

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
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EMAIL: oip@hawaii.gov

To: House Committee on Judiciary

From: Paul T. Tsukiyama, Director

Date: Friday, March 28, 2008, 2:00 p.m.  
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 2295, S.D. 1  
Relating to Public Meetings.

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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.

S. D. 1 addresses the concerns OIP had with this bill's original form by incorporating OIP's suggested amendments to the provisions relating to deliberation and 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

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House Committee on Judiciary  
March 28, 2008  
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matter of public policy, the question of whether this extension of board members' ability to discuss board business outside a board meeting is warranted.

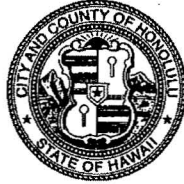
Thank you for the opportunity to testify.

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DEPARTMENT OF PLANNING AND PERMITTING  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813  
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MUFI HANNEMANN  
MAYOR



HENRY ENG, FAICP  
DIRECTOR

DAVID K. TANOUE  
DEPUTY DIRECTOR

March 28, 2008

The Honorable Tommy Waters, Chair  
and Members of the Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Waters and Members:

**Subject: Senate Bill 2295 SD1  
Relating to Public Meetings**

The Department of Planning and Permitting **supports the intent** of Senate Bill 2295 SD1, which clarifies the role of individual neighborhood board members with respect to non-board meetings, and gives explicit ability to poll board members on matters relating to official board business.

This bill would remove unnecessary barriers that prevent key community leaders from participating in planning for their communities at public information meetings and workshops for the various City plans. Paradoxically, the Sunshine Law, as interpreted, keeps the members of the Neighborhood Boards on Oahu in the dark about what is going on in their communities by prohibiting them from attending any event that might involve discussion of something that could come before their Board.

For your information, all city land use and regional plans are submitted to the neighborhood boards for review and comment prior to submittal to the Planning Commission and City Council. These plans are developed with input from the public through meetings which are open to all other members of the community and are widely publicized. It is not only unfortunate that neighborhood board members are at a disadvantage by the restriction imposed by the current interpretation of the Sunshine law in that only two board members may attend such meetings and are not allowed to participate in discussions or raise questions at those meetings. This prohibition denies the City the benefit of the views and insights of members of the boards and limits the ability of the Board members to be fully briefed on the City's plans and proposals.

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The Honorable Tommy Waters, Chair  
and Members of the Committee on Judiciary  
House of Representatives  
Re: Senate Bill 2295 SD1  
March 28, 2008  
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Please note that there are at least two other bills that address neighborhood board members' participation at other public meetings and events, and **we prefer the language of House Bill 2730 HD1 SD1 and House Bill 1512 HD1** over that of SB 2295 SD1. The House bills do not require prior approval of the board to attend other meeting and presentations, as does SB 2295 SD1. Such a requirement may continue to hinder board member presentations at other meetings, given that meeting notices do not conveniently coincide with neighborhood board meeting dates. We believe there is sufficient transparency in the process in that attending board members are required to report back at the next duly noticed board meeting.

We also support the provision of House Bill 2730 SD1 that allows announcements and other information to be presented at neighborhood board meetings, even if there is no quorum, provided no action is taken by the board on these matters. This will again support more participation in public planning events. If it moves forward, SB 2295 SD1 should incorporate this provision.

Thank you for this opportunity to comment.

Sincerely yours,



Henry Eng, FAICP, Director  
Department of Planning and Permitting

HE: jmf  
sb2295sd1-kh.doc

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Council Chair  
G. Riki Hokama

Director of Council Services  
Ken Fukuoka

Vice-Chair  
Danny A. Mateo

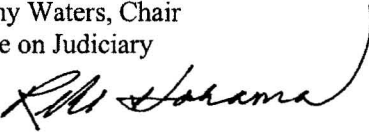


Council Members  
Michelle Anderson  
Gladys C. Baisa  
Jo Anne Johnson  
Bill Kauakea Medeiros  
Michael J. Molina  
Joseph Pontanilla  
Michael P. Victorino

**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.mauicounty.gov/council](http://www.mauicounty.gov/council)

March 27, 2008

TO: Honorable Tommy Waters, Chair  
House Committee on Judiciary

FROM: G. Riki Hokama   
Council Chair

SUBJECT: **HEARING OF MARCH 28, 2008; TESTIMONY TO PROVIDE COMMENTS ON  
SB 2295, SD1, 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.

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Attachment

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JAN 18 2008

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## A BILL FOR AN ACT

RELATING TO PUBLIC AGENCY MEETINGS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

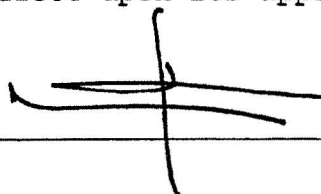
1           SECTION 1. Section 92-2.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:  
3           "(a) Two or more members of a board may discuss between  
4 themselves matters relating to official board business to enable  
5 them to perform their duties faithfully, as long as no  
6 commitment to vote is made or sought and the two or more members  
7 do not constitute a quorum of their board."

8           SECTION 2. New statutory material is underscored.

9           SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_

 P/K



S.B. NO.

2174

**Report Title:**

Public Agency Meetings

**Description:**

Allows two or more members of a board to discuss official board business to enable them to perform their duties.

2008-0630 SB SMA.doc



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Date of Hearing: Friday, March 28, 2008

Committee: House Committee on Judiciary

**WRITTEN TESTIMONY ONLY**

Board: Education

Person Testifying: Donna Ikeda, Chairperson, Board of Education

Title of Bill: S.B. No. 2295, S.D. 1, Relating to Public Meetings

Purpose of Bill: Allows two or more board members to discuss their individual positions or attend 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 Waters, Vice Chairperson Oshiro, and members of the House Committee on Judiciary, thank you for this opportunity to provide written testimony in support of S.B. No. 2295, S.D. 1.

This bill broadens the scope of permitted interactions among board members and the scope of allowable actions by board members under the Sunshine Law. The Board of Education (Board) believes that this bill will enable boards to carry out their responsibilities reasonably and efficiently in serving the public.

S.B. No. 2295, S.D. 1 also amends existing law to include provisions that ensure transparency and accountability in the

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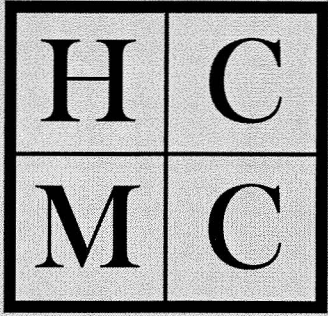
formation of board policies and in board decision-making. For example, while board members may participate in discussions conducted at meetings or presentations, the discussions must occur during and as part of the meeting or presentation and no commitment to vote on official board business may be made or sought. These provisions ensure public scrutiny into government decision making.

The provision in the bill that allows 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 assist boards in carrying out their responsibilities efficiently and effectively in adhering to the time demands and requirements of the legislative process.

Finally, the Board believes that the provisions in the bill 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, S.D.1.

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# Honolulu Community Media Council

*Since 1970*

*President:*

**Chris Conybeare**

*Vice-President:*

**Beth Ann Kozlovich**

*Treasurer:*

**Teresita Bernales**

*Secretary:*

**Marya Grambs**

*Board Members at Large:*

**Brenda Ching**

**Gerald Kato**

**Jean King**

**Michael Largarticha**

**Richard Miller**

**Sarah Vann**

March 27, 2008

To: The Honorable Tommy Waters, Chair, Honorable Blake Oshiro, Vice Chair and Members of the Judiciary Committee

Fr: Chris Conybeare, President, Honolulu Community-Media Council

Re: Opposition to SB 2295 SD1

The Honolulu Community-Media Council (HCMC) was founded in 1970 and is the oldest of the 5 similar councils in the United States. HCMC seeks to promote high standards of Journalism in Hawai'i, broaden public understanding of the role of the media, foster discussion of media issues, strengthen public support for First Amendment rights, and improve public access to information.

Our Council holds with the popular wisdom that says; "Democracy dies behind closed doors!" Accordingly we are opposed to SB 2295SD1 in that it would allow closing the door to the public on the workings of government. As one academic colleague noted, "it would create a loophole big enough to drive a county council through."

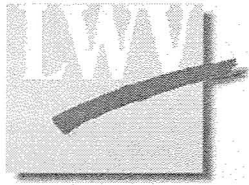
Further, we note that there are a number of bills this session dealing with various aspects of sunshine law. While we acknowledge that it may be time to take a comprehensive look at this legislation, we reject this piecemeal approach that may only add confusion and certainly could result in a partial eclipse of the sun with regard to public knowledge and participation in the democratic process.

We would favor the establishment of a comprehensive study involving all stakeholders, to asses community needs in this regard, with recommendations for any necessary reform that would then be presented to the legislature.

HCMC is willing to participate in discussions involving all stakeholders and requests that this bill and others like it should be defeated, pending such a process.

Thank you.

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## THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON S.B. 2295, S.D.1 A BILL FOR AN ACT RELATING TO PUBLIC MEETINGS

Committee on Judiciary  
Representative Tommy Waters, Chairperson  
Representative Blake K. Oshiro, Vice Chair  
Friday, March 28, 2008 2:00 p.m.  
Conference Room 325

Testifying: Jean Aoki, LWV Legislative Chair

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

The League of Women Voters is in strong opposition to S.2295, S.D.1.

If this bill passes and is enacted as law, our sunshine law will have been emasculated.

Discussions by two or more members at meetings other than their own board meetings on matters which are before their own board, discussing their own positions on the matter, and, of course, hearing each other's positions. Add to this the permitting of "polling in writing, facsimile transmissions and e-mail communications regarding their individual positions on matters relating to official board business; provided that the documentation shall be a public record and shall be available within seven days after polling. The polling shall not constitute a vote."

That is great! The polling shall not constitute a vote. Then on the day of the board meeting, all that is left to do on that particular item is to call for a vote and the "official" vote be taken.

In my testimony on similar legislation meant for the neighborhood boards specifically but which did not include polling as permissible action, I said, " Prior discussions held outside the board meetings tend to abbreviate the deliberative process because the members have gotten answers as to facts and the implications and consequences of different actions taken on the issues and have already heard the supportive and opposing views, and may not raise the same questions and issues. Not only does this short circuiting of the process raise suspicions of closed-door agreements, it deprives the public of valuable information and all of the reasoning behind the action taken by the board."

Several other proposed amendments make it bad enough; the permitted polling simply leaves me speechless. Please, please, bury this bill in committee. Thank you.

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March 27, 2008

HOUSE COMMITTEE ON JUDICIARY  
Representative Tommy Waters, Chair  
Representative Blake K. Oshiro, Vice Chair

Friday, March 28, 2008, 2:00 p.m.  
State Capitol, Conference Room 325

Re: SB 2295 SD1 – Relating to Public Meetings

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

The Screen Actors Guild Hawaii Branch represents over 600 performers who live and work in the film and video industry in the State of Hawaii.

It is very important that transparency remain within government and amending the law would create a loophole that may be dangerous to the democratic process. Therefore, we **oppose** SB 2295, SD1.

There are several bills dealing with the sunshine law. That being the case, may we suggest that a task force be created to review the sunshine law in its entirety and present their recommendations to the legislature.


Thank you for the opportunity to provide these comments.

Glenn Cannon, President, Screen Actors Guild Hawaii Branch  
Brenda Ching, Executive Director, Screen Actors Guild Hawaii Branch

**SCREEN ACTORS GUILD**

949 KAPIOLANI BLVD., SUITE 105, HONOLULU, HI 96814 ★ Tel. 808.596.0388 ★ Fax 800.305.8146

[www.sag.org](http://www.sag.org)

Branch of Associated Actors and Artistes of America / AFL-CIO •  Affiliate of International Federation of Actors

000037



**SOCIETY OF  
PROFESSIONAL  
JOURNALISTS**  
Hawaii Chapter

*written only*

P.O. Box 3141  
Honolulu, HI 96802  
March 28, 2008

Chairman Tommy Waters  
House Judiciary Committee  
State Capitol  
Honolulu, HI 96813

Re: Senate Bill 2295, SD 1

Judiciary Committee members:

We oppose this bill. It will create loopholes so big that county councils could drive through without being noticed.

SB 2295 savages the state Sunshine Law by allowing:

- **Boards to poll members.** Will discussions – rather deliberations – be allowed and recorded? The written poll would not be available to the public until seven days after the poll. Many people will not know about the existence of the poll. And if they do, it will not be released on a timely basis.

We feel this provision is an invitation to abuse. What would prevent a board from doing this with a controversial measure without the public present? The public is entitled to know how or why a board member is taking a certain position on an issue.

- **Board members (less than a quorum) to discuss issues at meetings outside the board's meeting.** This could also be subject to abuse – where a board member's position on an issue would be made outside the earshot of people interested in the issue.

Current law allows boards to designate members up to a quorum to present the views of the board at other meetings.

This bill affects all boards, county councils, regulatory commissions. Board members should not be able to discuss issues among themselves, except as provided by law.

Discussion is deliberation, and this bill allows that to happen out of sight of people most interested in the board's business.

Thank you for your time,

Stirling Morita  
FOI Committee Chairman  
Hawaii Chapter SPJ

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