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GOVERNOR

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CATHY L. TAKASE
ACTING DIRECTOR

To: House Committee on Judiciary

From: Cathy L. Takase, Acting Director

Hearing: February 1, 2011, 2:00 p.m.
State Capitol, Room 325

Re: Testimony on H.B. 109
Relating to the Sunshine Law

Thank you for the opportunity to submit testimony on H.B. No. 109.

This bill would add permitted interactions under the Sunshine Law for board members to attend public gatherings or professional association conferences and activities.

OIP does not object to such a permitted interaction, with appropriate safeguards for the public. However, the form of the bill as written is unclear in several areas. First, the Sunshine Law only comes into play when board members are communicating about "board business," i.e. discrete matters that are currently on an upcoming agenda or likely to appear on the boards' agenda in the foreseeable future. Board members thus can already attend professional conferences or activities, community gatherings, and similar events, so long as they do not discuss board business. Because these new permitted interactions do not say anything about whether board members may discuss board business at such events, it is not clear whether they are intended to allow discussion of

board business, or whether they merely restate what board members can already do, i.e., attend events together without discussion of board business.

Second, at page 4, lines 1-3, the bill provides that a public gathering or community event must not “relate to any matter over which the board is currently exercising its adjudicatory function.” Boards exercising an adjudicatory function are generally exempt from the Sunshine Law in their exercise of that function, as provided in section 92-6, HRS. Thus a Sunshine Law permitted interaction would be irrelevant to a board’s ability to exercise its adjudicatory function because the board members need not follow the Sunshine Law when adjudicating. Further, inclusion of the reference to a board’s adjudicatory function is confusing, as it suggests that perhaps the permitted interaction is intended to be limited to boards that have an adjudicatory role.

Finally, if this permitted interaction is intended to allow discussion of board business, OIP notes that it does not require reporting the matters discussed at the next meeting of the board. (The second provision requires posting a report of conference and training activities, but does not require reporting any discussions of board business.)

If this committee wishes to provide a permitted interaction allowing board members to discuss board business at community events or conferences, OIP recommends using section 92-82, HRS, as a model. Section 92-82 provides a permitted interaction for neighborhood board members to discuss board business at conferences or community meetings not organized specifically for the board, with reporting of any discussions at the next meeting. OIP has no objection to section 92-82’s language being applied to boards generally.

Thank you for the opportunity to testify.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

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

February 1, 2011

TO: Honorable Gilbert Keith-Agaran, Chair
House Committee on Judiciary

FROM: Gladys C. Baisa
Council Member

SUBJECT: **HEARING OF FEBRUARY 1, 2011; TESTIMONY IN SUPPORT OF HB 109,
RELATING TO THE SUNSHINE LAW**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to allow the participation by two or more members of a public policy deliberative body: (1) in a public gathering or community event not tied to matters currently under official deliberation or pending action; and (2) in professional association conferences and professional development activities with a publicly accessible report of their activities .

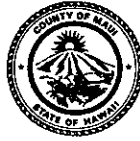
I support HB 109 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to support this measure.

GCB:amm

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
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January 31, 2011

TO: Honorable Gilbert S.C. Keith-Agaran, Chair
Committee on Judiciary

FROM: Michael P. Victorino
Council Member

DATE: Tuesday, February 01, 2011

SUBJECT: **SUPPORT OF HB 109 RELATING TO THE SUNSHINE LAW**

I **support HB 109** for the reasons cited in testimony submitted by the Maui County Council Chair Danny A. Mateo, and urge you to support this measure.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
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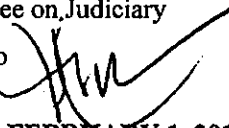


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January 31, 2011

TO: The Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary

FROM: Danny A. Mateo
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 1, 2011; TESTIMONY IN SUPPORT OF HB 109,
RELATING TO THE SUNSHINE LAW**

Thank you for the opportunity to testify in support of this important measure. The purpose of this measure is to allow the participation by two or more members of a public policy deliberative body: (1) in a public gathering or community event not tied to matters currently under official deliberation or pending action; and (2) in professional association conferences and professional development activities with a publicly accessible report of their activities.

The Maui County Council has not had the opportunity to take a formal position on this measure. Therefore, I am providing this testimony in my capacity as an individual member of the Maui County Council.

I support this measure for the following reasons:

1. Public officials are often invited to participate in public gatherings, community events, professional association conferences, development activities, and other events. For Maui County Council members, these events include conferences of the National Association of Counties (NACo) and the Hawaii State Association of Counties (HSAC).
2. Currently, the Sunshine Law does not specifically allow two or more members of a board to attend these events.
3. This measure will clarify that the joint participation of public officials in these events is permitted as long as conditions are met to ensure that there will be no deliberation on any matter over which the officials' board is currently exercising an adjudicatory function. The measure also will ensure that the public is granted access to reports on professional association conferences (such as NACo and HSAC conferences) and professional development activities.

For the foregoing reasons, I support this measure.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
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January 31, 2011

TO: Honorable Gilbert S.C. Keith-Agaran, Chair
House Committee on Judiciary

FROM: Joseph Pontanilla, Council Vice- Chair

A handwritten signature in black ink, appearing to read "Pontanilla".

DATE: Tuesday February 1, 2011

SUBJECT: **SUPPORT OF HB 109 RELATING TO THE SUNSHINE LAW**

Thank you for the opportunity to testify in support of this measure. I provide this testimony as an individual member of the Maui County Council.

I **support HB 109** for the reasons cited in testimony submitted by Maui County Council Chair Danny A. Mateo and urge you to support this measure.

11:01:31:kbn/JP: HB 109

TESTIMONY ON HB 109 RELATING TO THE SUNSHINE LAW

Committee on Judiciary

Date: Tuesday, February 1, 2011

Time: 2:00 p.m.

Place: Conference Room 325

Testifier: Jean Aoki, LWV Legislative Committee

Chair Keith-Agaran, Vice Chair Rhoads, members of the Committee on Judiciary,

The League of Women Voters would like to comment on HB 109 Relating to the Sunshine Law.

This is a very difficult topic for both sides, the board members who want to relax the laws that make for greater transparency, and the public who want the spirit of the sunshine law recognized and respected.

In the annual tug of war – one side narrowing the boundaries of forbidden behavior, the other side trying to preserve the status quo --, the League is not unsympathetic with the concerns of those who would ease the laws and the rules. But unless the public is careful, we begin to see proposed laws such as the one introduced in 2008 that would have “permitted 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.”

This bill, had it passed, would have made a mockery of our sunshine law. So very often, the backers of true sunshine, do have to hold the line tighter than would be necessary if everyone subscribed to the full meaning and spirit of the sunshine law.

Transgressions of the sunshine law are not always easily detected. But when the nature of a board's meetings is consistently short on debate and questioning, and overly efficient, one must suspect that a great deal of private deliberations and the reaching of consensus had occurred.

We will not oppose the changes provided in this bill, but ask that all new boards get detailed training on the sunshine law, and that older boards given refresher courses on the need for transparency to enhance the credibility of the boards' work.

Thank you for this opportunity to address HB 109 Relating to the Sunshine Law.

Testimony for HB109 on 2/1/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, January 31, 2011 4:47 PM

To: JUDtestimony

Cc: mel_s_gbf@yahoo.com

Testimony for JUD 2/1/2011 2:00:00 PM HB109

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Melanie Stephens

Organization: Individual

Address: 156 Alaluana Rd Makawao, HI

Phone: 573-9260

E-mail: mel_s_gbf@yahoo.com

Submitted on: 1/31/2011

Comments:

I support the ability of any number of elected officials to participate in community events as long as they don't talk among themselves about issues under consideration. The community NEEDS their participation. They need to be intimately familiar with what the community cares about. Public and community meetings and gatherings is the best place to see and hear people speak candidly and openly. Please pass this bill. Mahalo

Testimony for HB109 on 2/1/2011 2:00:00 PM

mailinglist@capitol.hawaii.gov [mailinglist@capitol.hawaii.gov]

Sent: Monday, January 31, 2011 1:46 PM

To: JUDtestimony

Cc: robert.carroll@mauicounty.us

Testimony for JUD 2/1/2011 2:00:00 PM HB109

Conference room: 325

Testifier position: support

Testifier will be present: No

Submitted by: Robert Carroll

Organization: Individual

Address: 200 S. High Street Wailuku, HI 96793

Phone: (808) 270-7246

E-mail: robert.carroll@mauicounty.us

Submitted on: 1/31/2011

Comments:

I support HB 109 for the reasons stated in testimony submitted by Maui County Council Chair Danny Mateo.