



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-SIXTH LEGISLATURE, 2012**

ON THE FOLLOWING MEASURE:

S.B. NO. 2737, S.D. 1, H.D. 1, RELATING TO PUBLIC MEETINGS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, April 3, 2012 **TIME:** 5:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): David M. Louie, Attorney General, or
Charleen M. Aina, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General (the "Department") supports the passage of this bill in the form that it was originally introduced.

In its original form, this bill amended the State's Sunshine Law to allow board and commission meetings to be conducted by any form of conferencing technology that permits interaction by audio, or audio and visual means, as long as:

1. All members participating in a board and the public are **at minimum** able to interact with each other by audio communication; and
2. The public is given notice of all the locations at which board members will be participating in the meeting, **and** may join board members at those locations.

The bill also specified that an agenda item may **not** be considered if any meeting location is connected by audio only technology, **and** copies of all visual aids brought or used to consider an item on the agenda are not available at all meeting locations within fifteen minutes after audio only technology is being used.

Travel time to and from board meeting locations often hinders a board member from attending a board meeting. Broadening the technology that can be used to conduct board meetings from multiple sites, including allowing board meetings to be conducted by means of audio connectivity only, should reduce the instances in which a board is unable to conduct business, foreclosing the public from participating in government for lack of a quorum. These amendments to the Sunshine Law will enable members of boards, as well as the public, to participate in board meetings from locations closer to their homes, office, or where they may

otherwise need to be. The Administration's purpose in proposing this measure is to raise attendance levels and participation in board meetings both by members of boards and the public.

The Senate Committee on Judiciary and Labor suggested that there be further discussion to consider whether an exception to the public access requirement should be added to address situations in which a board member is located in an area that cannot easily accommodate the public, for example, if a board member, although hospitalized, was able and wanted to attend a board meeting. We expressed no objection to such a proposal.

The amendment the House Judiciary Committee made, however, allows board members to participate from locations to which members of the public would be connected by interactive conference technology, but have no physical access, without qualification. We have no objection to carving out exceptions to the public access requirement to accommodate special circumstances, including allowing a board member to participate while traveling out-of-state, or while hospitalized in a facility that cannot accommodate members of the public who would want to participate from that location. However, because the exception in S.B. No. 2737, S.D. 1, H.D. 1, is so broad, we cannot support its passage.

We respectfully request that the Committee pass this bill in its original form instead.

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: April 3, 2012, 5:00 p.m.
State Capitol, Room 308

Re: Testimony on S.B. No. 2737, S.D. 1, H.D. 1
Relating to Public Meetings

Thank you for the opportunity to submit testimony in support of S.B. No. 2737, S.D. 1, H.D. 1, with proposed amendments. The Office of Information Practices ("OIP") is charged with administration of the State's Sunshine Law (Part I of Chapter 92, Hawaii Revised Statutes) and offers the following comments to the proposed amendments to the videoconferencing section of the law.

While OIP supports the proposal to allow board members to participate by teleconferences rather than videoconferences as provided in S.B. 2737, S.D. 1, we believe that House Draft 1 of the bill goes far beyond this and drastically changes the Sunshine Law's meeting requirements by proposing to remove the requirement that board members attend a public meeting from a location open to the public. OIP is concerned that House Draft 1 would create unintended consequences that could actually decrease disability access and adversely affect transparency in government as well as the public's ability to participate in public meetings.

Under the current Sunshine Law, a board wishing to offer its members a choice of sites from which to attend a meeting must offer that same choice of sites to the public. For example, when a board member wants to attend a Honolulu-

based meeting from a Maui location, the current law requires that other Maui residents also be allowed to attend from that Maui location instead of the Honolulu meeting site. The justification that the administration originally provided in proposing S.B. 2737 contained the following assurance in the "impact on the public" section:

The amendment should not affect the public's access to or ability to participate at board meetings. Notices of board meetings must identify every location where a board member will be participating in the board meeting by interactive conference technology and provide that any member of the public may join the board members at any identified location to participate in the board's meeting.

House Draft 1 amended S.B. 2737, S.D. 1 to eliminate the requirement that all meeting sites must be open to the public, in large part to accommodate disabled board members who want to participate from their homes without the public being invited. Whether a board is drawn from and serves the disabled community, or the community at large, House Draft 1 increases the convenience of attending meetings for board members, but decreases the convenience of attending meetings for members of the public, particularly the disabled.

Although accommodating disabled board members was offered as a justification for the changes in House Draft 1, a fundamental job function for any member of a state or county board is to be accessible to the public, including appearing in public at public meetings, as the Sunshine Law has consistently required. This does not preclude disabled individuals from serving on boards any more than it precludes disabled members of the public from attending meetings – reasonable accommodations are already made to assist disabled board members and members of the general public, which include building features such as wheelchair ramps, transport options such as the HandiVans, and interpreter services made

available on request. If the existing requirement to attend a meeting at a public location impedes the access rights of disabled board members, then the proposed change to the law to allow boards to reduce the number of public meeting sites available and to allow meetings at private locations closed to the public will even more adversely affect the access rights of disabled members of the public.

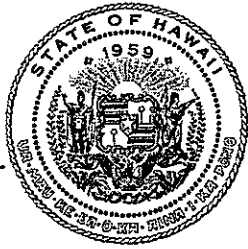
Under House Draft 1, boards would no longer have their current incentive to offer more than one meeting site in order to allow their members to participate remotely. And even those members of the public who are able to go to the one public meeting site might find a room full of speakerphones instead of a room full of board members, because the proposed amendment would allow any number of disabled or non-disabled members to participate by interactive conference technology from the privacy of their homes. Additionally, House Draft 1 contains no safeguards to ensure that the board members participating from a private location will not be unduly influenced by a favored few persons who are with them at that private site, from which the rest of the members of the public have been excluded.

Moreover, House Draft 1 has essentially removed the requirement for any physical location at all to be provided for a public meeting. Although section 92-3, HRS, would still require that a meeting be open to the public, House Draft 1 removes the requirement that board members be physically present in a public location to attend a meeting and would thus appear to permit public meetings to be held entirely through teleconference or other remote access methods, so long as the public could also participate via webinars or teleconferences, for example, where interested members of the public could log in or call in to the session using a number or website listed in the board's Notice.

OIP recognizes that the Legislature makes its own policy determinations. OIP also supports efforts to modernize the Sunshine Law by making meetings more accessible to the public through electronic means. But if it

is the House's intent to remove the requirement for board members' physical presence at meetings in order to promote the use of webinars, new disability access issues must be addressed as to the accessibility of such electronically conducted meetings. If the House's intent is, instead, to create a new accommodation for disabled board members or to aid a specific board with special circumstances, then OIP requests that this be done in a statute dealing more specifically with disability access, or in the statute creating the specific board, and not in the Sunshine Law itself. If new disability rights are being created, OIP also requests that the Hawaii Civil Rights Commission, or another body more appropriate than OIP, be charged with enforcing such rights.

Thank you for considering OIP's testimony.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

NEIL ABERCROMBIE
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RICHARD C. LIM
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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON FINANCE

Tuesday, April 3, 2012

5:00 PM

State Capitol, Conference Room 308

In consideration of
SB 2737, SD1, HD1
RELATING TO PUBLIC MEETINGS

Chair Oshiro, Vice Chair Lee and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB2737, SD1, HD1, Relating to Public Meetings. The purpose of this measure is to use various forms of interactive conference technology in order to increase the ability of members of state and county boards and commissions to attend board meetings; it also establishes requirements for notice and use of visual aids.

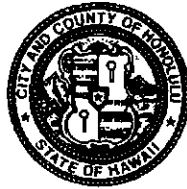
DBEDT and its neighbor island members, in particular, would benefit from this bill. As most board members are volunteers and have other obligations that make demands on their time, this bill would allow members to attend their board meetings by either audio or audio and visual forms of communications when traveling proves to be difficult. Conducting board meetings using interactive conference technology will not only save on time but will also help to reduce expenses.

Thank you for the opportunity to testify in support of 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

April 3, 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 Committee Members:

**Subject: Senate Bill No. 2737, SD1, HD1
Relating to Public Meetings**

The Department of Planning and Permitting (DPP) **supports** Senate Bill No. 2737, SD1, HD1, which amends the Sunshine Law to permit use of interactive conference technology to increase the ability of members of State and county boards and commissions to attend board meetings.

The Sunshine Law, as amended several years ago, does allow boards and commissions to use video conferencing to hold meetings. However, there are several forms of interactive conference technology which are much easier and less expensive to use than video conferencing technology. These alternative formats, including teleconferences and use of voice over internet protocol, are increasingly used to support conferences and training sessions linking participants at multiple sites.

Broadening the options that boards and commissions use to conduct public meetings, will allow them to operate more efficiently, especially reducing delays due to lack of quorum.

Please pass Senate Bill No. 2737, SD1, HD1. Thank you for the opportunity to testify.

Very truly yours,

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

David K. Tanoue, Director
Department of Planning and Permitting

DKT:jmf
sb2737sd1hd1-PublicMeetings-bs.doc

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
HOUSE COMMITTEE ON FINANCE
Thursday, April 3, 2012
5:00 PM
State Capitol, Conference Room 308

In consideration of
SB 2737 SD1 HD1 RELATING TO PUBLIC MEETINGS.

Chair Oshiro, Vice Chair Lee, and Members of the House Committee on Finance:

The High Technology Development Corporation (HTDC) **supports SB 2737 SD1 HD1.** SB 2737 SD1 HD1 allows board members to phone in to a board meeting held by teleconference provided that visual aids are provided beforehand and available to all participants in the meeting. The subject matter committee further clarified in HD1 as to which locations are declared public for these meetings.

Teleconference will make board meetings more economical, easier to convene, and likely increase participation, especially from the neighbor islands. We urge the Finance Committee to pass out this bill to ensure a more open government which takes advantage of the newer technologies available to us.

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