

**SB 2289**

JAN 17 2014

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# A BILL FOR AN ACT

RELATING TO PUBLIC AGENCY MEETINGS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that boards and  
2 commissions have a duty to ensure that meeting notices are  
3 readily available to the public under sunshine law in chapter  
4 92, Hawaii Revised Statutes. Existing law requires boards and  
5 commissions to maintain a list of names and addresses of persons  
6 who request notification of meetings and to mail a copy of the  
7 meeting notice to these persons when a meeting agenda is filed.  
8 Postage is becoming cost prohibitive, especially when electronic  
9 mail is a more efficient and effective alternative to  
10 conventional mail. If electronic mailing of meeting notices is  
11 allowed, boards and commissions will be able to save money.  
12 Furthermore, electronic notices maximize the convenience for  
13 members of the public who are relying more on receiving mail  
14 through electronic means and may improve public access to and  
15 attendance of board and commission meetings.

16           The purpose of this Act is to improve the ability of boards  
17 and commissions to make meeting notices readily available to the  
18 public by:

2014-0486 SB SMA.doc



- 1 (1) Requiring an internet web address that provides  
2 meeting notices to include instructions on submitting  
3 testimony for a meeting;
- 4 (2) Allowing boards and commissions to provide notice of a  
5 meeting by either first class mail or electronic  
6 means, including electronic mail and text messaging;
- 7 (3) Requiring boards and commissions to provide  
8 instructions and contact information for persons to  
9 request to be included on the list for notification of  
10 meetings to be sent via postal mail or electronic  
11 means; and
- 12 (4) Specifying that any person who fails to properly send  
13 meeting notices by postal mail or electronic means or  
14 fails to send meeting notices in a timely manner shall  
15 be subject to penalties.

16 SECTION 2. Section 92-7, Hawaii Revised Statutes, is  
17 amended to read as follows:

18 "§92-7 Notice. (a) The board shall give written public  
19 notice of any regular, special, or rescheduled meeting, or any  
20 executive meeting when anticipated in advance. The notice shall  
21 include an agenda [~~which~~] that lists all of the items to be  
22 considered at the forthcoming meeting, the date, time, and place



1 of the meeting, an internet web address for instructions on  
2 submitting testimony for the meeting, and in the case of an  
3 executive meeting the purpose shall be stated. The means  
4 specified by this section shall be the only means required for  
5 giving notice under this part notwithstanding any law to the  
6 contrary.

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

12 (c) If the written public notice is filed in the office of  
13 the lieutenant governor or the appropriate county clerk's office  
14 less than six calendar days before the meeting, the lieutenant  
15 governor or the appropriate county clerk shall immediately  
16 notify the chairperson of the board, or the director of the  
17 department within which the board is established or placed, of  
18 the tardy filing of the meeting notice. The meeting shall be  
19 canceled as a matter of law, the chairperson or the director  
20 shall ensure that a notice canceling the meeting is posted at  
21 the place of the meeting, and no meeting shall be held.



1 (d) No board shall change the agenda, once filed, by  
2 adding items thereto without a two-thirds recorded vote of all  
3 members to which the board is entitled; provided that no item  
4 shall be added to the agenda if it is of reasonably major  
5 importance and action thereon by the board will affect a  
6 significant number of persons. Items of reasonably major  
7 importance not decided at a scheduled meeting shall be  
8 considered only at a meeting continued to a reasonable day and  
9 time.

10 (e) The board shall maintain a list of names [~~and~~], postal  
11 or electronic addresses, and mobile phone numbers of persons who  
12 request notification of meetings by postal mail or electronic  
13 means and shall mail by first class mail or electronically  
14 transmit a copy of the notice to such persons at their last  
15 recorded postal or electronic address or mobile phone number no  
16 later than the time the agenda is filed under subsection (b).  
17 The board shall provide instructions and contact information for  
18 persons to request to be included on the list for notification  
19 of meetings to be sent via postal mail or electronic means.

20 (f) Any person who fails to properly send notices by  
21 postal mail or electronic means or fails to send notices in a



# S.B. NO. 2289

1 timely manner shall be subject to penalties under section 92-  
2 13."

3 SECTION 3. Statutory material to be repealed is bracketed  
4 and stricken. New statutory material is underscored.

5 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY:

*Rock Ford*  
*Will Evers*  
*SC Butcher*  
*Mike Gabbard*  
*Yr dhang*



# S.B. NO. 2289

**Report Title:**

Sunshine Law; Notice

**Description:**

Requires that an internet web address be included on a meeting notice for instructions on submitting testimony for a meeting; allows boards and commissions to provide notice of a meeting by first class mail or electronic means, including electronic mail and text messaging; requires boards and commissions to provide instructions and contact information for persons to request to be included on the list for notification of meetings to be sent via postal mail or electronic means; and specifies that any person who fails to properly send meeting notices by postal mail or electronic means or fails to send meeting notices in a timely manner shall be subject to penalties.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*



NEIL ABERCROMBIE  
GOVERNOR



HAKIM OUANSAFI  
EXECUTIVE DIRECTOR

**STATE OF HAWAII**  
DEPARTMENT OF HUMAN SERVICES  
HAWAII PUBLIC HOUSING AUTHORITY  
1002 NORTH SCHOOL STREET  
Honolulu, Hawaii 96817

BARBARA E. ARASHIRO  
EXECUTIVE ASSISTANT

Statement of  
**Hakim Ouansafi**  
Hawaii Public Housing Authority  
Before the

**SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS**

February 4, 2014 1:15 P.M.  
Room 414, Hawaii State Capitol

In consideration of

**Senate Bill 2289**  
**Relating to Public Agency Meetings**

Honorable Chair Wakai and Members of the Senate Committee on Technology and the Arts, thank you for the opportunity to provide you with comments regarding Senate Bill (S.B.) 2289, relating to public agency meetings.

The Hawaii Public Housing Authority (HPHA) supports the enactment of this measure, which would improve the ability of boards and commissions to make meeting notices readily available to the public, with comments.

In this day and age, the HPHA believes that electronic access to board meeting notifications and other information about the meetings will not only improve the public's access to the meetings, but will also save taxpayer's money from the costs of printing and postage, as well as assist our environment by using less paper.

However, the HPHA would like to see section (f) removed for two reasons. The first reason is because the HPHA staff prepare the notices and information, and we do not believe that they would willfully send out these materials after the required time period. The second reason is because none of the HPHA Board of Directors prepare or send out the notice and information, so they would not be affected.

The HPHA appreciates the opportunity to provide the Senate Committee on Technology and the Arts with the agency's position regarding S.B. 2289. We respectfully request the Committee to pass this measure favorably, and we thank you very much for your dedicated support.





# UNIVERSITY OF HAWAI'I

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## BOARD OF REGENTS

Testimony presented before the  
Senate Committee on Technology and the Arts  
February 4, 2014 at 1:15 p.m.

By  
John Holzman  
Chair, Board of Regents

### SB 2289 – RELATING TO PUBLIC AGENCY MEETINGS

Chair Wakai, Vice Chair Nishihara, and members of the Senate Committee on Technology and the Arts:

The University of Hawai'i Board of Regents comments that while it agrees with the intent of this measure to ensure adequate notice of public meetings, Section (f) is not necessary and should be deleted as it is contained in another section in this law.

As it applies to the public notices for the Board of Regents, the office of the Board voluntarily provides the information and notice by mail and email as proposed in this measure.

We ask that this measure be amended to delete section (f) in its entirety.

Thank you 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: Senate Committee on Technology and the Arts

From: Cheryl Kakazu Park, Director

Date: February 4, 2014, at 1:15 p.m.  
State Capitol, Conference Room 414

Re: Testimony on S.B. No. 2289  
Relating to Public Agency Meetings

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") supports the intent of this bill to add electronic notice as an alternative to notice by mail for people who have asked to be on a Sunshine Law board's mailing list, but OIP is concerned that the bill in its current form would set additional requirements that would not be feasible for all boards, and would inappropriately criminalize a failure to timely mail out notice.

The bill (at page 3, lines 1-2) would require every notice of a Sunshine Law meeting to include the address of a website, with instructions on how to submit testimony. Because the Sunshine Law applies to a wide variety of boards, including small boards with no support staff as well as the larger and more prominent boards, not all boards have websites or the ability to readily create a website, which would make it difficult for all boards to meet this requirement. Further, OIP notes that such a provision could be interpreted as authorizing each board to set its own requirements for how testimony must be submitted, whereas under current law OIP has opined (in its Opinion Letter Number 03-06) that the law must be liberally construed to afford the public the opportunity to submit written testimony by any

reasonable means. In other words, the proposed requirement could actually restrict the public's ability to submit written testimony by any reasonable means.

OIP is similarly concerned that the proposed requirement (at page 4 lines 17-19) for boards to "provide instructions and contact information for persons to request to be included" on the electronic or mail notice list would not be feasible for small boards without staff, web presence, or a physical office. By giving each board the ability to set its own procedure for being added the list, the proposal could also have the unintended consequence of restricting the public's ability to use any reasonable means to request to be added to the list.

The bill (at page 4, lines 11 and 15) anticipates sending the notice to a mobile phone number. Given the length of even a typical agenda, OIP does not believe that text message is a feasible method of electronic transmission.

Finally, the bill (at page 4, line 20 to page 5, line 2) would specifically subject any person failing to timely mail or electronically send notice to the Sunshine Law's criminal misdemeanor provision, section 92-13, HRS. OIP does not believe that a criminal misdemeanor and removal from the board is an appropriate penalty for failure to timely mail out notice. The provision is also confusing, in that (1) a staff member, not a board member, usually sends out those notices, and (2) late mailing of notices is usually not intentional. By contrast, the criminal misdemeanor's focus is on intentional acts by a board member.

OIP would recommend that this Committee amend the bill to address these concerns and limit it to simply adding electronic mail notice as an alternative to postal mail notice. OIP has attached language that would do so; changes to the bill's section 1 are shown in Ramseyer form, and for the sake of readability, bill sections 2 forward show only the new suggested language to replace the current language, and are not in Ramseyer form. Thank you for the opportunity to testify.

SECTION 1. The legislature finds that boards and commissions have a duty to ensure that meeting notices are readily available to the public under sunshine law in chapter 92, Hawaii Revised Statutes. Existing law requires boards and commissions to maintain a list of names and addresses of persons who request notification of meetings and to mail a copy of the meeting notice to these persons when a meeting agenda is filed. Postage is becoming cost prohibitive, especially when electronic mail is a more efficient and effective alternative to conventional mail. If electronic mailing of meeting notices is allowed, boards and commissions will be able to save money. Furthermore, electronic notices maximize the convenience for members of the public who are relying more on receiving mail through electronic means and may improve public access to and attendance of board and commission meetings. The purpose of this Act is to improve the ability of boards and commissions to make meeting notices readily available to the public by:

- ~~(1) Requiring an internet web address that provides meeting notices to include instructions on submitting testimony for a meeting;~~
  - ~~• Allowing requiring boards and commissions to provide notice of a meeting by either first class mail postal or electronic ~~[means, including electronic]~~ mail. ~~[and text messaging;~~~~
- ~~(3) Requiring boards and commissions to provide instructions and contact information for persons to request to be included on the list for notification of meetings to be sent via postal mail or electronic means; and~~
- ~~(4) Specifying that any person who fails to properly send meeting notices by postal mail or electronic means or fails to send meeting notices in a timely manner shall be subject to penalties.]~~

SECTION 2. Section 92- 7, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

"(e) The board shall maintain a list of names and postal or electronic mailing addresses of persons who request notification of meetings and shall ~~[mail]~~ transmit a copy of the notice to ~~[such]~~ these persons at their last recorded postal or electronic mailing address ~~[no later than~~ the time the agenda is filed under subsection (b)] at least six calendar days before the meeting."

SECTION 3. Section 92-8, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

"(a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting; provided that:

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and
- (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for

in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

(1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;

(2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;

(3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office;

(4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and

(5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.



Written Statement of

**KARL FOOKS**

**President**

Hawaii Strategic Development Corporation

Before the

**COMMITTEE ON TECHNOLOGY & THE ARTS**

**February 4, 2014**

**1:15 PM**

**State Capitol, Conference Room 414**

In consideration of

**SB 2289 RELATING TO PUBLIC AGENCY MEETINGS**

Chair Wakai, Vice Chair Nishihara and Members of the Committee on Technology & the Arts:

The Hawaii Strategic Development Corporation (HSDC) respectfully submits testimony in support of HB 2382, with comments.

We agree that electronic access to board meeting notifications and other information about the meeting will improve the public's access to and attendance of the meetings.

However, we find that the added provision to HRS §92-7 regarding penalties to be redundant with HRS §92-13 and therefore not needed.

Thank you for the opportunity to provide testimony.



49 South Hotel Street, Room 314 | Honolulu, HI 96813  
www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

SENATE COMMITTEE ON TECHNOLOGY AND THE ARTS  
Tuesday, February 4, 2014, 1:15 p.m. Room 414  
SB 2289, RELATING TO PUBLIC AGENCY MEETINGS

TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Wakai, Vice-Chair Nishihara and Committee Members:

**The League of Women Voters supports SB 2289 in concept, but requests that the bill be amended** to simply allow timely electronic mail notice as an alternative to timely postal notice with no change in the remedies and penalties for failure to provide timely notice to persons who have requested such notice.

We suggest that you consult the Office of Information Practices for appropriate statutory language. We do not believe it is necessary to establish criminal penalties for failure to send timely notice, as currently proposed by SB 2289. We also think it would be problematic to require trivial boards and commissions to establish a web site (to provide instructions on submitting testimony), as currently proposed by SB 2289.

Thank you for the opportunity to submit testimony.

PETER L. FRITZ  
ATTORNEY AT LAW  
200 NORTH VINEYARD BOULEVARD, #430  
Honolulu, Hawaii 96817  
Telephone: i711 Call Me: 808.568.0077

THE SENATE  
THE TWENTY-SEVENTH LEGISLATURE  
REGULAR SESSION OF 2014

COMMITTEE ON TECHNOLOGY AND THE ARTS  
Hearing February 4, 2014  
Testimony on S.B. 2289

(RELATING TO PUBLIC AGENCY MEETINGS)

Chair Wakai, Vice Chair Nishihara and members of the Committee, my name is Peter Fritz. I am an attorney and an individual with a disability. I am testifying in my capacity as an attorney with knowledge of the laws relating to individuals with disabilities. I am testifying **in support of the intent** of Section 2 of this bill to require commissions and boards to include information about how to submit testimony and to permit boards and commissions to send notices of meetings to certain individuals electronically. However, I do not support the provisions as currently drafted because the provisions, as currently drafted, may violate the rights of individuals with disabilities.

Section 2, paragraph (a) of this bill requires a board or commission to include Internet web address and instructions for submitting testimony for the meeting. However, as currently drafted, it is not clear whether these instructions will allow for the submission of testimony by means other than electronically. Many individuals with disabilities do not own a computer or a computer with Internet connectivity. To avoid a board or commission inadvertently discriminating against persons with disabilities by specifying submission of testimony solely electronically, consideration should be given to revising the language on page 3 lines 1 and 2 to clarify that the methods of submitting testimony are not limited to electronic submissions. It is recommended that the bill be revised to require that the notice include information to permit individuals with disabilities to request an accommodation to attend the meeting to bring the notice into compliance with the Governor Abercrombie's Administrative Directive 12-06 concerning Accessibility to State Government by Persons with Disabilities

Paragraph (e) of Section 2 of this bill would allow boards and commissions to provide notice of a meeting by either first class mail or electronic means, including electronic mail and text messaging. However, it is not clear whether the individual or the board or commission determines the method of delivery of the notice. A person with a disability has a right to receive a notice in a format that accommodates their disability. It is respectfully submitted that this bill specify, that while a board or commission has the right to provide notice of a meeting by mail or electronically, that the notices are to be sent by the method specified by the person making the request. Furthermore, if the notice is sent electronically, the bill should specify that any attachments need to be accessible for individuals with disabilities.

Very truly yours,

  
PETER L. FRITZ