sessions all of the time. I remember the board took a straws poll on a board policy one time.

I realize that this board could be the exception to the rule but I believe that sunshine rules were enacted to protect the public. There are too many boards and commissions to monitor and this law will only muddy the waters more.

Thank you for this opportunity to testify

Respectfully submitted.

Isaac W. Choy, CPA

Susan Miyao

LATE

From: William Sager [WSAGER@hawaii.rr.com]
Sent: Wednesday, February 06, 2008 6:33 PM
To: hihitek@hotmail.com; Sen. Brian Taniguchi; Sen. Clayton Hee
Subject: RE: 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 Bill Sager, a member of the Kaneohe
Neighborhood Board. This testimony is mine alone and does not
represent a formal Board position.

I fully support the concept of all government meetings being
open to the public. Full public discussion is necessary for our
legislators to understand issues and know how the public feels
about issues.

Unfortunately, the present interpretation of the sunshine law
hobbles that discussion.

We have had meetings where we failed to have a forum. People in
the audience wanted to speak their mind, so we held a
non-meeting in defiance of the Sunshine Law. Of course, there
was no decision making.

I have attend public talk-story meetings where there was a
quorum of neighborhood members attending. This was a violation
of the sunshine law, but to force to leave would have been a
violation of my freedom of speech.

We are trying to set up a public blog which would improve
communication between members and between the board and the
community. It has been suggested that such a blog would be a
violation of the Sunshine Law. We are waiting for an official
ruling.

These are all examples of problems relating to the sunshine law.
Decision making should be made in pulic and full discussion must
be allowed in our meetings. But it is also necessary for board
members to attend public meeting, hold public discussions at
meetings where there is no quorum, and be able to discuss issues
among them selves. All to often board members have voted NO
sighting there reason as not knowing enough about the subject at
hand. Board meetings by their nature are forced to minimize

discussions to fit into their 3 hour schedule. Relaxing the requirement related to non-decision making discussions between board members will greatly improve the opportunities for board members to be better informed.

Bill Sager
44-211 Mikiola Dr.
Kaneohe, HI 96744