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EMAIL: oip@hawaii.gov

To: House Committee on Finance
From: Cheryl Kakazu Park, Director
Date: February 24, 2012, 4:30 p.m.
State Capitol, Room 308
Re: Testimony on H.B. No. 1611, H.D. 2
Relating to the Sunshine Law

Thank you for the opportunity to submit testimony in opposition to H.B. No. 1611, H.D. 2.

This bill would allow the members of a board subject to the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes, to discuss board business outside a meeting, either in the course of attending a public gathering or community event, or while attending professional conferences and seminars.

OIP generally supports the concepts of (1) adding a permitted interaction allowing less than a quorum of board members to attend conferences or community meeting and (2) specifically recognizing e-mail as an alternate manner of sending notices and agendas to those who have requested notification. However, OIP is concerned that the language of this bill is confusing and will be problematic to implement. The concepts this bill intends to address are included in one of OIP's own bills, introduced as H.B. 2597 and S.B. 2859. The House Judiciary Committee heard H.B. 2597, and decided to hold it in favor of working on the companion bill that the Senate Judiciary Committee has already voted to pass out as S.B. 2859, S.D. 1. (The committee report and Senate vote on S.B. 2859, S.D. 1 are pending.)

Rather than contradicting proposed changes to the Sunshine Law being worked on in another vehicle, and passing a bill with language that is problematic and that OIP does not support, OIP respectfully suggests that this bill be held in favor of working on S.B. 2859, S.D. 1. OIP's concerns about this bill are as follows.

OIP believes that a permitted interaction to allow attendance at these sorts of events should also apply to legislative hearings and meetings of other boards; should be limited to less than a quorum of members, rather than allow all members to attend; should include safeguards to ensure that the event was not set up specifically for the board and that deliberation and decisionmaking are done only at a board meeting; and should require reporting back at a meeting in all cases, not just for attendance at professional seminars. OIP's proposals include these safeguards, but this bill does not.

OIP is also concerned that the permitted interaction for attending public gatherings or community events does not appear to allow board members to discuss board business at such events either with other board members or with members of the public, which makes it confusing to determine what the Legislature intends to achieve by adding this permitted interaction. If board members are attending such an event but are not discussing board business, then the Sunshine Law would not apply to their participation in the event in the first place, so the bill's creation of a permitted interaction would be unnecessary.

The amendments made in the H.D. 2 version of this bill add to the confusion, as the proposed (as amended) permitted interactions to attend public gatherings or conferences would also require board members to also meet the requirements for the existing permitted interaction set out in subsection 92-2.5(a), HRS. If board members seeking to attend an event already meet the requirements of subsection 92-2.5(a), HRS, which allows two members to discuss board business

so long as no commitment to vote is made or sought, then they have no need for a new permitted interaction allowing them to do what they are already allowed to do under current law. If, on the other hand, they do not meet the requirements of that subsection (e.g., perhaps because more than two members wish to attend), the permitted interactions proposed by this bill would still not allow them to attend the event.

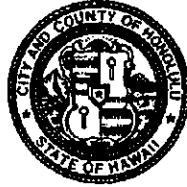
For the e-mail notice provision, OIP's proposals add e-mail notice as an option as part of a broader set of amendments changing the official filing method from paper filing to electronic filing, which this bill would not address. S.B. 2859, S.D. 1, removed the electronic filing and e-mail notice provisions to allow them to be addressed in S.B. 2234, which includes similar proposals and is attached for this Committee's reference.

Therefore, OIP recommends that this bill be held in committee, as these concepts are progressing and will continue to be discussed in S.B. 2859, S.D. 1, and S.B. 2234. Thank you for considering OIP's testimony.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

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PETER B. CARLISLE
MAYOR



DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

February 24, 2012

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
House of Representatives
State Capitol
Honolulu, Hawaii 96813

Dear Chair Oshiro and Members:

Subject: House Bill No. 1611, HD2
Relating to the Sunshine Law

The Department of Planning and Permitting **supports** House Bill No. 1611, HD2 which allows board members to attend public gatherings, community events, professional association conferences, and professional development seminars.

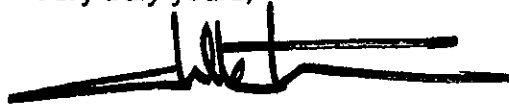
This bill would remove unnecessary barriers that prevent key community leaders from participating in planning for their communities at public information meetings and workshops for the various City plans. Paradoxically, the Sunshine Law, as interpreted, keeps the members of the Neighborhood Boards on Oahu in the dark about what is going on in their communities by limiting their ability to attend meetings discussing the vision and policies that should guide the future of their communities.

The Department supports changes to the law to make it clear that members of advisory boards (i.e., the City's Neighborhood Boards) can individually participate in community meetings and workshops which inform participants about planning issues for their communities and collect input from participants on community concerns, reactions to alternatives, and suggestions how plans and plan implementation can be improved. It is very helpful to have members of the Neighborhood Boards participate individually in community planning meetings and workshops. We don't think that the rights of free speech and assembly should be stripped from citizens who voluntarily provide non-binding advice and recommendations to government as part of advisory boards and groups.

The Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
House of Representatives
Subject: House Bill No. 1611, HD2
February 24, 2012
Page 2

Please adopt House Bill No. 1611, HD2. Thank you for this opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read 'D. Tanoue', with a long horizontal line extending to the right.

David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf

Hb1611hd2SunshineLaw-bs-doc

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

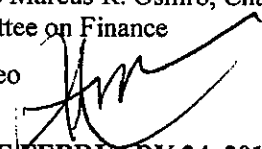


Director of Council Services
Ken Fukuoka

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

February 22, 2012

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Danny A. Mateo
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 24, 2012; TESTIMONY IN SUPPORT OF HB 1611,
HD2, RELATING TO THE SUNSHINE LAW**

Thank you for the opportunity to testify in support of this important measure. The purposes of this measure are to: (1) allow multiple board members to attend the same public gatherings and community events that are not related to any matter over which the board is currently exercising its authority and that meet requirements for permitted interactions; (2) allow multiple members to attend the same conferences and seminars if the member produces a public report and meets requirements for permitted interactions; and (3) allow notice of board meetings to be sent to persons requesting notice by e-mail. 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, professional-development activities, and other events. For Maui County Council members, these events may include conferences of the National Association of Counties (NACo) and the Hawaii State Association of Counties (HSAC). Currently, the Sunshine Law does not specifically address the ability of board members to attend these events.
2. Recognizing the need for more flexibility, other states, including Texas, have created exemptions from their open meetings laws to allow members of a board to attend social functions, conferences, or workshops, with appropriate limitations.
3. The measure will improve efficiency for both government and the public by allowing agendas to be delivered via e-mail prior to meetings.

The measure could be improved by: (a) explicitly allowing for attendance by all County Council members at governmental conferences and meetings, irrespective of the requirements for "permitted interactions"; and (b) deleting the requirement that members attending informational meetings report on their attendance and matters presented and discussed at the next duly noticed meeting of the board.

For the foregoing reasons, I support this measure.

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

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www.maui-county.gov/council

February 23, 2012

TO: Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Joseph Pontanilla, Council Vice- Chair

DATE: Friday February 24, 2012

SUBJECT: **SUPPORT OF HB 1611, HD 2, RELATING TO THE SUNSHINE LAW**

A handwritten signature in cursive script that reads "Joseph Pontanilla".

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 1611, HD 2** for the reasons cited in testimony submitted by Maui County Council Chair Danny A. Mateo. I concur, as well, in support of the recommended improvements to the measure as cited in Maui County Council Chair Mateo's testimony.

I urge your support of this measure.

12:02:23:kbm/JP: HB 1611 HD2

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
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Director of Council Services
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February 23, 2012

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Mike White
Council Member, Makawao - Ha'ikū - Pā'ia

SUBJECT: **HEARING OF FEBRUARY 24, 2012; TESTIMONY IN SUPPORT & COMMENTS ON H.B. 1611 H.D. 2, RELATING TO THE SUNSHINE LAW**

Thank you for the opportunity to testify in **support** of this measure. The Maui County Council has not had the opportunity to take a formal position on this matter and therefore, I am providing this testimony in my capacity as an individual member of the Council.

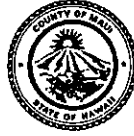
At the current time, members who wish to attend public or community meetings are often advised against appearing at an event if two or more members are already in attendance. The proposed amendment clarifies that multiple members are able to attend public gatherings or community events as long as it does not relate to any specific matter over which the board is currently exercising its adjudicatory, advisory or legislative function. Although the proposed language broadens permitted interactions, it **continues to restrict members from attending many events and educating themselves on pending issues.**

I believe this bill could be **improved by removing the provision**, "...provided that the public gathering or community event does not directly relate to any specific matter over which the board is currently exercising its adjudicatory, advisory or legislative function." The removal of this language will allow board members to **educate themselves on a broad range of issues** and interact with constituents, which is very important in Maui County where members are technically at-large. Most importantly, the bill already addresses permitted interactions between members in regards to official board business and "no commitment to vote can be made or sought".

I also support the provision in the bill allowing members of a board to individually or jointly attend professional association conferences and professional development seminars. Currently, Hawaii's Sunshine Law does not specifically address the ability of members to attend these events.

Thank you for the opportunity to **support** this measure.

Council Chair
Danny A. Mateo



Director of Council Services
Ken Fukuoka

Vice-Chair
Joseph Pontanilla

COUNTY COUNCIL

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

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Don Couch 
Council Member, South Maui District

DATE: Thursday, February 23, 2012

SUBJECT: **SUPPORT OF HB1611, HD2, RELATING TO THE SUNSHINE LAW**

As indicated by Maui County Council Chairman Danny Mateo, I, too, **support** the intent of this measure for the following reasons: (1) Public officials are often invited to participate in public gatherings and community events. (2) Currently, the Sunshine Law does not specifically allow two or more members of a board to attend these gatherings and events. (3) This measure will clarify that the joint participation of public officials in these gatherings and events can be permitted as long as conditions are met.

The measure allows for public officials to jointly attend a public gathering or community events *only* if the gathering or event "does not directly relate to any specific matter over which the board is currently exercising its adjudicatory, advisory, or legislative function." Because there are always dozens of bills and resolutions pending before county councils, many of which cover broad subject matter (such as the county general plans), **this limitation would effectively prevent council members from attending most public gatherings and community events**, thus defeating this measure's intent. Moreover, for educational purposes (or, as Section 92-2.5(a) states "*to enable them to perform their duties faithfully*"), it is especially important for Council members to attend gatherings and events when the subject matter *does* address currently pending matters. Therefore, I would like to propose that the text referenced above be deleted and replaced with a more appropriate limitation, using text already in use elsewhere in the Sunshine Law.

Specifically, my proposed amendment is as follows:

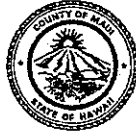
- Strike the following text after the semicolon in section 92-2.5(c): "provided that the public gathering or community event does not directly relate to any specific matter over which the board is currently exercising its adjudicatory, advisory, or legislative function."
- Replace the struck text with the following: "if reasonably necessary to enable them to perform their duties faithfully and as long as no commitment to vote is made or sought."

The measure also states that board members may attend gatherings or events provided that "requirements for permitted interactions between board members as set forth in subsection (a) are met." Subsection (a) limits interactions between board members to two members, "as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board." If a member's vote is not being solicited, the total number of board members attending a gathering is irrelevant. Please remove language which restricts board member participation and interaction at public gatherings and community events.

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

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www.mauicounty.gov/council

February 23, 2012

TO: The Honorable Marcus R. Oshiro, Chair
House Committee on Finance

FROM: Robert Carroll
Councilmember, East Maui

Handwritten signature of Robert Carroll in cursive.

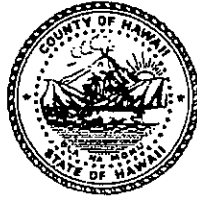
SUBJECT: **HEARING OF FEBRUARY 24, 2012; TESTIMONY IN SUPPORT OF HB 1611, HD2, RELATING TO THE SUNSHINE LAW**

I SUPPORT HB 1611, HD2 for the reasons cited in testimony submitted by the Maui County Council Chair Danny Mateo, and urge you to pass this measure. There are three main reasons why I support this draft legislation:

1. Public officials are often invited to participate in public gatherings, community events, professional-association conferences, professional – development activities and other functions. For Maui County Council members, these events may include National Association of Counties (NACo) and the Hawaii State Association of Counties (HSAC) conferences. Currently, the Sunshine Law does not specifically address the ability of board members to attend these events.
2. Recognizing the need for more flexibility, other states, including Texas, have created exemptions from their open meetings laws to allow members of a board to attend social functions, conferences, or workshops, with appropriate limitation.
3. The measure will improve efficiency for both government and the public by allowing agendas to be delivered via e-mail prior to meetings.

However, this proposed draft could be improved by: (a) explicitly allowing for attendance by all County Council members at governmental conferences and meetings, irrespective of the requirements for “permitted interactions”; and (b) deleting the requirement that members attending informational meetings report on their attendance and matters presented and discussed at the next duly noticed meeting of the board.

William P. Kenoi
Mayor



BJ Leithead Todd
Director

Margaret K. Masunaga
Deputy

West Hawaii Office
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County of Hawai'i
PLANNING DEPARTMENT

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Fax (808) 961-8742

February 23, 2012

Honorable Marcus R. Oshiro, Chair
and Members of the Committee on Finance
The House
Hawaii State Capital
415 South Beretania Street
Honolulu, HI 96813

Dear Chair Oshiro, Representatives and Committee Members:

**SUBJECT: Statement In Consideration of House Bill 1611 HD2, Relating to the Sunshine Law
Hearing: Friday, February 24, 2012, Agenda #7, 4:30 p.m.
B.J. Leithead Todd, Planning Director, County of Hawai'i**

House Bill (HB) No. 1611 HD2 proposes substantial changes to Chapter 92, Hawaii Revised Statutes relating to public agency meetings. Overall, I support these amendments with the following comments and concerns:

The bill proposes to permit "one or more members of a board" to attend a public gathering or community event provided that the gathering or event does not directly relate to any specific matter over which the board is currently exercising its adjudicatory, advisory or legislative function. I support this amendment fully as it will address concerns raised by many members of advisory committees who wish to attend functions that may generally address areas of concern for them.

The bill also allows one or more members of a board to participate in professional-association conferences and professional development seminars provided that the members provide a report to the presiding officer within a reasonable time after the conference or seminar. I fully support this amendment also.

The bill also allows email notification of meetings on the same day the agenda is filed. I fully support this amendment.

The one area that appears to be missing or uncertain is whether the "public gatherings" can be interpreted broadly enough to allow participation at publicly noticed meetings of other boards and the legislature. It has been very frustrating for various members of boards and commissions that the Sunshine Law as it has been interpreted by the Attorney General and OIP appears to prohibit

attendance by all members at meetings that are publicly noticed and where members of the public and media can participate, but not board or commission members.

I would suggest that the following language be considered as an amendment for a new subsection (e) with the other sections to be appropriately re-alphabetized. This amendment is similar to one proposed by OIP but would allow all members to attend rather than limiting participation to less than a quorum:

(e) One or more members of a board may attend a public hearing or an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may provide testimony and participate in discussions, including discussions among themselves; provided that the discussions occur during and as a part of the public hearing, informational meeting or presentation; and provided further that there is no commitment made relating to a vote on the matter. The board members, at the next duly noticed meeting of the board, shall report their attendance and the matters presented and discussed that related to official board business.

For example this would clearly allow all members of the County Council to attend a Finance or Ways and Means hearing where the respective mayors address the committees regarding the county's budget or Transient Accommodations Taxes and would allow them to appear in person and testify on bills. It is currently unclear whether they may currently do so legally if a majority of the Council should attend.

This amendment would also allow for participation by our Community Development Plan (CDP) Steering and Action Committee members at publicly noticed charrettes or meetings regarding matters that may impact their respective plans. Recently our office had to tell members of the Puna CDP Action Committee that they could not all attend a public hearing being conducted on a proposed amendment to the General Plan that impacted the Pāhoia area. When the Planning Department conducted charettes for development of a Honokōhau TOD Plan, all members of the Kona CDP Action Committee could not attend. Similarly, when community charrettes were held on the Ka'ū CDP, the CDP Steering Committee members could not all attend. These were meetings that were publicly advertised or noticed and were open to the general public.

I also suggest that the committee look at the other amendments proposed in SB2859 that would allow participation in a social media website or blog.

I ask that the Committees consider my comments and concerns and pass HB 1611HD 2 with amendments.

Sincerely,



BJ LEITHEAD TODD
Planning Director

xc: Mayor William P. Kenoī, County of Hawai'i
Mr. Bobby Command, Executive Assistant