



SB2859 SD1
RELATING TO OPEN GOVERNMENT
House Committee on Judiciary

March 16, 2012

2:00 p.m.

Room: 325

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

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 7-10 that upon request, boards must provide a list of all board members using social media and those members' 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, with the amendment that we propose above.

Mahalo for the opportunity to testify on this measure.

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 Judiciary
From: Cheryl Kakazu Park, Director
Date: March 16, 2012, 2:00 p.m.
State Capitol, Room 325
Re: Testimony on S.B. No. 2859, S.D. 1
Relating to Open Government

Thank you for the opportunity to submit testimony on S.B. No. 2859, S.D. 1. OIP strongly supports this administration-backed 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. S.B. No. 2859 is the companion bill to H.B. 2597, which this Committee previously heard.

The Sunshine Law was originally enacted in 1975, long before the widespread use of the Internet and electronic devices.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.

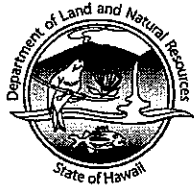
As amended by the Senate, S.B. 2859, S.D. 1 clarifies that only the social media addresses that board members use to discuss board business, and not their personal social media addresses, are subject to disclosure on request under the social media permitted interaction; requires that boards adopt a social media policy prior to carrying out discussions under the social media permitted interaction; and creates 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. 2858, S.D. 1.

In conclusion, OIP respectfully requests this Committee's support of S.B. 2859, S.D. 1, 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 OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
WILLIAM J. AILA, JR
Chairperson**

**Before the House Committee on
JUDICIARY**

**Friday, March 16, 2012
2:00 PM
State Capitol, Conference Room 325**

**In consideration of
SENATE BILL 2859, SENATE DRAFT 1
RELATING TO OPEN GOVERNMENT**

Senate Bill 2859, Senate Draft 1, allows members of a board or commission to hear public testimony and presentations on items listed on an agenda if the meeting is canceled due to lack of quorum, allows less than a quorum of members of a board or commission to attend informational meetings and presentations, and allows less than a quorum of members of a board or commission to discuss board or commission business via social media. The Department of Land and Natural Resources (Department) strongly supports this bill.

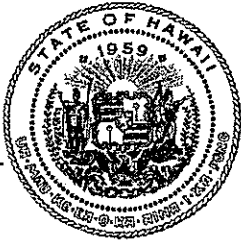
Senate Bill 2859, Senate Draft 1, will allow for enhanced public interaction with boards and more effective communication and coordination between boards. The Department administers numerous boards and commissions, and supports Senate Bill 2859, Senate Draft 1, for the aforementioned reasons.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

GUYH. KAULUKUKUI
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



**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
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Statement of
RICHARD C. LIM
Director

Department of Business, Economic Development, and Tourism
before the

HOUSE COMMITTEE ON JUDICIARY

Friday, March 16, 2012

2:00 PM

State Capitol, Conference Room 325

In consideration of
SB 2859 SD1
RELATING TO OPEN GOVERNMENT

Chair Keith-Agaran, Vice Chair Rhoads and Members of the House Committee
on Judiciary.

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

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

Thank you for the opportunity to testify on this measure.

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 12, 2012

**TESTIMONY TO THE
HOUSE COMMITTEE ON JUDICIARY**

For Hearing on Friday, March 16, 2012
2:00 p.m., Conference Room 325

BY

BARBARA A. KRIEG
INTERIM DIRECTOR

**Senate Bill No. 2859, S.D. 1
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 S.B. No. 2859, S.D. 1.

The purpose of S.B. No. 2859, S.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.

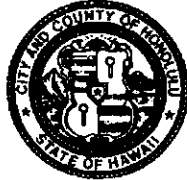
S.B. No. 2859, S.D. 1, encourages inclusive and participatory government for our citizenry, particularly since it is cognizant of the emerging technologies in electronic communication.

We respectfully request that this Committee move this bill forward.

DEPARTMENT OF PLANNING AND PERMITTING
CITY AND COUNTY OF HONOLULU

650 SOUTH KING STREET, 7TH FLOOR • HONOLULU, HAWAII 96813
PHONE: (808) 768-8000 • FAX: (808) 768-6041
DEPT. WEB SITE: www.honolulu.dpp.org • CITY WEB SITE: www.honolulu.gov

PETER B. CARLISLE
MAYOR



DAVID K. TANOUE
DIRECTOR

JIRO A. SUMADA
DEPUTY DIRECTOR

March 16, 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: Senate Bill No. 2859, SD1
Relating to Open Government**

The Department of Planning and Permitting (DPP) **supports** Senate Bill 2859, SD1. This bill allows board members to hear testimony and presentations for a meeting cancelled for 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, those who were scheduled to present, and those who came to hear the presentation. Those who were not present will receive information through meeting minutes.

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. This would be especially helpful for volunteers on advisory boards like the City's Neighborhood Boards which provide non-binding advice and recommendations to government.

Please pass Senate Bill No. 2859, SD1. 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
sb2859sd1-OpenGov-bs.doc

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, Līhu'e, Hawai'i 96766-1300
TEL (808) 241-4930 FAX (808) 241-6319

Testimony of Alfred B. Castillo, Jr.

Before a Hearing of the House Committee on Judiciary
Friday, March 16, 2012
2:00 pm
Conference Room 325

Senate Bill 2859 Relating to Open Government

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

The County of Kaua'i does not support S.B. No. 2859. To allow testimony during a cancelled meeting does not allow for equal access by the public to absent 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 may find useful or important 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,

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

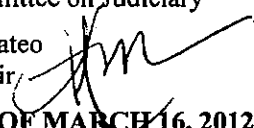


Director of Council Services
Ken Fukuoka

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

March 14, 2012

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

FROM: Danny A. Mateo
Council Chair, 

SUBJECT: **HEARING OF MARCH 16, 2012; TESTIMONY IN SUPPORT OF SB 2859, SD1,
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 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 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 sunset clause for 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
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200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

March 15, 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 that reads "Joseph Pontanilla".

DATE: Friday March 16, 2012

SUBJECT: **SUPPORT OF SB 2859, SD1, 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** for the reasons cited in testimony submitted by Maui County Council Chair Danny A. Mateo and urge you to support this measure.

12:03:15:kbn/JP: SB 2859 SD1

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

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



Director of Council Services
Ken Fukuoka

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www.mauicounty.gov/council

March 15, 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, March 16, 2012

SUBJECT: **SUPPORT OF SB 2859 S.D. 1, RELATING TO OPEN GOVERNMENT**

I support SB 2859 SD1, 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
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Mike White



Director of Council Services
Ken Fukuoka

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www.mauicounty.gov/council

March 12, 2012

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

F R O M: Elle Cochran
Council Member

SUBJECT: TESTIMONY IN SUPPORT OF SB 2859, RELATING TO OPEN
GOVERNMENT

Thank you for the opportunity to testify in support of this important measure. I offer my support for this bill as an individual member of the Maui County Council. I concur with the testimony submitted by Maui County Council Chair, Danny A. Mateo.

I would respectfully add that I encourage improving this law, which as currently written, deters members from attending many important public meetings, presentations and gatherings that would otherwise be of significant value in our role as policy makers.

It is a common complaint from the public that they are unable to attend regularly scheduled Committee and Council meetings to testify, due to conflicting work schedules. Allowing board members the opportunity to attend public meetings that occur after normal working hours, without worry of violating the Sunshine Law, would help effectuate the job that we intend to do.

The amendments to this legislation would better assist us in our capacity as elected officials to do our due diligence in fact gathering and reaching out to the community for their input and various perspectives.

I strongly support the intent of this bill and respectfully urge the committee to pass SB 2859.

Mahalo for the opportunity to testify.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

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



Director of Council Services
Ken Fukuoka

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www.maui-county.gov/council

March 14, 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 MARCH 16, 2012; TESTIMONY IN SUPPORT & COMMENTS OF SB 2859 SD 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 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.

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 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.

I also support improving this measure by: (a) explicitly allowing for attendance by all County Council members at governmental conferences and meetings; and (b) deleting the requirement that members attending informational meetings report on their attendance and matters presented and discussed at the next duly noticed meeting of the board.

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

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

FROM: Don Couch
Council Member, South Maui District

DATE: Thursday, March 15, 2012

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

Thank you for the opportunity to testify in **support** of measure **SB 2859, SD1**. As indicated by Maui County Council Chairman Danny Mateo, I, too, support the intent of this measure.

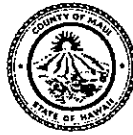
The measure states that board members may attend an information meeting or presentation on matters relating to official board business, provided that the meeting is not specifically organized for nor directed to them, and that board members attending such gatherings may participate in discussions provided 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 is unnecessary.

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.

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March 15, 2012

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

Dear Chair Keith-Agaran:

**Re: Testimony in Support of SB 2859 SD1 relating to Open Government
(Public Hearing: March 16, 2012 at 2:00 pm in Conference Room 325)**

As the Lana`i member on the Maui County Council, I would like to offer testimony in support of SB 2859, SD1. This measure allows 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.

In my view, the proposed measure would allow for more responsive government by allowing public testimony to be received in the event of a lack of quorum and by allowing board members to attend informational meetings. I concur with testimony in support submitted by Maui County Council Chair Danny A. Mateo.

Thank you for the opportunity to offer this testimony in support.

Sincerely,

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

Riki Hokama, Councilmember- Lana`i

cc: Council Chair Danny Mateo



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

March 16, 2012

2:00 PM

State Capitol, Conference Room 325

In consideration of

SB 2859 SD1 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 SB 2859 SD1, 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 would like to recommend that the legislation clarify that a majority of the board members present may decide whether a board meeting canceled due to lack of quorum or terminated pursuant to section 92-3.5(c) will receive testimony and presentations. The proposed legislation does not require the board to receive testimony and presentations and the convening board under these circumstances lacks a quorum for the board to decide whether to receive testimony or not.

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



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March 14, 2012

To: Chair Gilbert Keith-Agaran, Vice Chair Karl Rhoads
Members of the House Judiciary Committee

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

Subject: Comments on SB 2859 SD 1 Relating to Open Government

Americans for Democratic Action/Hawaii supports part (d) of SB 2859 SD1 and recommends an amendment, but recommends deletion of parts (e) and (f).

While we have some concerns about the change proposed in part (d), namely permitting testimony to be taken when a meeting has to be cancelled for lack of a quorum, we would support this, as providing the opportunity for people who have taken time to come to testify to do so. We assume they would also be able to choose to wait until the next full board meeting to testify instead. Our concern is that this clause could be used by a board to avoid having full board meetings to hear testimony. We do not have a specific proposal, but would ask the committee to look at language that would make clear that this could not be a pattern—perhaps limiting this option to once or twice a year.

We strongly oppose 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. We are aware that the House has passed and sent HB 1611 HD2 to the Senate. This is a far superior bill, 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, we support passage of part (d) of this bill, but urge you to delete parts (e) and (f). Thank you for the opportunity to provide testimony.



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

Friday 3/16/12 at 2:00PM in Room 325
SB 2859 SD1 – Open Government

TESTIMONY
Nikki Love, Executive Director, Common Cause Hawaii

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

Common Cause Hawaii offers the following comments on SB2859, 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.

As the SD1 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.
- Analogous to meeting notices being posted 6 days in advance, these lists posted on OIP and boards' websites serve as a sort of "notice" that discussions may be happening on social media.

Social media is a rapidly changing area, and we see that this section of the bill is scheduled to sunset in 2016. We believe four years is far too long, given the pace of technology today. We suggest that the sunset date be moved up sooner, e.g., 2014.

Mahalo for the opportunity to submit testimony.