

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
250 SOUTH HOTEL STREET, SUITE 107  
HONOLULU, HAWAII 96813  
TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: House Committee on Finance

From: Cheryl Kakazu Park, Director

Date: March 29, 2012, 5:30 p.m.  
State Capitol, Room 308

Re: Testimony on S.B. No. 2859, S.D. 1, H.D. 1  
Relating to Open Government

---

Thank you for the opportunity to submit testimony on S.B. No. 2859, S.D. 1, H.D. 1. OIP strongly supports this Administration proposal, 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.

The Sunshine Law was originally enacted in 1975, long before the widespread use of the Internet and electronic devices.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. 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, even though the meeting must be 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) clarify that meeting notices are required to be filed as provided under part I of chapter 92, HRS, notwithstanding any other law to the contrary.

The bill's proposals are further explained as follows.

#### 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; neighborhood board meetings) 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.

The Senate previously amended S.B. 2859 to clarify that only the social media addresses that board members use to discuss board business, and not their personal social media addresses, 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 supports these amendments.

#### Meeting Notices

The Senate also removed the electronic notice provisions originally proposed in the bill to consider them separately in S.B. 2234, S.D. 2, Relating to Electronic Information, but left in the proposed amendment to the general provisions of HRS § 92-7(a) intended to make clear that the notice required by the Sunshine Law is governed only by Part I of HRS Chapter 92, notwithstanding any other law to the contrary. OIP believes that it is important to retain this provision making clear that the Sunshine Law's notice provisions control over any other law. If any other bill is passed that affects HRS § 92-7(a), OIP requests that such other bill contain language and an effective date that are consistent with S.B. 2859.

In conclusion, OIP respectfully requests this Committee's support of S.B. 2859, S.D. 1, H.D. 2, which 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 OIP's 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  
FINANCE

Thursday, March 29, 2012, 5:30 p.m.  
State Capitol, Conference Room 325

**WRITTEN TESTIMONY ONLY**

S.B. 2859, S.D. 1, H.D. 1

RELATING TO OPEN GOVERNMENT

Chair Oshiro, Vice Chair Lee, and members of the committee, thank you for the opportunity to testify on S.B. 2859, S.D. 1, H.D. 1.

The Office of Information Management and Technology strongly supports and recommends passage of the proposed bill as it allows members of a board or commission to hear public testimony for a meeting is canceled due to lack of quorum, attend informational meetings and presentations, and discuss board or commission business via 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 the use of social media will enhance public participation and government transparency.

The bill benefits both boards and the public. While allowing for better board efficiency, 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.

We respectfully request the Committee move this bill forward. Thank you for the opportunity to testify on this matter.

NEIL ABERCROMBIE  
GOVERNOR



BARBARA A. KRIEG  
INTERIM DIRECTOR

LEILA A. KAGAWA  
DEPUTY DIRECTOR

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

March 28, 2012

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE

For Hearing on Thursday, March 29, 2012  
5:30 p.m., Conference Room 308

BY

BARBARA A. KRIEG  
INTERIM DIRECTOR

**Senate Bill No. 2859, S.D. 1, H.D. 1  
Relating to Open Government**

**WRITTEN TESTIMONY ONLY**

TO CHAIRPERSON MARCUS OSHIRO AND MEMBERS OF THE COMMITTEE:

Thank you for the opportunity to provide testimony on S.B. No. 2859, S.D. 1, H.D. 1.

The purpose of S.B. No. 2859, S.D. 1, H.D. 1 is to allow board members to hear testimony for a meeting canceled for lack of quorum, to attend informational meetings, and for a four-year period to discuss board business via social media.

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

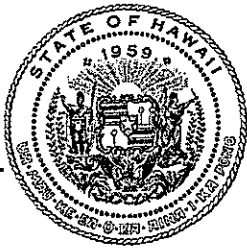
We believe that the new permitted interactions allowed by this bill would:

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 a duly noticed formal meetings.

S.B. No. 2859, S.D. 1, H.D. 1  
March 28, 2012  
Page 2

S.B. No. 2859, S.D. 1, H.D. 1 encourages inclusive and participatory government for our citizenry, particularly since it is cognizant of the emerging technologies in electronic communication.

We respectfully request that this Committee move this bill forward.



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

NEIL ABERCROMBIE  
GOVERNOR

RICHARD C. LIM  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813  
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804  
Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**RICHARD C. LIM**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**HOUSE COMMITTEE ON FINANCE**  
Thursday, March 29, 2012  
5:30 PM  
State Capitol, Conference Room 308

In consideration of  
**SB 2859 SD1, HD1**  
**RELATING TO OPEN GOVERNMENT**

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

The Department of Business, Economic Development, and Tourism (DBEDT) supports SB2859 SD1, HD1, Relating to Open Government.

DBEDT, with its many boards and commissions, believes this bill will assist in improving government efficiency and reducing costs while protecting the public's right to openness and transparency.

Thank you for the opportunity to testify on this measure.



**SB2859 SD1 HD1**  
**RELATING TO OPEN GOVERNMENT**  
House Committee on Finance

March 29, 2012

5:30 p.m.

Room 308

The Office of Hawaiian Affairs (OHA) **SUPPORTS with AMENDMENTS** SB2859 SD1 HD1.

OHA supports this measure because it gives members of boards greater flexibility in their external interactions; in their ability to receive testimony and presentations even when a board meeting has been canceled for lack of a quorum or terminated under certain videoconferencing laws; and in their ability to discuss matters relating to board business through social media.

However, we respectfully request that your committee amend this measure by deleting the requirement on page 5, lines 9-12, that upon request, boards must provide a list of all board members using social media and the social media addresses or identifications used for their discussions on social media about matters relating to board business. 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 SB2859 SD1 HD1, with the amendment that we propose above.

Mahalo for the opportunity to testify on 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

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

March 27, 2012

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

FROM: Danny A. Mateo  
Council Chair 

SUBJECT: **HEARING OF MARCH 29, 2012; TESTIMONY IN SUPPORT OF SB 2859, SD1,  
HD1, 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 or terminated due to technical malfunction; to attend informational meetings on matters relating to board business; and, for a four-year period, to discuss board business via social media.

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 which is canceled due to lack of quorum or terminated due to technical malfunction 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 and technical problems have been addressed.
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 and the Hawaii State Association of Counties. Currently, the Sunshine Law does not specifically address the ability of board members to attend these events. This measure is a step in the right direction. I commend the Abercrombie Administration – particularly the Office of Information Practices – for proposing this measure.
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.

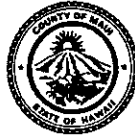
For the foregoing reasons, I support this measure.

The measure could be improved by: (a) allowing for the attendance of all county council members at governmental conferences and meetings; (b) deleting the requirement that members attending informational meetings report on matters presented and discussed at the next duly noticed meeting of the board; and (c) deleting the four-year limitation on the provisions relating to social media.

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)

March 27, 2012

TO: Honorable Marcus Oshiro, Chair  
House Committee on Finance

FROM: Joseph Pontanilla, Council Vice-Chair

A handwritten signature in cursive script, appearing to read "Pontanilla".

DATE: Thursday March 29, 2012

**SUBJECT: SUPPORT OF SB 2859, SD1, HD1 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 **SB 2859, SD1, HD1** 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.

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)

March 28, 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 MARCH 29, 2012; TESTIMONY IN SUPPORT & COMMENTS ON SB 2859, SD 1, HD 1, 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 bill and therefore, I am providing this testimony in my capacity as an individual member of 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. The **sunset clause** however, **should be removed**. I believe guidance on social media interaction must continue past 2016, as its value will only increase in assisting with community outreach.

The proposed language allowing 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 is a step in the right direction. It continues however, **to restrict members from attending many events and educating themselves on a wide range of issues**.

I believe this language should be amended to allow **all members of a board to attend any informational meeting or presentation** 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.

The bill should also be amended to **explicitly allow** for attendance by all county council members at **governmental conferences and meetings**. This may include conferences of the National Association of Counties and the Hawaii State Association of Counties. The proposed measure does not specifically address this issue and may require a future opinion by the Office of Information Practices.

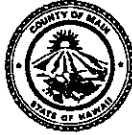
Thank you for your consideration.



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)

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

FROM: Don Couch  
Council Member, South Maui District

DATE: Wednesday, March 28, 2012

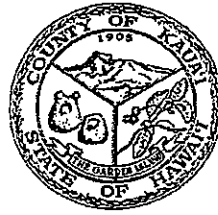
SUBJECT: **SUPPORT OF SB 2859, SD1, HD1 RELATING TO OPEN GOVERNMENT**

Thank you for the opportunity to testify in **support** of measure **SB 2859, SD1, HD1**. I support this measure for the reasons cited in testimony submitted by the Maui County Council Chair Danny Mateo.

Please delete the phrase "Two or more members of a board, but less than the number of members which would constitute a quorum for the board" from Section 92-2.5 (e) and (f) and replace it with "Board members". It is important that as many Council members as possible attend meetings and events to avail themselves of the opportunity to gain information, ask questions and participate in discussions.

The measure states that board members may attend an informational meeting or presentation on matters relating to official board business, provided that the meeting is not specifically organized for nor directed to them, and that board members attending such gatherings may participate in discussions provided that no commitment is made relating to a vote on any matter discussed. **If the community gathering or event is not a duly noticed meeting, and if a board member cannot commit to a vote, restricting the number of board members attending such a gathering to less than a quorum of that board is not necessary.**

**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**  
4444 Rice Street, Suite 220, Lihue, Hawai'i 96766-1300  
TEL (808) 241-4930 FAX (808) 241-6319

Testimony of Amy I. Esaki

Before a Hearing of the House Committee on Finance  
Thursday, March 29, 2012  
5:30 pm  
Conference Room 308

**Senate Bill 2859, SD1, HD1, Relating to Open Government**

Thank you for the opportunity to submit testimony on S.B. No. 2859, SD1, HD1, Relating to Open Government.

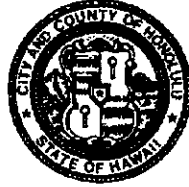
The County of Kauai does not support S.B. No. 2859, SD1, HD1. To allow testimony during a cancelled meeting does not allow for equal access by the public to board members who may have questions for the testifiers. Also, limiting the number of members to a convention or seminar is not practicable, especially 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,

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

650 SOUTH KING STREET, 7<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
PHONE: (808) 768-8000 • FAX: (808) 768-6041  
DEPT. WEB SITE: [www.honolulu.gov/dpp](http://www.honolulu.gov/dpp) • CITY WEB SITE: [www.honolulu.gov](http://www.honolulu.gov)

PETER B. CARLISLE  
MAYOR



DAVID K. TANOUÉ  
DIRECTOR

JIRO A. SUMADA  
DEPUTY DIRECTOR

March 29, 2012

The Honorable Marcus 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. 2859, SD1, HD1  
Relating to Open Government**

The Department of Planning and Permitting (DPP) **supports** Senate Bill 2859, SD1, HD1. This bill allows board and commission members to hear testimony for a meeting that was canceled due to a lack of quorum, to attend informational meetings, and for a four-year period to discuss board business via social media.

No public purpose is served by delaying the testimony or presentation to a later meeting as it is a waste of time of all those who came to the meeting, including the members of the board, presenters, and those who came to hear the presentation. Those who were not present will receive information through meeting minutes and through the required reports made at the subsequent meeting of the testimony and presentations received.

Allowing board members to attend informational meetings and to discuss community issues on social media websites will encourage and broaden citizen participation in government activities and give board members a better understanding of community concerns and issues.

Please pass Senate Bill No. 2859, SD1, HD1. 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:jmf  
sb2859sd1hd1-OpenGov-bs.doc



Written Statement of

**KARL FOOKS**

**President**

Hawaii Strategic Development Corporation  
and

**Yuka Nagashima**

**Executive Director and CEO**

High Technology Development Corporation

before the

**SENATE COMMITTEE ON FINANCE**

March 29, 2012

5:30 PM

State Capitol, Conference Room 308

In consideration of

**SB 2859 SD1 HD1 RELATING TO OPEN GOVERNMENT.**

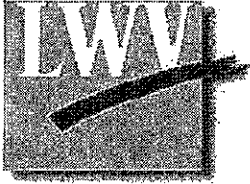
Chair Oshiro, Vice Chair Lee, and Members of the Committee on Finance:

The Hawaii Strategic Development Corporation (HSDC) and the High Technology Development Corporation (HTDC) support, with comments, SB 2859 SD1 HD1, legislation 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 recommend that the legislation clarify that a majority of the board members present at a meeting canceled due to lack of quorum or terminated pursuant to section 92-3.5(c) may decide that the board will 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. As the board members present will have the responsibility to report on all testimony and presentations heard at the meeting, a decision mechanism needs to be established.

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



# THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB 2859, SD1, HD1 RELATING TO OPEN GOVERNMENT

Committee on Finance  
Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B. Lee Vice Chair  
Thursday, March 29, 2012  
5:30 p.m. Conference Room 308

Testimony written by Jean Aoki, LWV Legislative Committee

Chair Marcus Oshiro, Vice Chair Marilyn Lee, members of the Committee on Finance,

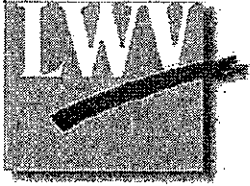
Bills such as SB 2859 SD1 are very difficult to judge on their merits, because no matter what the laws and rules are, detection of any violation of the the laws are not easy. We just have to depend on the willing acceptance of the spirit of open government by all board members which is necessary if we are to have a democratic form of government.

We would like to make comments on three of the amendments to our open government laws. As far as allowing board members present at a meeting that must be canceled for lack of quorum to accept testimony or presentations from members of the public and even ask questions for clarity, or more detailed explanations, etc. we believe is acceptable. I have been to such a meeting where without testimony, we did have some informal discussion which I doubt took anything away from the next regular meeting. Besides, in most cases, there will be some members of the public aware of the open meeting laws ready to issue complaints or just to warn the meeting participants to stick to the rules.

At such a meeting, careful attention must be given to the avoidance of deliberation and decision making. In a regular meeting, the tell-tale evidence of discussions having lead to agreements outside the meeting would be the all too brief deliberations. Genuine, thoughtful oral deliberations can most often and sometimes very gradually lead to consensus, so that before a vote is taken, the audience can predict the outcome. This is what we want.

In subsection (e) concerning two or more members of a board, but less than the number of board members which would constitute a quorum for the board attending an informational meeting or presentation on matters relating to official board business, etc., we would ask you to delete the phrase, in the second sentence, "including discussion among themselves;"..... They may be free to enter discussions with others, but should refrain from discussions among themselves. Because of the nature of the topic before them, this could turn into a discussion **only** among themselves.

As to chapter92 – 2.5 (f), its difficult to fathom how this is going to work without further clarification. We'd want to know the policies they adopt "on the use of social media" and how no commitment to vote is made or sought, the extent to which the discussion on the social media website:



## THE LEAGUE OF WOMEN VOTERS OF HAWAII

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

The provision under 2. is quite interesting. Some boards at present allow for questioning and comments from the public during their meetings, not merely at the beginning of the agenda, which makes them more informative and thought-provoking. And, very often, the members of the audience have information and ideas beneficial to the board.

Would you get into a debate with members of the public on the website or would there be rules to control the discussions?

Would each board member participating in one website then be able to separately join other websites with different members of the Board?

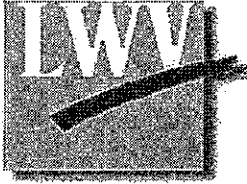
What is a reasonable period of time? Would the members have to report these conversations at their regular meetings? How do we know that the same board members are not participating on other websites under assumed names.

Can the policies being developed by the Attorney General's office be the policy for all boards with the only option allowable being a tightening of the rules, not relaxing them?

Realizing that the social media is so important for public discourse today, with all of our questions answered, we would be agreeable to trying it for some time. We are encouraged by the lapsing of the provisions of subsection (e) of this bill in 2016. We would hope to get some indications of the effects of allowing conversations on social media have on encouraging the openness of board meetings at the end of two years, such that policies can be tightened if necessary.

It has dawned on us that the legislature need not rush this bill. You have plenty of time till the end of the session. We would like to suggest that you defer any decision on this bill at this time, and bring all interested parties together for a meeting at which time, who knows, we may reach consensus on a workable bill.

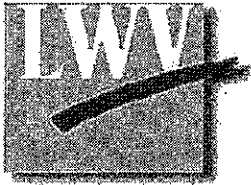
Thank you for this opportunity to testify on SB 2859. SD1.



THE LEAGUE  
OF WOMEN VOTERS OF HAWAII

Testimony written by Jean Aoki, LWV Legislative Committee member

49 South Hotel Street, Room 314, Honolulu, Hawaii 986813 Ph. (808) 531-7448 Fax (808) 599-5669  
Website: [www.lwv-hawaii.com](http://www.lwv-hawaii.com) email: [voters@lwv-hawaii.com](mailto:voters@lwv-hawaii.com)



## THE LEAGUE OF WOMEN VOTERS OF HAWAII

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

Bills such as SB 2859 SD1 are very difficult to judge on their merits, because no matter what the laws and rules are, detection of any violation of the the laws are not easy. We just have to depend on the willing acceptance of the spirit of open government by all board members which is necessary if we are to have a democratic form of government.

We would like to make comments on two of the amendments to our open government laws. As far as allowing board members present at a meeting that must be canceled for lack of quorum to accept testimony or presentations from members of the public and even ask questions for clarity, or more detailed explanations, etc. we believe is acceptable. I have been to such a meeting where without testimony, we did have some informal discussion which I doubt took anything away from the next regular meeting.

At such a meeting, careful attention must be given to the avoidance of deliberation and decision making. In a regular meeting, the tell-tale evidence of discussions outside of the meeting would be the all too brief deliberations. Genuine, thoughtful oral deliberations can most often lead to consensus, so that before a vote is taken, the audience can predict the outcome.

As to chapter 92 – 2.5 (f), its difficult to fathom how this is going to work without further clarification. We'd want to know the policies they adopt "on the use of social media and not commitment to vote is made or sought and the discussion on the social media website:

4. Is accessible at any time to any member of the public with an internet connection.
5. Allows participation by interested members of the public.
6. Remains available for public viewing for a reasonable period of time on the social media. "

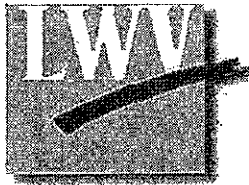
The provision under 2. is quite interesting. Some boards at present allow for questioning and comments from the public during their meetings which makes them more

informative. Would you get into a debate with members of the public on the website or would there be rules to control the discussions?

Would each board member participating in one website then be able to separately join other websites with different members of the Board?

What is a reasonable period of time? Would the members have to report these conversations at their regular meetings? Couldn't these social media addresses being used by members go on the board's website?

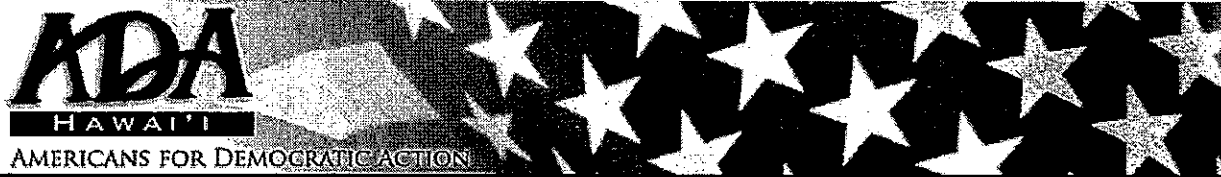




## THE LEAGUE OF WOMEN VOTERS OF HAWAII

We're not sure how this would work. If you are going to try this, could you do it on a limited basis for a while so we get a good indication of its resulting effect on the board's behavior when it comes to real deliberations at their board meetings? If it adds to every member's readiness to participate with knowledge and confidence, and questioning attitude, so much the better. However, we do need to give it real thought.

Thank you for this opportunity to testify on SB 2859. SD1.



OFFICERS	DIRECTORS			MAILING ADDRESS
Guy Archer, President	John Bickel	Jan Lubin		PO. Box 617
Juliet Begley, Vice-President	Karin Gill	Stephen O'Harrow	Bart Dame (Alt)	Honolulu
Fritz Fritschel, Treasurer	Tom Horton	Barbara Polk,	Josh Frost (Alt)	Hawai'i 96822
Chuck Huxel, Secretary	Nancy Bey Little	George Simson	Marsha Schweitzer (Alt)	

March 28, 2012

To: Chair Marcus Oshiro, Vice Chair Marilyn Lee  
Members of the House Committee on Finance

From: Americans for Democratic Action/Hawaii  
Barbara Polk, Legislative Chair

Subject: Opposition to SB 2859 SD 1 HD1 Relating to Open Government

Americans for Democratic Action/Hawaii opposes this bill which makes multiple changes to the Open Meetings (or Sunshine) laws that stand to allow Board and Task Force members to discuss board business outside of regularly scheduled meetings with public notice.

Our strongest opposition is to part (e) that would allow board members to attend a public meeting and discuss board business among themselves at that meeting. This clearly undermines the purposes of the Sunshine laws that require that board business be discussed at previously announced meetings with agenda posted, and is therefore unacceptable. There are several bills before the legislature this year to loosen the requirements that no more than two members of a board attend the same public meeting. While we are generally sympathetic to this concern, we believe that SB 2859 goes much too far. HB 1611 HD2 to the Senate is a far superior bill addressing this concern, since it loosens the requirements, but still maintains the purpose and spirit of the Sunshine act by providing that the meetings attended by more than two board members not be ones addressing board business and that discussion among board members not be allowed at that meeting.

Likewise we oppose the changes in part (f) that would allow the use of social media to discuss board business. Although the proposal limits the discussion to a minority of the board members, there is simply no way of controlling that—all members of a board may be passive participants in the discussion without anyone knowing it. Again, by allowing more than two board members to discuss board business in a setting that is not a previously announced meeting clearly violates the intent and purpose of the sunshine law. While individuals may be able to access the discussion in retrospect, they have no way of knowing when such a discussion will take place in real time.

We recognize that social media may have a role in involving the public in board business and urge that the Office of Information Practices think through more carefully in what ways that might happen, perhaps by allowing board members to inform the public of issues before the board and solicit input. But discussion by board members is not an appropriate use of social media.

In summary, urge you to hold this bill. Thank you for the opportunity to provide testimony.



House FIN Committee  
Chair Marcus Oshiro, Vice Chair Marilyn Lee

Thursday 3/29/12 at 5:30PM in Room 308  
SB 2859 SD1 HD1 – Open Government

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

---

Chair Oshiro, Vice Chair Lee, and Committee Members:

Common Cause Hawaii offers the following comments on SB2859 SD1 HD1, 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...)

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. "Reasonable period of time" is vague; it seems that additional details about record retention are needed.

As the bill is now written, boards would be required to adopt social media policies before members engage in social media discussions, and upon a citizen's request, boards would be required disclosure of social media accounts used by members to discuss board business. To improve this section, we propose the following idea for discussion, to make it easier for citizens to access the social media discussions:

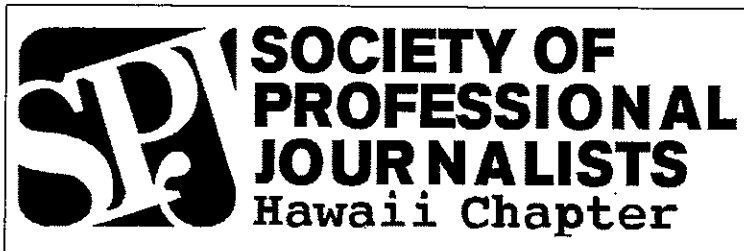
- Once a board adopts a social media policy, **the board should be required to submit to OIP their list of social media accounts of board members** intending to discuss board business on social media. The board should be required to keep their list at OIP updated.
- **Boards and OIP should publish these lists online** on their respective websites.

Without these lists being available online, it is unlikely that citizens would know that discussions may be happening on social media. Few people would think to request such a list from the board directly.

In the current bill, the social media section is scheduled to sunset in 2016. **We believe four years is far too long for the sunset date, given the fast pace of changing technology. We suggest that the sunset date be moved up sooner, e.g., 2014.** This new area of the law deserves a serious review sooner than 4 years from now, given the important implications for public access and participation.

Even with various additions suggested above, we believe **much more discussion is needed to ensure that abuses are prevented and public access is truly maintained.** Although social media is becoming second nature for some young or tech-savvy people, it is still very foreign for many members of the public, both young and old. While social media does provide exciting new opportunities for participation, we should proceed very cautiously when moving any public discussions to a venue where many people are not yet comfortable.

Mahalo for the opportunity to submit testimony.



P.O. Box 3141  
Honolulu, HI 96802  
March 29, 2012

Rep. Marcus Oshiro, Chairman  
Finance Committee  
State Capitol  
Honolulu, HI

Re: Senate Bill 2859, Relating to Open Government

Chairman Oshiro and Committee Members:

While we may not like the amendments offered in this bill, we understand the intent to allow boards more opportunity to interact with the public.

But we ask you to remove the provision allowing discussion by social media. This is a new subject and complex – something that should be studied before implementing.

We believe allowing board members to communicate via social media could be problematic and difficult to monitor. This would also enhance the possibility of board members communicating serially – something forbidden by the Sunshine Law – so that a quorum of the board would know what the vote would be by viewing communications or board members' Twitter, Facebook or other sites.

For example, if a board member posts that he or she opposes a bill for various reasons, and another board member does the same, and then succeeding members post their opposition or support – could you not craft a deliberation and a vote?

Would that not in itself be a discussion of the issue by the full board?

We consider that dangerous, and it should not be allowed to happen.

Thank you for your time and attention,

A handwritten signature in black ink, appearing to read 'Stirling Morita'. The signature is written in a cursive, flowing style.

Stirling Morita  
Hawaii Chapter SPJ

**TESTIMONY OPPOSING SB 2859, SD 1, HD 1**  
**PRESENTED TO THE HOUSE COMMITTEE ON FINANCE**  
**ON MARCH 29, 2012, 5:30 P.M., CAPITOL ROOM 308**  
**BY BEVERLY DEEPE KEEVER**

As a retired journalism and communications professor at the University of Hawaii at Manoa, expressing my own professional opinion, I **oppose passage of SB2859**, as amended, a non-appropriations measure sponsored by the Governor.

Please vote down SB2859. The first portion of this bill is amply covered in HB 1611, as amended, now before the Senate.

But the last portion of SB2859 related to social media communications (beginning with (f) on page 3) would be costly to Hawaii taxpayers and public because it:

1. **would duplicate scarce government resources and efforts.** This bill calls upon boards and county councils to "adopt their own social media policies that will address important constitutional, legal, or practical concerns"—a time-consuming, legally complex task. Yet the state Office of Management and Technology and the Attorney General's Office are also developing a model social media policy for the state.<sup>1</sup> The Attorney General's Office, along with the prosecuting attorney, is responsible for enforcing the Sunshine Law, which requires public meetings to be open. **This duplication of efforts creates confusing red-tape and a bureaucratic nightmare;**
2. **risks cyberdeal-making under the guise of modernizing the Sunshine Law.** There's no way to police whether an unauthorized number of government officials discussing official business are lurking on the social media site described in SB2859 or are using a phony identity;
3. **disadvantages the most disadvantaged segments of society** such as the many who can not afford computers or smartphones—the low-income, the elderly, the disabled, those speaking English as a second language;
4. **is overly broad and vague** so that the social media site could be:
  - outside of Hawaii or
  - could be on the site of a private individual using a fictitious name or

- could be the site of a person who could not or would not have the means or motivation to maintain the discussion about official business so that "it remains available for public viewing for a reasonable period of time." (p. 4 at(3)).

Please devote House Finance efforts to more important legislation and kill this ill-conceived bill.

Mahalo nui loa.

Respectfully submitted,



Beverly Deepe Kever, MSJ, MLIS, PH.D  
Professor Emerita  
School of Communications  
University of Hawaii at Manoa

---

<sup>1</sup> Office of Information Practices' testimony on SB2859 SD1 to the House Judiciary Committee on March 16, 2012 reads: "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 Management and Technology and the Attorney General's Office have been developing a model social media policy for the state."