



NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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KEALI'I S. LOPEZ  
DIRECTOR

**PRESENTATION OF THE  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

TO THE HOUSE COMMITTEE ON JUDICIARY

TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012

Friday, February 10, 2012  
2:00 p.m.

**WRITTEN TESTIMONY ONLY**

**TESTIMONY ON HOUSE BILL NO. 2597, RELATING TO OPEN GOVERNMENT.**

TO THE HONORABLE GILBERT S. C. KEITH-AGARAN, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Celia Suzuki, Licensing Administrator for the Professional and Vocational Licensing Division ("Division"), Department of Commerce and Consumer Affairs ("Department"). The Department appreciates the opportunity to testify in support of House Bill No. 2597, Relating to Open Government.

The purpose of House Bill No. 2597 is to allow board members to hear testimony for a meeting canceled due to lack of quorum, to attend informational meetings, and to discuss board business via social media. The bill also provides for the electronic filing of meeting notices.

Testimony on House Bill No. 2597  
Friday, February 10, 2012  
Page 2

The Division is responsible for implementing the licensing regulations for forty-seven (47) boards, commissions, and programs. There are twenty-five (25) boards and commissions that are administratively attached to the Department. The boards meet on a regular basis and would welcome the suggested amendments to Chapter 92, Hawaii Revised Statutes. The measure will also be very beneficial to the consuming public.

Thank you for the opportunity to testify in support of House Bill No. 2597.

NEIL ABERCROMBIE  
GOVERNOR



BARBARA A. KRIEG  
INTERIM DIRECTOR

DEPUTY DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

February 8, 2012

TESTIMONY TO THE  
HOUSE COMMITTEE ON JUDICIARY

For Hearing on Friday, February 10, 2012  
2:00 p.m., Conference Room 325

BY

BARBARA A. KRIEG  
INTERIM DIRECTOR

**House Bill No. 2597**  
**Relating to Open Government**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON GILBERT KEITH-AGARAN AND MEMBERS OF THE  
COMMITTEE:

Thank you for the opportunity to provide testimony on H.B. No. 2597.

The purpose of H.B. No. 2597 is to allow board members to hear testimony for a meeting canceled for lack of quorum, to attend informational meetings, and to discuss board business via social media; and to provide for electronic meeting notices.

**The Department of Human Resources Development supports this bill.**

We believe that the electronic notice requirement of this bill significantly enhances the ability of public agencies and boards to more widely publicize their meeting notices, which could lead to more public interest and participation in their proceedings. Posting notices electronically is also a low-cost alternative to traditional posting methods that require expenditures for paper, copying, and distribution.

In addition, the new permitted interactions allowed by this bill would:

1) communicate to the public that its time spent appearing at meetings is valued

because testimony will be received even if the meeting is cancelled; and 2) enable agency and board members to interact more with the public—via informational meetings and social media—in order to receive input outside the formalities of duly noticed formal meetings.

H.B. No. 2597 encourages inclusive and participatory government for our citizenry. We respectfully request that this Committee move this bill forward.



HAWAII COMMUNITY  
DEVELOPMENT AUTHORITY



Neil Abercrombie  
Governor

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Chairperson

Anthony J. H. Ching  
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STATEMENT OF

ANTHONY J. H. CHING, EXECUTIVE DIRECTOR  
HAWAII COMMUNITY DEVELOPMENT AUTHORITY

BEFORE THE

HOUSE COMMITTEE ON JUDICIARY

Friday, February 10, 2012

2:00 P.M.

State Capitol, Conference Room 325

in consideration of

**H. B. 2597 – RELATING TO OPEN GOVERNMENT.**

**Purpose:** Allows board members to hear testimony for a meeting cancelled for lack of quorum, to attend informational meetings, and to discuss board business via social media; provides for electronic meeting notices.

**Position:** The Hawaii Community Development Authority supports this proposal as it allows board members the following:

- To hear testimony for a meeting cancelled due to lack of quorum.
- To allow less than a quorum of members of a board attend informational meetings or presentations on matters relating to official board business, provided that the meeting is not specifically organized for board members and that board members report on the meeting at its next board meeting.
- To allow less than a quorum of members to discuss board business via social media.
- Provides for electronic meeting notices.

It is our opinion that the proposed amendments will provide greater opportunities for board members to interact with the community and the public and possibly gain a fuller understanding of various perspectives and opinions. The amendments also propose a more efficient use of time and effort for the public and board members by allowing testimony or a presentation to be heard, despite the cancellation of a meeting due to lack of quorum. Finally, the proposed amendments will save staff time and resources by simplifying the filing of meeting notices for State boards.

Thank you for the opportunity to testify in support of this proposal.

**NEIL ABERCROMBIE**  
GOVERNOR

**BRIAN SCHATZ**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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**FREDERICK D. PABLO**  
DIRECTOR OF TAXATION

**RANDOLF L. M. BALDEMOR**  
DEPUTY DIRECTOR

**To:** The Honorable Gilbert Keith-Agaran, Chair  
and Members of the House Committee on Judiciary

**Date:** Friday, February 10, 2012  
**Time:** 2:00p.m.  
**Place:** Conference Room 325, State Capitol

**From:** Frederick D. Pablo, Director  
Department of Taxation

**Re:** H. B. 2597, Relating to Open Government

The Department of Taxation (Department) supports the adoption of H.B. 2597.

H.B. 2597 proposes to permit board members to: hear testimony for a meeting that has been canceled due to lack of quorum, attend informational meetings, discuss board business via social media, and utilize electronic means for filing meeting notices.

The Department supports all of these proposed amendments because not only do they allow the Department to address changes in the way the public receives and accesses information, it also provides board members with the ability to attend other open public meetings without the fear of violating the Sunshine law by virtue of their attendance. These changes will enable boards to be more efficient in both time and cost.

Thank you for the opportunity to provide comments.

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
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To: House Committee on Judiciary  
From: Cheryl Kakazu Park, Director  
Date: February 10, 2012, 2:00 p.m.  
State Capitol, Room 325  
Re: Testimony on H.B. No. 2597  
Relating to Open Government

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Thank you for the opportunity to submit testimony on H.B. No. 2597.

OIP strongly supports this bill, which would require the official meeting notice to be electronically filed and would create three new permitted interactions regarding cancelled meetings, attendance at informational and other meetings, and use of social media. Specifically, this bill would:

(1) allow members of a board or commission to hear public testimony and presentations on items listed on a filed agenda at the time and place stated in the notice where the meeting, as noticed, is canceled as a matter of law due to a lack of quorum;

(2) allow less than a quorum of members of a board or commission to attend informational meetings or presentations on matters relating to official board business, provided that the meeting is not specifically organized for board members and that the members report back at the next board meeting;

(3) allow less than a quorum of members of a board or commission to discuss board or commission business via social media, provided that the discussion is continuously accessible for public viewing and participation; and



(4) require state boards to electronically file their meeting notices under part I of chapter 92, Hawaii Revised Statutes (HRS) (Sunshine Law), on the State's electronic calendar, and allow counties to electronically file such notices on the State's calendar or their official calendars; clarify that meeting notices required to be filed under part I of chapter 92, HRS, need not be published in a newspaper of general circulation; and provide housekeeping changes related to untimely filed notice.

The Sunshine Law was originally enacted in 1975, long before the widespread use of the Internet and electronic devices. The intent of this bill is to modernize the Sunshine Law, while enhancing public participation and government transparency.

#### Meeting Notices to be Electronically Filed

Currently, the Sunshine Law requires public meeting notices to be physically filed with the Office of the Lieutenant Governor, and copies are posted on the bulletin board in the Capitol Chambers. By Executive Order, Governor Abercrombie and the previous administration also required state boards to electronically post their notices on the state calendar.

This bill will require the official meeting notices of state boards to be electronically filed on the State's electronic calendar. The bill will also give counties the option to electronically file board notices on the state's website or on official county websites. The bill further clarifies that the proper electronic filing location for other types of state agency notices is the electronic calendar. The emergency meeting provisions have also been amended to require electronic posting of the emergency meeting agendas and findings justifying the emergency meeting, so as to prevent any confusion that could result from inconsistent filing methods.

The electronic filing provisions of this bill will make it easier for the public to be notified of state and county board meetings as well as emergency meeting notices and findings because all the notices will be centrally located on the state calendar (or the county's official website) where they are easily accessible and searchable over the Internet. For those members of the public who do not have access to the Internet, the proposed bill will continue to provide individuals with the option of receiving notice through mail, or they can use the public library internet facilities. Additionally, for members of the public with internet access, the proposed bill will add the option of receiving notice through electronic transmission.

In addition to cost savings resulting from the near elimination of paper, copying, and delivery costs, use of electronic posting will promote government efficiency by reducing staff resources and duplication of effort spent to maintain and physically post the notices with the Office of the Lieutenant Governor, in the Chambers, and on the state calendar.

There is a built-in safeguard to ensure that only timely filed notices are electronically posted, as the state calendar will automatically reject a notice that is posted with less than six days' advance notice. The board can print out an electronically time-stamped agenda to retain proof that it timely filed the meeting notice.

#### Permitted Interaction Regarding Cancelled Meetings

OIP has advised boards that the current Sunshine Law does not allow board members to hear testimony or presentations on items on the agenda of a cancelled meeting because the board members would be doing so outside a meeting, even though a notice and agenda had been filed and members of the public may not want to have to return for a rescheduled meeting. This proposed amendment to the law

is intended to accommodate the public by allowing the receipt of testimony and presentations, even though a meeting must be cancelled.

The bill would create a new permitted interaction to allow board members to hear public testimony and presentations on agenda items when the meeting is cancelled as a matter of law due to the lack of a quorum or videoconference equipment failure. Despite the cancellation of a meeting in such cases, the board members present will be able to receive public testimony or presentations so that people will not have to spend more time and incur additional travel costs in order to give their testimony or presentations at a subsequent meeting. The public can choose to attend the subsequent meeting before a duly constituted board in lieu of, or in addition to, testifying at the cancelled meeting. The reporting requirement – that the board members at the cancelled meeting must report on the testimony and presentations to the full board at its next meeting – will generally ensure that the entire board has access to the information received at the cancelled meeting. A board's deliberation and decisionmaking must still occur at a subsequent duly noticed board meeting.

#### Permitted Interaction to Attend Other Meetings

The Sunshine Law prohibits members from discussing official board business outside of a meeting of their board, except as specifically permitted. One aspect that has been a source of much frustration for board members is that the Sunshine Law does not generally allow more than two members to discuss board business in the course of attending another board's meeting, a presentation, a legislative hearing, or a seminar, even though that other board's meeting may be open to the public either as a Sunshine Law meeting or for other reasons. Thus, for example, three of seven City Council members who represent districts overlapping with one neighborhood board district cannot all attend and participate in that neighborhood

board's public meeting relating to Council matters, or in a community meeting regarding a proposed development, or in a legislative hearing on a bill of interest to that community. Although the law allows a board to set up a permitted interaction group ("PIG") of less than a quorum to attend such meetings, there often is not sufficient lead time before the other bodies' meetings for the board to hold its own meeting to establish such a PIG.

Consequently, OIP believes that the Sunshine Law, as currently written, deters board members from attending presentations or other meetings, discourages board members from testifying or participating in discussions that are a part of those presentations, lessens the public's ability to interact with board members, makes it difficult for board members to be fully informed of all sides of an issue, and reduces communication and cooperation between various boards on issues of mutual concern. To correct this, the Sunshine bill proposes to create a second new permitted interaction that would allow less than a quorum of board members to attend meetings of other boards, conferences, or community groups.

OIP's proposal is based on the 2008 law creating special provisions for Neighborhood Boards (Part VII of Chapter 92), one of which allows those board members to participate in informational meetings and presentations before other entities. OIP proposes to have a similar provision apply to all Sunshine boards and would allow less than a quorum of board members to participate in other boards' meetings, legislative hearings, seminars, presentations, community meetings, and similar events to enhance board members' knowledge and performance of their duties, increase the public's input into the board's deliberations, and promote cooperation between various boards on matters of common concern.

The proposed amendment is intended to improve the performance of the board members and their boards by allowing for a more thorough gathering of information and a fuller understanding of various perspectives, which would

promote better discussion and deliberation before the full board. So long as there is no quorum to make decisions, board members would be able to attend other entities' meetings (e.g., legislative hearings) on short notice and they will no longer have to leave or refrain from participating in the discussions held as part of the presentations. The proposal is also intended to foster better and more effective communication and coordination between boards and other entities on issues of common concern.

By giving board members greater freedom to attend and participate in meetings other than their own board meetings, the proposal will also increase the public's ability to engage with board members on matters of public concern. Board members can now go to the public, and not simply wait for the public to come to their board meetings. Thus, the proposal will give the public increased access to information about a board's current business and greater ability to interact and express their views with board members.

The bill contains safeguards for the public by limiting the number of board members who may participate to less than a quorum, allowing discussion only during and as part of the presentation, and requiring subsequent reporting by the board members at a duly noticed open meeting. The reporting requirement protects the public's interest, as the report by the minority of members to the full board will need to be sufficiently detailed if they wish to influence any decision on issues discussed under this permitted interaction.

#### Permitted Interaction to use Social Media

The Sunshine Law prohibits board members from discussing official board business outside of a meeting of their board, except as specifically permitted. Presently, there is no permitted interaction that would allow more than two board members to participate in a social media discussion, even though board members'

intent in doing so is typically to make current policy discussions more accessible to more people. This prohibition could apply to board members who, for instance, directed "tweets" about board business to one another via Twitter or even "followed" one another's Twitter accounts, or who used Facebook to comment on each other's posts about board business or to post on each other's "walls" about board business, even if the discussion was open to anyone with internet access. Depending on the specific situation, even board members' status as Facebook "friends" could be considered participation in a serial discussion if the members were writing posts about board business and those posts automatically showed up in the other members' news feeds as posts by "friends."

The bill would create a new permitted interaction that would allow less than a quorum of board members to openly participate in a social media discussion, while ensuring public access to those discussions and retaining OIP's ability to examine specific cases to determine whether the spirit and intent of the Sunshine Law has been violated through surreptitious means of utilizing social media. Limiting participation to less than a quorum of a board's membership ensures that the social media discussion will not result in a board decision being essentially made online, as a majority of the board will not be part of the discussion and, thus, would not be part of any consensus reached in the course of the discussion.

As an additional safeguard, any social media discussions taking place must be accessible for review and participation by the public-at-large, and the discussions must be in a written, continuously accessible form that allows members of the public to review what has been said and to add their comments according to their own schedule. In other words, Twitter, Facebook, or similar accounts used to discuss board business must be set as public, and the discussions of board business must be left online and available, to meet the terms of the permitted interaction. To ensure that the public can readily find and access the social media sites being used

by board members, the proposed bill further requires the board to provide a list of all board members using social media and their social media addresses or identifications.

Unlike more private means of communicating via personal meetings, letters, e-mails, or telephone calls, the social media discussions permitted by this proposal would provide greater transparency and enhance OIP's ability to determine the content and context of board members' communications, because all social media comments can be viewed and examined. For example, in contrast to a conversation in the hallway or a phone call, a written record of tweets or postings could be downloaded by a member of the public who believed board members' discussions violated the Sunshine Law. Given the inherently open and transparent nature of the social media discussions being permitted by this amendment, it would be foolish for someone to intentionally violate the Sunshine Law using this method of communication.

Instead, the proposed bill should be viewed as a means for board members to engage in more effective communication with the public and to enhance public participation in the decisionmaking process. OIP recognizes that a significant segment of the public enjoys communicating through social media or may have difficulty participating in the board's decisionmaking process through the traditional means of personally attending and testifying at board meetings. For example, people of all ages and economic backgrounds may have work, school, or family obligations that conflict with typical meeting times, and many people find it difficult to attend meetings due to distance, disability, or other responsibilities. Social media encourages public participation in governance by providing members of the public with additional and more convenient access to and interaction with board members regarding board business. In addition to allowing board members to communicate with their constituents, social media also provides a means for the

public to read and respond to different views and perspectives from other people's comments on various board issues. All of the social media communication can take place according to individuals' preferred schedules throughout the day or week, rather than being limited to the time, date, and place set by a board. Thus, OIP views social media as a means to greatly enhance openness, transparency, and public participation in government.

OIP strongly recommends that boards adopt their own social media policies that will address important constitutional, legal, or practical concerns, and notes that the state Office of Information Management and Technology and the Attorney General's Office have been developing a model social media policy for the state. By proposing this amendment, OIP is not setting out a policy on how board members should best use social media, but simply intends to ensure that the Sunshine Law does not present an impediment to social media usage while still providing safeguards to protect against Sunshine Law abuse.

Senate Amendments to Companion Bill, S.B. 2859, S.D. 1

The Senate Committee on Judiciary and Labor has proposed amending the companion to this bill, S.B. 2859, to clarify that only the social media addresses that board members use to discuss board business are subject to disclosure on request under the social media permitted interaction; to require that boards adopt a social media policy prior to carrying out discussions under the social media permitted interaction; and to create a sunset date in four years for the social media permitted interaction. OIP has no objection to these amendments. Specifically, the proposed amendments to the social media permitted interaction, beginning at bill page 4, line 14, are highlighted and would read:

(f) From July 1, 2012, to June 30, 2016 only, two or more members of a board, but fewer than the number of members



necessary to constitute a quorum for the board, may participate in a discussion on a social media website about matters relating to official board business; provided that the board has previously adopted a policy on the use of social media and that no commitment to vote is made or sought and the discussion on the social media website:

(1) Is accessible at any time to any member of the public with an Internet connection,

(2) Allows participation by interested members of the public, and

(3) Remains available for public viewing for a reasonable period of time on the social media website.

Upon request by any person, the board shall provide a list of all board members using social media and their social media addresses or identifications used for discussions subject to this subsection. For the purpose of this subsection, "social media website" means a website that facilitates social interaction among unlimited numbers of persons for the purposes of friendship, meeting other persons, or information exchanges, and allows persons using the website to communicate with other users.

The Senate Committee on Judiciary and Labor has also proposed removing the electronic notice provisions of the bill to allow them to be considered separately in S.B. 2234, Relating to Electronic Information. OIP has no objection, providing that the electronic notice provisions would indeed move ahead in S.B. 2234 and that S.B. 2859's amendments to the general provisions of HRS § 92-7(a) would be

retained to make clear that the notice required by the Sunshine Law is governed by Part I of HRS Chapter 92, notwithstanding any other law to the contrary. At the time this testimony was submitted, OIP did not yet know whether S.B. 2234 is moving forward, in what form it may move forward, or whether the Senate Committee on Judiciary and Labor will ultimately pass S.B. 2859 out with the proposed amendments. Given this uncertainty, OIP would prefer to see the electronic notice requirements maintained in H.B. 2597 at this time.

If the electronic notice provisions are retained in H.B. 2597, then OIP would concur with a request made by the Hawaii Strategic Development Corporation that language at bill page 6, lines 15-21 should be amended to conform more closely to the original statutory wording, by changing it to read:

(b) The board shall file the notice in the ~~[office of the lieutenant governor or the appropriate county clerk's office, and in the]~~ board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible.

In conclusion, OIP requests this Committee's support of H.B. 2597, which we believe reasonably enhances government efficiency and cost savings while effectively protecting the public's right to openness and transparency and increasing public participation in government.

Thank you for considering our proposed legislation.

NEIL ABERCROMBIE  
GOVERNOR



SANJEEV "SONNY"  
BHAGOWALIA  
CHIEF INFORMATION  
OFFICER

STATE OF HAWAII  
OFFICE OF INFORMATION MANAGEMENT & TECHNOLOGY  
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

TESTIMONY OF  
SANJEEV "SONNY" BHAGOWALIA, CHIEF INFORMATION OFFICER  
TO THE HOUSE COMMITTEE ON  
JUDICIARY

Friday, February 10, 2012, 2:00 p.m.  
State Capitol, Conference Room 325

**WRITTEN TESTIMONY ONLY**

H.B. 2597

RELATING TO OPEN GOVERNMENT

Chair Keith-Agaran, Vice Chair Rhodes, and members of the committee, thank you for the opportunity to testify on H.B. 2597

The Office of Information Management and Technology strongly supports and recommends passage of H.B. 2597.

The proposed bill would require the official meeting notices to be electronically filed and would create three new permitted interactions regarding cancelled meetings, attendance at informational and other meetings, and use of social media. Social media has become an accepted way for business to be conducted and encourages citizen engagement and participation.

The intent of the bill clearly aligns with the chief information officer's strategic vision for the state's information technology (IT). Modernizing the Sunshine Law to allow electronically transmitted meeting notices and the use of social media will enhance public participation and government transparency.

The bill further allows boards to conduct their business more efficiently and cost-effectively by using new technologies and provide opportunities for the public to submit testimony and presentations electronically so that public meetings need not be cancelled. By giving board members greater freedom to attend and participate in other meetings in addition to their own and allowing them to communicate with the public through social media, the proposal

will also increase the public's ability to engage with board members on matters of public concern.

The bill benefits both boards and the public. While allowing for better board efficiency and government cost savings, it provides adequate safeguards for the public through quorum and reporting requirements and will give the public increased access to information about a board's current business as well as a greater ability to interact and express their views with board members.

Thank you for the opportunity to testify on this matter.



**HB2597**  
**RELATING TO OPEN GOVERNMENT**  
House Committee on Judiciary

February 10, 2012

2:00 p.m.

Room: 325

The Office of Hawaiian Affairs (OHA) **SUPPORTS, with AMENDMENTS,** HB2597.

OHA supports HB2597 because it gives members of boards greater flexibility in their external interactions, in their ability to hear testimony even when a board meeting has been terminated for such reasons as lack of a quorum, and in their ability to discuss board business through social media.

However, we respectfully request that your committee amend HB2597 by deleting the requirement on page 5, lines 5-7 that upon request, boards and commissions must provide a list of all board members using social media and their social media addresses and identifications. Such a requirement raises privacy concerns and could have a chilling effect on board members' use of social media.

Therefore, we urge your committee to PASS HB2597, with the amendments that we propose above.

Mahalo for the opportunity to testify on this measure.

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 10, 2012

The Honorable Gilbert S. C. Keith-Agaran, Chair  
and Members of the Committee on Judiciary  
House of Representatives  
State Capitol  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran and Committee Members:

Subject: House Bill No. 2597  
Relating to Open Government

The Department of Planning and Permitting **supports** House Bill No. 2597. This Bill allows board members to hear testimony and presentations for a meeting cancelled for lack of quorum, to attend informational meetings, and to discuss board business via social media. It also provides for electronic meeting notices.

No important public purpose is served by delaying testimony or presentations. It is a waste of time for board members, presenters, and those who came to hear the presentations. In addition, board members should be able to attend informational meetings and to discuss community issues on social media websites, especially those who are members of advisory boards (such as the City's Neighborhood Boards) which provide non-binding advice and recommendations to government.

Finally, electronic meeting notices, in lieu of publication in newspapers or posting with the Office of the City Clerk, will reduce the cost of notices for the Department, and shorten the time required to post notices. Electronic notices are increasingly more accessible to, and preferred by the public than posting at governmental offices or newspaper notice publication.

Please pass House Bill No. 2597. Thank you for the opportunity to testify.

Very truly yours,

A handwritten signature in black ink, appearing to read "David K. Tanoue", is written over a horizontal line.

David K. Tanoue, Director  
Department of Planning and Permitting

DKT:js  
hb2597 notice-k

**Bernard P. Carvalho, Jr.**  
Mayor



**Alfred B. Castillo, Jr.**  
County Attorney

**Gary K. Heu**  
Managing Director

**Amy I. Esaki**  
First Deputy

**OFFICE OF THE COUNTY ATTORNEY**  
**County of Kaua'i, State of Hawai'i**  
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Testimony of Alfred B. Castillo, Jr.

Before a Hearing of the House Committee on Judiciary  
Friday, February 10, 2012  
2:00 pm  
Conference Room 325

**House Bill 2597 Relating to Open Government**

Thank you for the opportunity to submit testimony on H.B. No. 2597, Relating to Open Government.

The County of Kaua'i does not support H.B. No. 2597. To allow testimony during a cancelled meeting does not allow for equal access by the public to board members who may have questions for the testifiers. Also, limiting the number of members to a convention or seminar is not practicable, especially when there are conventions or seminars that all board members should be allowed to attend. Finally, the monitoring of participation on a social media website is impractical. There may be a fine line between participation by a board member on a social media personally or in their official capacity and it would be impossible for the agency staff to monitor.

Mahalo,



**House JUD Committee**  
**Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads**

**Friday 2/10/12 at 2:00PM in Room 325**  
**HB 2597 – Open Government**

**TESTIMONY**

**Nikki Love, Executive Director, Common Cause Hawaii**

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Chair Keith-Agaran, Vice Chair Rhoads, and Committee Members:

**Common Cause Hawaii would like to offer the following comments on HB 2597, regarding open government.**

**BOARD MEMBERS ATTENDING OTHER MEETINGS**

We understand the value of having board members participate in other events, especially so that they may hear from the public and learn about relevant topics. However, more clarity is needed to ensure this does not become a major loophole for our sunshine law. We are concerned that the board members could end up getting into substantial discussion about matters that should be discussed in a properly noticed public meeting. Perhaps additional limitations should be added, e.g., there should be no direct discussions between board members on board business.

**SOCIAL MEDIA**

We recognize that social media provides new opportunities for engaging the public, especially for individuals who may not be able to attend public meetings in person. Particularly among young generations, social media represents an opportunity for education and engagement in our civic dialogue.

If we are considering social media discussions as something analogous to a meeting or town hall, then we should think carefully about how we can make this truly accessible for all. It must be accessible to those who do not wish to open an account on that particular social media site; it should be accessible to people with disabilities; there should also be some way to include those who are not comfortable on computers.

(continued on next page ...)



Furthermore, the proceedings of a traditional in-person meeting are captured in meeting minutes. Something similar should be done to archive these social media discussions. The bill's language, "*Remains available for public viewing for a reasonable period of time on the social media website*" is not enough to ensure a proper record for the public.

#### ELECTRONIC POSTING OF MEETING NOTICES

This bill proposes that all meeting notices be posted online, and deletes the requirement that notices also be posted at the Lieutenant Governor's or county clerk office. We support online posting of these notices as a good step for public access.

However, we are concerned about the changes regarding posting of hard-copy notices. For those without internet access, posting the notice at the board's office may not be enough, especially if the office is not in an easily accessible location.

Mahalo for the opportunity to submit testimony.



HAWAII  
STRATEGIC  
DEVELOPMENT  
CORPORATION



Written Statement of

**KARL FOOKS**

**President**

Hawaii Strategic Development Corporation  
and

**Yuka Nagashima**

**Executive Director and CEO**

High Technology Development Corporation

before the

**HOUSE COMMITTEE ON JUDICIARY**

February 10, 2012

2:00 PM

State Capitol, Conference Room 325

In consideration of

**HB 2597 RELATING TO OPEN GOVERNMENT.**

Chair Gilbert S.C. Keith-Agaran, Vice Chair Karl Rhoads, and Members of the Committee on Judiciary:

The Hawaii Strategic Development Corporation (HSDC) and the High Technology Development Corporation (HTDC) support the intent of HB 22597 to provide greater public access to board proceedings and to improve the performance of board members.

HSDC and HTDC defer to the Office of Information Practices on the public impact of this bill.

We would like to recommend that the legislation clarify who decides whether a board meeting canceled due to lack of quorum or terminated pursuant to section 92-3.5(c) may still receive testimony and presentations. The proposed legislation does not require the board to receive testimony and presentations, but the convening board lacks a quorum for the board to decide to receive testimony or not.

We also recommend the proposed requirement to post the notice at the site of the meeting be six calendar days before the meeting be dropped in favor of the previous requirement to post the notice at the site of the meeting whenever feasible. Often meetings are held at locations where the board has no control over posted notices during the six calendar day period required by the proposed legislation.

Thank you for the opportunity to submit testimony on this bill.

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

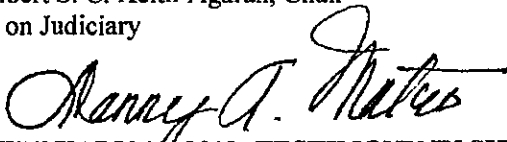


Director of Council Services  
Ken Fukuoka

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

February 9, 2012

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

FROM: Danny A. Mateo  
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 10, 2012; TESTIMONY IN SUPPORT OF HB 2597,  
RELATING TO OPEN GOVERNMENT**

Thank you for the opportunity to testify in support of this important measure. The purposes of this measure are to allow board members to hear testimony for a meeting canceled for lack of quorum, to attend informational meetings on matters relating to board business, and to discuss board business via social media. The measure also provides for electronic meeting notices.

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. Allowing Council committees to receive testimony at a properly noticed meeting for which quorum is lacking honors the efforts made by members of the public to become involved in the legislative process. It strikes the appropriate balance between allowing those opinions to be voiced and restricting deliberations until a subsequent meeting can be held for which quorum is present.
2. 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. The proposed measure is a step in the right direction.
3. As reliance on social media flourishes, it is critical that the Sunshine Law be adapted to address ways in which social media can promote open government. I support legislation that would recognize social media as an opportunity to provide community outreach.

For the foregoing reasons, I support this measure.

The measure could be improved by: (a) exempting County councils from the Sunshine Law, as proposed by HB 2742, relating to public agency meetings and records; (b) explicitly allowing for attendance by all County Council members at governmental conferences and meetings; (c) 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; and (d) deleting the requirement that board members list their social media addresses or identifications, which may infringe on members' private communications.

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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February 9, 2012

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: Friday February 10, 2012

SUBJECT: **SUPPORT OF HB 2597, RELATING TO OPEN GOVERNMENT**

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 2597** for the reasons cited in testimony submitted by Maui County Council Chair Danny A. Mateo and urge you to support this measure.

12:02:09:kbm/JP: HB 2597

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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February 9, 2012

The Honorable Gilbert S.C. Keith-Agaran, Chair  
House Committee on Judiciary  
State Capitol, Conference Room 325  
Honolulu, Hawaii 96813

Dear Chair Keith-Agaran:

**SUBJECT: TESTIMONY IN SUPPORT OF HB 2597 RELATING TO OPEN  
GOVERNMENT (PUBLIC HEARING: FEBRUARY 10, 2012 AT  
2:00 PM IN CONFERENCE ROOM 325)**

As the Lanai representative on the Maui County Council, I would like to offer testimony in support of the subject bill. The purposes of this measure are to allow board members to hear testimony for a meeting canceled for lack of quorum, to attend informational meetings on matters relating to board business, and to discuss board business via social media. The measure also provides for electronic meeting notices.

I support the measure, because it would provide the County Council with the necessary flexibility to receive testimony from the public with no action taken until a quorum is present at a subsequent meeting, thus encouraging rather than frustrating public participation. Also, allowing public officials to participate in public gatherings, community events, conferences, etc. is an important part of public service and being informed and educated on matters of interest to the community.

I understand that Maui County Council Chair Danny A. Mateo has also submitted testimony in support of this measure and offered other suggestions on how to improve this measure. I concur with Chair Mateo's position on this measure.

Thank you for the opportunity to offer testimony in support.

Sincerely,

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

RIKI HOKAMA  
Council Member-Lanai seat

cc: Council Chair Danny A. Mateo

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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February 9, 2012

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

FROM: Robert Carroll  
Council Member, East Maui

A handwritten signature in cursive script that reads "Robert Carroll".

DATE: Friday, February 10, 2012

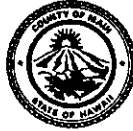
SUBJECT: **SUPPORT HB 2597. RELATING TO OPEN GOVERNMENT**

I support HB 2597 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to 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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February 9, 2012

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

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

SUBJECT: **HEARING OF FEBRUARY 10, 2012; TESTIMONY IN SUPPORT & COMMENTS  
ON HB 2597, RELATING TO OPEN GOVERNMENT**

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 the Council.

I support allowing testimony and presentations on agenda items at meetings cancelled due to a lack of quorum, as it honors the time and presence of individuals who attend scheduled meetings. I also support the interaction between members through discussions on social media sites. Online tools have the power to provide a meaningful dialogue and can assist members in receiving feedback from constituents. Finally, I believe most individuals already rely upon online notices to learn about upcoming meetings. This bill simply formalizes and standardizes the online notice process.

I would however, like to **offer comments** on the section relating to **permitted interactions of members**. The proposed language allows two or more members, but fewer than a quorum to attend informational meetings or presentations on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar or community meeting. 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 language should be **amended to allow all members of a board to attend any informational meetings or presentations** on matters relating to official business "as long as no commitment to vote is made or sought." This change 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.

I also support the improvements to the measure suggested by Council Chair Danny Mateo, which include (a) exempting County Councils from the Sunshine Law, as proposed by HB 2742, relating to public agency meetings and records; (b) explicitly allowing for attendance by all County Council members at governmental conferences and meetings; and (c) 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.