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**House Committee on Judiciary and Hawaiian Affairs
Tuesday, March 30, 2021, 2:00 p.m.**

Testimony by:

Kendra Oishi, Executive Administrator and Secretary of the Board of Regents

S.B. No. 1034, S.D. 1, H.D. 1– RELATING TO SUNSHINE LAW BOARDS

Chair Nakashima, Vice-Chair Matayoshi, and members of the Committee:

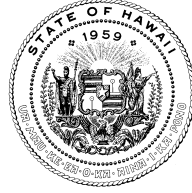
The Office of the Board of Regents (Board Office) supports S.B. No. 1034, S.D. 1, H.D. 1, which provides avenues for meaningful engagement in meetings of various boards, including the Board of Regents of the University of Hawai'i (Board of Regents), through the use of interactive conference technology.

The COVID-19 pandemic has required the implementation of emergency measures suspending certain requirements of the State's Sunshine Law which allowed boards, including the Board of Regents, to conduct official business in a manner that protected public health and safety while maintaining public access to board meetings. In lieu of traditional in-person meetings, remote meetings, also referred to as virtual meetings, have connected people in different physical locations through the use of interactive conference technology and thus enabled and enhanced board and public participation.

On March 19, 2020, the Board of Regents held its first "hybrid" remote meeting, whereby some board members participated in person and some participated remotely, and subsequent meetings, including standing committees, have been conducted remotely via interactive conference technology including audio and video livestreaming. Board of Regents meetings have already incorporated many of the provisions contemplated in S.B. No. 1034, S.D. 1, H.D. 1. While there have been some minor technological issues, conducting Board meetings in this manner has worked well overall and the Board Office has received positive community feedback.

Although the Board attempts to hold meetings across the various campuses of the University System statewide in accordance with statutory intent under Section 304A-104, Hawai'i Revised Statutes, the Board Office believes that S.B. No. 1034, S.D. 1, H.D. 1, strikes a balance between providing flexibility to boards in conducting business while ensuring public access to these meetings is retained. As such, S.B. No. 1034, S.D. 1, H.D. 1, is worthy of further discussion and consideration and the Board Office supports this measure.

Thank you for the opportunity to testify.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
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DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Judiciary & Hawaiian Affairs
Tuesday, March 30, 2021
2:00 p.m.
Via Videoconference**

**On the following measure:
S.B. 1034, S.D. 1, H.D. 1, RELATING TO SUNSHINE LAW BOARDS**

Chair Nakashima and Members of the Committee:

My name is Dorene Eddy, and I am a program specialist with the Department of Commerce and Consumer Affairs' (Department) Professional and Vocation Licensing Division (PVL). The Department appreciates the intent of and offers comments on this bill.

The purposes of this bill are to: (1) authorize boards, in conjunction with in person meetings, to use interactive conference technology to remotely conduct public meetings; (2) authorize boards to exclude the public from nonpublic locations, such as homes, where board members are physically present when remote board meetings are held by interactive conference technology, with members of the public given the option to participate either remotely or at an in-person public location; (3) establish requirements for the conduct of remote meetings; (4) require remote meetings held by interactive conference technology to recess for a maximum prescribed period when audiovisual communication cannot be maintained by the board (not due to a member of the public's inability to maintain such communication) and allow the meeting to be

reconvened under certain circumstances; (5) establish a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail, which also applies to remote meeting agendas; and (6) allow for additional courtesy sites open to the public for both remote and in-person meetings held by interactive conference technology.

The Department appreciates the intent of this bill to allow the boards and commissions administratively attached to it to hold meetings virtually. This will ensure that our team and the public remain safe during emergencies declared by government authorities, as well as when no emergency exists. The PVL has, on average, 25 board, committee, or commission publicly noticed meetings a month. The ability to hold virtual meetings has provided significant cost savings on travel, per diem, and postage to mail meeting packets.

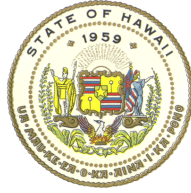
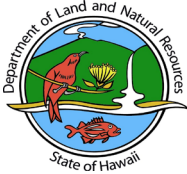
To ensure that the PVL and its staff are able to carry out the functions of holding virtual meetings, the Department offers the following comments:

- As stated above, the PVL has, on average, 25 board, committee, or commission publicly noticed meetings a month. The language included on page 3, lines 16 through 19, to list at least one meeting location that is open to the public that shall have an audio-visual connection if requested by the public at least 72 hours before the meeting is unrealistic. The Department is limited to nine public meeting rooms that multiple divisions share. The Department may not be able to accommodate said request by the public in this limited amount of time. At a minimum, the Department would need at least five business days to accommodate this request.
- The Department appreciates the need for the public to participate in board meetings; however, it is concerned that this language, while permissive, on page 4, lines 8 through 13, to list additional locations for public participation would place an undue hardship on PVL staff and be impractical. For the Committee's information, each board typically has two staff members assigned to it: an executive officer and a secretary. These two staff members will not be able run the production side of the virtual meeting, take notes for

meeting minutes, address board members' comments, and act as technical support to ensure public participation. Further, the PVL does not have the equipment (e.g., additional laptops, cameras, microphones) to supply for public participation in a meeting. Currently, most staff are using their own devices to participate in virtual board meetings.

Thank you for the opportunity to testify on this bill.

DAVID Y. IGE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
SUZANNE D. CASE
Chairperson**

**Before the House Committee on
JUDICIARY & HAWAIIAN AFFAIRS**

**Tuesday, March 30, 2021
2:00 PM**

State Capitol, Via Videoconference, Conference Room 325

**In consideration of
SENATE BILL 1034, SENATE DRAFT 1, HOUSE DRAFT 1
RELATING TO SUNSHINE LAW BOARDS**

Senate Bill 1034, Senate Draft 1, House Draft 1 proposes to authorize boards to use interactive conference technology to remotely conduct public meetings under the sunshine law in conjunction with in-person meetings, even when no emergency has been declared by government authorities, and to implement other statutory changes to expand and enhance participation in public meetings. House Draft 1 of the measure proposes to make a number of changes to the technical requirements for remote meetings, especially as they relate to participation by individuals with disabilities. **The Department of Land and Natural Resources (Department) supports this Administration measure.**

The Board of Land and Natural Resources (Board) conducts public meetings twice a month, except for November and December when the Board meets once a month. The Board was forced to cancel its March 27, 2020 meeting due to the COVID-19 pandemic and resulting Governor's Emergency Proclamations, but was able to pivot to virtual meetings beginning with its April 10, 2020 meeting. Interactive conference technology allowed the Board to continue to conduct its business with Board members attending remotely and members of the public testifying remotely, often via portable devices such as laptops, tablets and smart phones. The Commission on Water Resource Management and other boards and commissions under the purview of the Department similarly pivoted successfully to virtual meetings. The use of this technology reduced the State's cost of holding meetings as well as the cost to the public and time of attending in-person meetings, especially for items that would otherwise require travel by neighbor island residents to Honolulu to provide oral testimony. For these reasons, the Department believes that interactive conference technology should be made a permanent feature of public meetings in the Information Age and therefore supports Senate Bill 1034, Senate Draft 1, House Draft 1.

Thank you for the opportunity to comment on this measure.

SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ROBERT K. MASUDA
FIRST DEPUTY

M. KALEO MANUEL
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
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To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: March 30, 2021, 2:00 p.m.
Via Videoconference

Re: Testimony on S.B. No. 1034, S.D. 1, H.D. 1
Relating to Sunshine Law Boards

Thank you for the opportunity to submit testimony on this bill, which would allow boards to use interactive conference technology to remotely conduct Sunshine Law meetings in conjunction with one or more in-person sites, even when no state of emergency has been declared. **The Office of Information Practices (OIP) supports this bill**, which is an Administration proposal to expand and enhance public participation in public meetings, lower the costs of holding meetings, protect public health and safety, promote voluntary participation on boards, and avoid unnecessary and possibly burdensome travel by board members, staff, testifiers, observers, other participants, and the general public. **OIP's earlier concerns with SD 1 have been addressed by the amendments made in HD 1 by the House Pandemic and Disaster Preparedness Committee. Consequently, OIP supports SB 1034, SD 1, HD 1, with the exception of one suggested amendment regarding the 72-hour notice requirement for in-person meetings** (see pages 6-7 of this testimony) and **the effective date** (see page 12 of this testimony).

The COVID-19 pandemic forced the implementation of emergency measures that suspended certain requirements of Hawaii's Sunshine Law in order to allow boards to continue meeting and conducting necessary business, while protecting participants' health and safety and expanding access to public meetings throughout our island state. In lieu of traditional in-person meetings, remote meetings (popularly referred to as "virtual" meetings) connected people in different physical locations through the use of interactive conference technology (ICT) and thus safely

enabled and expanded public participation by people from different islands or parts of the islands and at times when many would not otherwise be able to leave their work, homes, or schools to participate in a traditional in-person meeting.

For the first six months of this fiscal year, the State Office of Information Practices (OIP) worked with government boards and the general public on various bill drafts to amend the Sunshine Law so that public meetings can continue to be remotely conducted by boards after the COVID-19 emergency orders are lifted. Except for stylistic or nonsubstantive changes, this bill as originally introduced contained OIP's proposal, which can be summarized as follows.

I. Three options to hold public meetings

The bill (HD 1) proposes to amend existing Sunshine Law provisions and add new sections that **essentially recognize that boards have three distinct options to conduct public meetings:**

- (1) a meeting in person at one site, as is the traditional method;
- (2) a meeting in person at multiple sites connected by interactive conference technology (ICT), without any requirement to provide remote access, as is currently allowed; or
- (3) a new type of "remote" meeting using ICT where board members and the public may either participate remotely, or from the in-person site(s) listed on the notice, provided that a request for an in-person meeting is made at least 72 hours prior to the meeting.

In recognition of the digital divide, which may affect the general public as well as board members, all three options allow for at least one in-person meeting site, but this requirement may be suspended by the Governor's emergency orders if the pandemic persists or new emergencies arise.

Option one is existing law and how Sunshine Law meetings have traditionally been held in person at one physical location. OIP expects that boards without the staffing, equipment, or technical ability to conduct remote meetings will continue to favor this option, as there is no requirement for ICT connectivity.

Option two is consistent with the current law and revises HRS section 92-3.5 to expressly recognize that a public meeting may be held at multiple in-person meeting sites connected by ICT. Under option two, a board could hold a public meeting at multiple physical locations connected by ICT so

that board members, testifiers, and other people from various islands or parts thereof can simultaneously participate in the same meeting held in person at different sites. As is the current practice, OIP expects that option two will be favored by boards with members or constituents on different islands (*e.g.*, Maui County Council: Maui, Molokai, and Lanai), or from different locations on the same island (*e.g.*, Hawaii County Council: Hilo, Kona, and Waimea). To successfully use option two, a board will need sufficient staffing and technological capability to use ICT to connect the multiple in-person meeting locations, which boards have typically done through the use of existing videoconference facilities. **Option two does not require a board to provide a way for the public to attend and testify remotely from any location of the public's choice, although it also would not bar a board from accepting telephone testimony or something similar. Option two would require all board members to attend in person at one of the meeting sites, unless they are disabled and are thus allowed to participate remotely under existing provisions of HRS section 92-3.5.**

Option three is presented in a newly created section that will allow for the conduct of a remote online meeting, similar to what boards have been doing during the COVID-19 pandemic, but with enforceable public access standards appropriate for remote meetings in normal, non-emergency circumstances. **All board members as well as the public can participate via ICT from their private homes, offices, or other location of their choice, and will also have the option to attend from the in-person meeting site** provided by the board with ICT equipment and connectivity to give members of the public and board members a physical location they can go to participate and testify. Having experienced the benefits of using ICT to conduct remote meetings during the pandemic, OIP expects that most boards with the staffing and resources to do so will favor option three.

The primary difference between option three and option two is that option two is essentially an entirely in-person meeting and therefore does not require the board to provide an ICT connection for the public to remotely view and testify at the meeting. Because the public will not have the ability to remotely participate, option two likewise does not allow board members to remotely participate, unless they are disabled. Board members and the public would thus have to attend one of the official in-person meeting sites that have been connected by ICT under option two. If the ICT connection is interrupted between the multiple in-person meeting sites under option two, or during a remote meeting

held under option three, then the meeting may have to be terminated under the bill's provisions, to be discussed below.

An in-person meeting is also required for remote meetings under HD 1, but only “[i]f requested by a member of the public at least seventy-two hours before the meeting[.]” (Page 3, lines 16-18.) **OIP has suggested an amendment of this provision on pages 6-7 of this testimony to more clearly reflect this legislative intent.**

II. Additional unofficial meeting locations

Besides the official in-person meeting sites that could be set up under option one or two, current law allows boards to set up additional unofficial in-person sites, which OIP has been referring to as “courtesy” sites. OIP has interpreted the existing section 92-3.5, including its requirement that a meeting terminate if connection is lost to one site, to only apply to sites that are noticed as official meeting sites where board members may be present. **The current law thus allows boards the option to set up unofficial additional locations for the public’s convenience where board members will not be present and there is no requirement that the formal meeting be recessed or terminated if ICT connection to the courtesy sites fails.**

While most boards do not go through the extra effort to set up courtesy sites in locations where no board member will be present, this has been a current practice of the Maui and Hawaii county councils because it allows them to improve public access to meetings in rural areas or to other islands within their county while still limiting the number of sites for which a communication failure could require cancellation of the whole meeting. The courtesy sites allow members of the public to observe the proceedings or may even allow them to testify remotely without having to travel to the nearest official meeting site, which could be a long distance away. Although the public may be able to attend remotely and the board will be required to have at least one physical meeting site available, a board may still want to accommodate members of the public who are not near that site and do not have their own broadband access, equipment, or skills to remotely attend meetings. The public at the courtesy sites are notified that they bear the risk of ICT connection to the official meeting being lost, which would render them unable to observe or testify remotely, as the meeting would continue without them. But members of the public who cannot participate remotely may still find it more convenient to participate from a courtesy site nearer to their home or work than to travel to the nearest

official meeting site, and they can ensure that their testimony will be considered by providing written comments as well.

As amended by the HD 1, the bill incorporates the current practice and recognizes that “additional locations” (formerly called “courtesy sites”) may be provided to supplement the official in-person meeting sites required under any of the three options. In other words, the explicit statutory recognition that a board may provide additional courtesy sites would not change the board’s obligation to provide the required in-person meeting sites open to the public that must stay connected to the meeting under any of the options. **By retaining the boards’ choice to provide for additional in-person meeting locations not held to the same connectivity guarantee, the bill encourages boards to expand public access in more locations by making clear that doing so will not increase the boards’ risk of having to terminate meetings early due to connectivity problems.** The bill also requires a board’s notice to state whether an additional meeting site is one that might miss out on part of the meeting in the event of a lost connection, so **members of the public can make their own informed decisions as to whether they would rather go to a more convenient “additional location” and take the risk that ICT connection might fail, or go to what may be a less convenient official meeting site with the guarantee that the meeting will not proceed without them.** Moreover, people are free to submit written testimony so their views will be presented, or to call in their oral testimony to a formal meeting site where that option is available, whether or not the ICT connection to an additional location is lost.

By recognizing that boards could hold a multi-site in-person meeting (option two) as a distinct and separate option, the bill provides a way to balance statewide access to public meetings with concerns that on controversial issues Hawaii residents’ voices may be drowned out by a potential worldwide onslaught of online participants. Rather than holding a remote meeting under option three that could draw a disruptively large number of participants from outside Hawaii seeking to present oral testimony, a board could choose to link its members and public participants from different islands under option two by holding a public meeting at multiple connected in-person sites, without also providing a remote option for participants who for whatever reason could not attend at an in-person site. (Such participants would, of course, still have the option to submit written testimony.) Under the bill, a board could further expand public participation under option two by providing additional in-person locations where no board members will be present and which will not require the recess or termination of the official meeting if ICT

connection to the unofficial additional locations is interrupted or lost. This would allow a board to focus its resources on conducting the in-person meetings and provide for more orderly conduct of public meetings that would not be as vulnerable to the possibility of online disruption. Moreover, a board could provide for greater public access at additional locations, while avoiding the potential problem of having insufficient bandwidth or resources to technologically or reliably support a long meeting with an unusually large number of attendees.

Boards dealing with less controversial issues and are thus less vulnerable to a global online onslaught may have also wanted to expand public participation at additional locations while conducting a remote meeting under option three. Members of the public would have had the opportunity to go to an additional location that has the necessary equipment, internet connection, or technical support for them to remotely participate in a meeting, even if they do not have such skills or resources of their own.

III. Requirements to hold remote meetings under option three

A. Notice requirements

A board holding a remote meeting under option three is not required to allow members of the public to join board members in person at nonpublic locations where board members are physically present, such as their homes or private offices, or to identify those locations in the board's meeting notice. The meeting notice, however, must inform the public how to contemporaneously view the audio and video of a remote meeting and how to provide remote oral testimony.

The notice may also list additional locations open for public participation and must specify whether, if the ICT connection to an additional location is lost, the meeting will continue without that location or will be automatically recessed to restore communication to it.

The HD 1 now provides that the in-person meeting requirement for remote meetings under option three need only be met “[i]f requested by a member of the public at least seventy-two hours before the meeting[.]” (Page 3, lines 16-18.) The placement of this clause, however, might confusingly require the meeting notice to list an in-person meeting only if someone requests it 72 hours before the meeting, when the notice must have already been sent six days before the meeting under the Sunshine Law's requirements. Additionally, there may be questions as to when the

request was made, whether only a member of the public and not a board member can make the request, and whether the person requesting the meeting must intend in good faith to actually appear in person or is simply harassing the board. **To have the law more clearly reflect the legislative intent and provide specific direction to boards, OIP recommends that page 3, lines 16-19 be amended as follows:**

- (1) **List at least one in-person meeting location, which shall be open to the public and shall have an audio-visual connection to the remote meeting, provided that an individual intending in good faith to appear in person at the meeting has made a request that has been received by the board at least seventy-two hours prior to the meeting using the board's telephone, email, or postal contact information listed in the notice.**

B. Board member visibility and quorum requirement

During drafting, OIP received comments that were both strongly in favor and against having board members visible during remote meetings. Keeping in mind the traditional in-person meeting requirement and the importance of body language, **OIP balanced the competing views to include in the proposal that this bill was based on a requirement for a quorum of board members to be visible and all board members to be audible to the public during remote meetings**, which allows people to view board members' facial expressions and thus ensure as close to an in-person experience as possible for those watching online. In contrast to the board and in recognition of the digital divide, there is no requirement for the public or other non-board participants to be visible during online meetings, but only to allow the public to provide oral (which could be via telephone or an audio-only link) or written testimony.

This bill thus recognizes that boards may experience technical difficulties in maintaining visual connection throughout an online meeting, or their members may be subject to the digital divide themselves, so it requires a "quorum," rather than all, of board members to be visible during a remote meeting. The digital divide is not limited to members of the public, as board members may also live in rural or underserved locations without broadband connection, or they may be uncomfortable with technology for other reasons. Based on what OIP has heard from boards, some members may not have internet access, may have trouble keeping a reliable video connection from their homes, or do not have access to or the skills to use a computer, cell phone, or other equipment to connect to an audio-video

meeting. While such members will still have the option to attend in person at the public meeting site, there may be members who live at a great distance from the meeting, or who are unable to travel due to disability, caregiving responsibilities, or confinement to their homes or medical facility where they do not have video equipment or internet connection. By limiting the visibility requirement during remote meetings to a quorum of board members, the bill allows board members who are themselves disabled or caring for someone disabled, or who are technologically challenged, to participate with basic telephone connection. Thus, the bill helps to accommodate and attract as large a pool of potential board members as possible—from all communities throughout our state and from all walks of life and experience—while still recognizing the importance to the public and other participants of being able to see board members as they consider the issues before them.

OIP has advised in the past that a board member's brief absences from the room during a meeting, such as to take a five-minute restroom break, would not cause the board to lose quorum. OIP would apply the same standard of reasonableness in administering the visibility requirement and would not find that quorum has been lost due to a member's brief disappearance from camera view. If, however, a board member needed to meet the quorum requirement will be out of view for an extended period of time or will be absent during a vote, OIP would recommend that the board call for a recess until quorum can be reestablished.

Note that the visibility requirement for board members applies only to the public portion of a meeting. During an executive session closed to the public, board members can participate via telephone or audio only without being visible online. Because participants may not be visible during the executive session conducted online, **the board needs to have a record of who is participating** and can protect itself from unintentionally waiving the confidentiality of the executive session by identifying whether the participants are (1) authorized to be in the meeting and (2) not remotely transmitting the executive session to unauthorized persons. The “authorized participants” that the presiding officer must identify at the start of an executive session would generally be anyone properly included in the closed portion of the meeting, such as board members, staff members necessary to running the meeting (*e.g.*, technical or production staff), and in some cases, third parties whose presence is necessary to the closed meeting (*e.g.*, applicant, witness, or attorney).

C. Meeting procedures

At the start of a remote meeting, the presiding officer must announce the names of the participating members. Under HD 1, all votes shall be conducted by roll call so that it is clear how each member voted.

Boards must record remote meetings “when practicable” and make the recording electronically available to the public as soon as practicable after the meeting and until such time as the board’s minutes are electronically posted on the board’s website. This provision recognizes that it is usually easy to record an online meeting and have it posted on a board’s website, so that people who were unable to attend the meeting can do so at another time before the minutes are posted, and doing so provides for additional public access and government transparency. However, it also allows for those unusual circumstances in which recording an online meeting presents a more significant challenge, as it requires doing so only “when practicable.” **There is no change to the Sunshine Law’s existing minutes provision, so a board could use this recording as its minutes once a written summary has also been posted.** HRS § 92-9(b). If a board opts for traditional written minutes instead, it can remove and even delete the recording once its written minutes are posted because the Sunshine Law does not require a verbatim account but does require that the minutes reflect “a true reflection of the matters discussed at the meeting and the views of the participants.” HRS § 92-9(a). For guidance as to how OIP interprets this requirement, see OIP’s [“Quick Review: Sunshine Law Requirements for Public Meeting Minutes”](#) on our Training page at oip.hawaii.gov.

D. Procedures if ICT connection is interrupted or lost

If audio-visual connection is lost during the public portion of a remote meeting by the board (though not if the connection was lost due to a member of the public's inability to maintain it), the bill requires the meeting to automatically recess while the board attempts to restore the connection. The board may reconvene with audio-only communication if the visual link cannot be restored and provided that additional safeguards are followed. If audio-only communication is established, then speakers must state their names prior to speaking. Also, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled

presentation must be made available by posting on the internet or other means to all meeting participants, otherwise agenda items with unavailable visual aids cannot be acted upon at the reconvened meeting. **If the meeting cannot be reconvened within one hour after interruption to communication, and reasonable notice of its continuance has not been provided to the public, then the meeting is automatically terminated.** (Similar procedures apply to multiple site meetings connected by ICT and held under option two.)

How a board can give notice of the continuation of a meeting has been previously discussed in [OIP's online training materials](#). For remote meetings, the board has several ways that it could give notice of continuation:

1. The board's notice of the meeting may contain a contingency provision stating that if the board loses online connection, then people should check the board's website (give address) for reconnection information. Alternatively, the notice could provide that if the connection is lost for more than one hour, then the meeting shall be continued to a specific date and time, with the new link for the continued meeting either on the agenda itself or to be provided on the board's website.
2. At the start of the online meeting, the board could announce both audibly and visually that if online connection is lost by the board, information on reconvening or continuing the meeting will be posted on its website and give the website address.
3. If possible, the board should post a visual notice of the continuation of the meeting on the screen or in the chatbox, and on the board's website. If there is audio but no visual connection, the board could audibly announce that the meeting will be continued and direct people to its website where the relevant information has been posted.
4. The board can email people on its email list with a notice of continuation of the meeting. See the training or [forms page](#) on OIP's website for a form of the notice of continuation.

Finally, please note that **there is no Sunshine Law requirement that a meeting be terminated by a scheduled time**, and OIP is **not** proposing the establishment of such a provision.

E. Accessibility

OIP notes that current ICT technology has improved and will continue to improve to provide services that are accessible by people who are blind, hard of hearing, or have other disabilities. The bill as originally introduced did not specify that the ICT technology utilized by a board must be accessible for people with disabilities because **accessibility requirements are already set out by other state and federal laws and should not be administered or enforced by the OIP under the Sunshine Law. No new cause of action under the Sunshine Law should be created for disability rights when there are other state and federal laws administered by other agencies that have the jurisdiction and expertise to enforce them.** The Sunshine Law at section 92-7(a) already requires meeting notices to provide “instructions on how to request an auxiliary aid or service or an accommodation due to disability, including a response deadline, if one is provided, that is reasonable.” (See bill at page 11, lines 9-12) OIP routinely advises boards to consult with the state Disability and Communications Access Board or Hawaii Civil Rights Commission on issues concerning the Americans with Disabilities Act (ADA) because OIP itself does not have the expertise or personnel to be able to administer or enforce those matters under the Sunshine Law. **Thus, to avoid confusion, government inefficiency, and potential conflicts between laws and agencies, the HD 1 recognizes that ADA provisions should be addressed in the relevant laws by the agencies already charged with administering and enforcing them, and not in the Sunshine Law that is administered by OIP.**

IV. Provisions applicable to all meetings

A. Notice

HRS section 92-7 is being amended to require that **the meeting notice include the board’s electronic and postal contact information for submission of testimony** before the meeting.

B. Procedures to prevent meeting disruptions

The Sunshine Law already allows boards to remove persons who willfully disrupt a meeting. HRS § 92-3. Therefore, a board could cut off a person creating an online disruption or could take reasonable action to prevent disruption. For example, obscene images through “zoombombing” can be avoided if the board’s meeting is conducted as a one-way live stream, while public oral

testimony is presented audibly over a telephone line rather than as an interactive video feed.

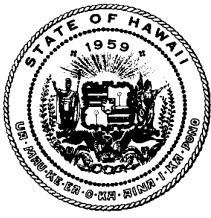
V. Effective date

S.D. 1 inserted a defective date of May 6, 2137, which the HD 1 retained. **OIP recommends that the effective date be January 1, 2022** for the following reasons:

- (1) Depending on if and when this bill is passed, the Governor must review and sign it into law;
 - (2) Once signed into law, OIP will need time to create new training materials and communicate the Sunshine Law amendments to boards;
 - (3) Boards will need time to train, learn, and adjust to the new amendments;
- and
- (4) The COVID-19 pandemic needs to be well under control so that public facilities can be safely opened to provide for in-person meetings required by the law.

OIP notes, too, that until the Sunshine Law is amended to allow remote meetings as proposed by this bill, or if the pandemic continues to require restrictions on in-person meetings, only the Governor's continuation of emergency orders will allow completely remote meetings to continue.

Thank you for considering OIP's testimony in support of this bill.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
Ph. (808) 586-8121 (V) • Fax (808) 586-8129 • TTY (808) 586-8162

March 30, 2021

TESTIMONY TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

Senate Bill 1034, SD1, HD1 – Relating to Sunshine Law Boards

The Disability and Communication Access Board (DCAB) supports, with comments, Senate Bill 1034, SD1, HD1, which, among other things, expands board and public participation by giving boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings under the Sunshine Law, even when no emergency has been declared by government authorities.

Individuals with disabilities have unique accessibility and accommodation needs when it comes to participating in public meetings. Since the Governor's emergency proclamation suspended provisions of the Sunshine Law, DCAB has been able to conduct meetings remotely and, as a result, meetings are more accessible to Board members and members of the public with disabilities. That said, SB 1034, SD1, HD1 will be beneficial to board members and members of the public with disabilities by allowing them to participate in public meetings remotely, especially from neighbor islands or areas where accessible transportation is an issue.

Title II of the Americans with Disabilities Act (ADA) requires state and local governments to provide equal access for individuals who are disabled when providing services, programs, or activities, especially persons with communication access needs. As it concerns SB 1034, SD1, HD1, it is important that auxiliary aids/services or other accommodations are provided, when requested, to ensure that meetings are equally accessible to the full spectrum of persons with disabilities. DCAB recommends inserting a notice requirement to provide information on how to make such requests. Also, some provisions of this measure pose legitimate ADA compliance issues, such as the availability of an individual's auxiliary aid/service or other accommodation once a public meeting has reconvened after recessing to restore audiovisual communication and whether an individual still has equal access if a meeting reconvenes through audio-only communication. These comments are offered to ensure that all individuals have equal opportunity to participate in processes of their government.

Thank you for this opportunity to provide testimony.

Respectfully submitted,

KIRBY L. SHAW
Executive Director



STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
201 MERCHANT STREET, SUITE 1700
HONOLULU, HAWAII 96813
Oahu (808) 586-7390
Toll Free 1(800) 295-0089
www.eutf.hawaii.gov

BOARD OF TRUSTEES
RODERICK BECKER, *CHAIRPERSON*
DAMIEN ELEFANTE, *VICE-CHAIRPERSON*
CHRISTIAN FERN, *SECRETARY-TREASURER*
JACQUELINE FERGUSON-MIYAMOTO
AUDREY HIDANO
LAUREL JOHNSTON
CELESTE Y.K. NIP
OSA TUI
RYKER WADA
JAMES WATARU

ADMINISTRATOR
DEREK M. MIZUNO

ASSISTANT ADMINISTRATOR
DONNA A. TONAKI

WRITTEN ONLY

TESTIMONY BY DEREK MIZUNO
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS
ON SENATE BILL NO. 1034 S.D. 1, H.D. 1

March 30, 2021
2:00 p.m.
Via Videoconference & Conference Room 325

RELATING TO SUNSHINE LAW BOARDS

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees supports the bill, but has concerns on one section.

The intent of this bill is to expand board and public participation by using interactive conference technology post COVID-19 pandemic. The EUTF monthly board meetings and periodic committee meetings are currently conducted 100% via interactive conference technology during the COVID19 pandemic. Due to its success in expanding access to public meetings, it makes sense to allow boards to continue such meetings. The bill not only allows the continuance of such interactive board meetings, it also provides reasonable rules around their conduct such as:

1. Not requiring board members who are participating remotely to open their place of participation to the public.
2. Only requiring one physical location to be open to the public.

EUTF's Mission: We care for the health and well being of our beneficiaries by striving to provide quality benefit plans that are affordable, reliable, and meet their changing needs. We provide informed service that is excellent, courteous, and compassionate.

3. Allowing meetings to continue if certain persons lose audiovisual connectivity as long as: a) a quorum is maintained, b) audiovisual connectivity is maintained with the physical public locations identified in the notice that require connectivity, and c) an audio only connection is established and communicated to participants.

EUTF staff has concerns regarding section 92(b)(5) that requires all votes to be conducted by roll call. This can be cumbersome and extend the meeting when such votes relating to approval of minutes or adjournment do not need a roll call vote. A compromise would be to require roll call votes when the vote is not unanimous.

Thank you for the opportunity to testify.

DAVID Y. IGE
GOVERNOR OF HAWAII



ELIZABETH A. CHAR, M.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
PRINCESS VICTORIA KAMĀMALU BUILDING
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
March 30, 2021

The Honorable Representative Mark M. Nakashima, Chair
House Committee on Judiciary and Hawaiian Affairs
The Thirty-First Legislature
State Capitol
State of Hawai'i
Honolulu, Hawaii 96813

Dear Representative Nakashima and Members of the Committee:

SUBJECT: SB 1034 SD1 HD1 Relating to Sunshine Law and Boards

The Hawaii State Council on Developmental Disabilities **SUPPORTS SB1034 SD1 HD1** which expands board and public participation by giving boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings under the Sunshine Law, even when government authorities have declared no emergency.

The State Council on Developmental Disabilities holds monthly meetings. Many of our members are individuals with a developmental disability who have compromised health conditions, making them a part of the vulnerable population during this COVID-19 pandemic. Our board members are also parents who have a child with special health care needs. We are extremely concerned about our board members' health and safety and would like to keep their exposure to large groups and flying inter-island as limited as possible.

According to the CDC, individuals with developmental disabilities have a higher mortality rate if they get COVID-19 compared to the general population. We do not want to expose our vulnerable high-risk population to the possibility of catching the coronavirus.

Not only would this measure keep our individuals safe, but it would also increase the accessibility of our meetings to our community. Our council contains many individuals from neighboring islands who would attend our meetings more frequently through telecommunication as some of our individuals are unable to travel. This measure would allow individuals like this to have access to our council and our meetings without having to open their homes to strangers.

Thank you for the opportunity to submit testimony **supporting SB1034 SD1 HD1**.

SB 1034 SD1 HD1 – Relating to Sunshine Law and Boards

March 30, 2021

Page 2 of 2

Sincerely,

A handwritten signature in blue ink that reads "Daintry Bartoldus". The signature is written in a cursive, flowing style.

Daintry Bartoldus
Executive Administrator

DAVID Y. IGE
GOVERNOR



THOMAS WILLIAMS
EXECUTIVE DIRECTOR

KANOE MARGOL
DEPUTY EXECUTIVE DIRECTOR

STATE OF HAWAII
EMPLOYEES' RETIREMENT SYSTEM

TESTIMONY BY THOMAS WILLIAMS
EXECUTIVE DIRECTOR, EMPLOYEES' RETIREMENT SYSTEM
STATE OF HAWAII

TO THE HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS

ON

SENATE BILL NO. 1034, S.D. 1, H.D. 1

March 30, 2021
2:00 P.M.
Conference Room 325

RELATING TO SUNSHINE LAW BOARDS

Chair Nakashima, Vice Chair Matayoshi and Members of the Committee,

S.B. 1034, S.D. 1, H.D. 1 proposes to allow boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings. On behalf of its Board of Trustees, the staff of the Employees' Retirement System (ERS) offers the following comments:

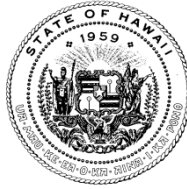
Since June 2020, in the midst of the COVID 19 pandemic, the ERS Board of Trustees has held its monthly board meetings and six committee meetings using interactive conference technology. The board has found that having remote meetings provides greater opportunity to meet quorum requirements, encourages wider public access and allows the board the opportunity to discuss and consider information provided by consultants, managers and staff in various locations. Based on their successful virtual meeting experiences and with the additional flexibilities and transparency provided by S.B. 1034, S.D. 1, H.D. 1, the ERS Board would be supportive of this bill should it be passed.

Thank you for this opportunity to provide testimony.



Employees' Retirement System
of the State of Hawaii

DAVID Y. IGE
GOVERNOR



TESTIMONY BY:

JADE T. BUTAY
DIRECTOR

Deputy Directors
LYNN A.S. ARAKI-REGAN
DEREK J. CHOW
ROSS M. HIGASHI
EDWIN H. SNIFFEN

STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

March 30, 2021
2:00 P.M.
State Capitol, Teleconference

S.B. 1034, S.D. 1, H.D. 1
RELATING TO SUNSHINE LAW BOARDS

House Committee on Judiciary & Hawaiian Affairs

The Department of Transportation (DOT) **supports** S.B. 1034, S.D. 1, H.D. 1, which authorizes boards, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings. The bill also authorizes boards to exclude the public from nonpublic locations where board members are physically present when remote board meetings are held by interactive conference technology; establishes requirements for the conduct of remote meeting; requires remote meetings held by interactive conference technology to recess for a maximum prescribed period when audiovisual communication cannot be maintained by the board and allows the meeting to be reconvened under certain circumstances; establishes a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail, which also applies to remote meeting agendas; and allows for additional courtesy sites open to the public for remote and in-person meetings held by interactive conference technology.

The DOT supports this bill as it encourages the use of technology to continue conducting board meetings remotely. This will save on the cost of renting meeting rooms as well as airfare and per diem for statewide meetings. For local meetings, people will be able to use their work time more efficiently by not having to spend time driving to meetings.

In addition to improving efficiency, this bill also ensures that the public can still participate in these meetings.

Thank you for the opportunity to provide testimony.

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 28, 2021

TO: Honorable Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Alice L. Lee
Council Chair

A handwritten signature in cursive script, appearing to read "Alice L. Lee".

DATE: March 30, 2021

SUBJECT: **SUPPORT OF SB 1034 SD1 HD1 RELATING TO SUNSHINE LAW
BOARDS**

Thank you for the opportunity to testify in **SUPPORT** of this important measure. The purpose of this measure is to expand board and public participation by giving boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings under the Sunshine Law, even when no emergency has been declared by government authorities.

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. Under the Governor's temporary partial suspension of the Sunshine Law due to COVID-19, the Maui County Council and other boards have held virtual meetings since March 2020. The practice has been favorably received by the public and could be made permanent by this measure.
2. Interactive conference technology has allowed Councilmembers and the public the ability to participate in meetings from any location, including offices or residences, while ensuring public safety, government transparency, and efficiency. This measure would allow Maui County residents from all parts of Maui, Lanai, and Molokai easier means of providing live testimony to both State and County boards. Promoting the use of remote meetings means broader civic engagement.
3. The Maui County Council Legislative Package contains legislation with a similar purpose (HB 190 and SB 442).

For the foregoing reasons, I **SUPPORT** this measure.

ocs:proj:legis:21legis:21testimony:sb1034sd1hd1_paf21-008(49)a_nas

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Gabe Johnson
Kelly Takaya King
Michael J. Molina
Tamara Paltin
Shane M. Sinenci
Yuki Lei K. Sugimura



Director of Council Services
Traci N. T. Fujita, Esq.

COUNTY COUNCIL

COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.MauiCounty.us

March 29, 2021

TO: Honorable Mark M. Nakashima, Chair
House Committee on Judiciary & Hawaiian Affairs

FROM: Councilmember Kelly Takaya King

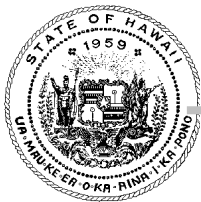
SUBJECT: **SUPPORT OF SB1034 SD1 HD1, RELATING TO SUNSHINE LAW
BOARDS**

Thank you for the opportunity to testify in **support** of this important measure. The purpose of this measure is to give boards the option to use interactive conference technology to conduct remote meetings under the Sunshine Law in conjunction with in-person meetings. It expands public participation by giving boards this option even when no emergency has been declared by government authorities.

I support this measure in my capacity as an individual member of the Maui County Council for the following reasons:

1. Under the Governor's temporary partial suspension of the Sunshine Law due to COVID-19, the Maui County Council and other boards have held virtual meetings since March 2020. The practice has been favorably received by the public and could be made permanent by this measure.
2. Interactive conference technology has allowed councilmembers and the public the ability to participate in meetings from any location, including offices or residences, while ensuring public safety, government transparency, and efficiency. This measure would allow Maui County residents from all parts of Maui, Lana'i, and Moloka'i easier means of providing live testimony to both State and County boards. Promoting the use of remote meetings means broader civic engagement.
3. The Maui County Council Package contains legislation with a similar purpose (HB190 and SB442)

For the foregoing reasons, I **support** this measure.



HAWAI‘I CIVIL RIGHTS COMMISSION

830 PUNCHBOWL STREET, ROOM 411 HONOLULU, HI 96813 · PHONE: 586-8636 FAX: 586-8655 TDD: 568-8692

March 30, 2021
Room 325, 2:00 p.m.
Videoconference

To: The Honorable Mark M. Nakashima, Chair
The Honorable Scot Z. Matayoshi, Vice Chair
Members of the House Committee on Judiciary and Hawaiian Affairs

From: Liann Ebesugawa, Chair
and Commissioners of the Hawai‘i Civil Rights Commission

Re: S.B. No. 1034, S.D.1, H.D.1

The Hawai‘i Civil Rights Commission (HCRC) has enforcement jurisdiction over Hawai‘i’s laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state funded services. The HCRC carries out the Hawai‘i constitutional mandate that no person shall be discriminated against in the exercise of their civil rights. Art. I, Sec. 5.

The HCRC supports S.B. No. 1034, S.D.1, H.D.1, with concerns discussed below.

S.B. No. 1034, S.D.1, H.D.1, allows boards to use interactive conference technology to remotely conduct public meetings under the Sunshine Law in conjunction with in-person meetings, adding two new sections to HRS chapter 92 providing for the following requirements:

- That board members be visible and audible;
- Names of participating members shall be announced and whether anyone additional is present at the non-public location;
- List one meeting location open to the public that has an audio visual connection if requested;
- Requirements for executive sessions when remote;

- Votes shall be conducted by roll call unless unanimous;
- All meetings be recorded;
- Board notices must include the URL address of the remote meeting/electronic invitation;
- Protocol for failure of audio-visual communication;
- Provision of the board's electronic and postal contact information for submission of testimony.

We support most of these revisions, and the efforts to provide transparency and ease of access.

The Commission has concerns about the § 92-___(a)(1) requirement of at least one meeting location open to the public that shall have an audio visual connection, and whether and how the HCRC and other boards can comply with such a mandate. The amendment in H.D. 1 requires a public meeting place, only if requested. HCRC seeks clarification from the legislature about whether **the availability of computers at public libraries satisfy the requirement of a public meeting location for remote access.** Further, it appears that if the public location is a conference room that a board would have to provide technology and hardware, such as a laptop, to participants which would require staff to monitor that electronic equipment. This may be difficult if staff is using computers in their own work spaces, or in a remote location, and would not be able to monitor the equipment to prevent theft, or provide help if needed. We suggest clarifying this requirement and addressing whether libraries, which have computers for public use, will suffice as a required public meeting place. If not, this would require provision of a laptop or computer, supervision and monitoring to prevent theft. If libraries do not meet the requirement, then we suggest postponing this requirement until all public buildings are open to the public.

HCRC notes that H.D.1 removes the amendments in the S.D.1 which made the use of interactive technology by those with disabilities more accessible.

While generally in support of S.B. No. 1034, S.D.1, H.D.1, the HCRC opposes the mandate that meeting be recorded, and the recordings posted. This new requirement is unnecessary. Current law already requires posting of minutes within 40 days, even if not yet approved. The State of Hawai'i hiring freeze means that we, as well as other agencies, must continue to do the same work with less staff. Adding this additional requirement, when minutes will still be posted within 40 days pursuant to statute, is onerous, and implementation may be problematic for the Microsoft Teams platform used by the executive branch.

Again, the Commission believes that the amendments to Chapter 92 to aid the use of interactive technology are an important step forward, with the comments above.

The HCRC supports S.B. No. 1034, S.D.1, H.D.1, with the concerns noted above.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
Fax: (808) 380-3580
info@civilbeatlawcenter.org

House Committee on Judiciary & Hawaiian Affairs
Honorable Mark M. Nakashima, Chair
Honorable Scot Z. Matayoshi, Vice Chair

**RE: Testimony Supporting S.B. 1034 S.D. 1 H.D. 1,
Relating to Sunshine Law Boards**
Hearing: March 30, 2021 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit testimony in **strong support** of S.B. 1034, but **requesting an amendment**. Boards always should have at least one public meeting location.

The COVID-19 pandemic highlighted the modern innovations in remote conferencing that allowed members of the public to continue observing and participating in policy discussions at State and county boards and commissions despite physical distancing. But those conferencing options were permitted only because the Governor suspended the Sunshine Law.

The conferencing provisions of the Sunshine Law were last amended in 2012 when the only viable options were in-person videoconferencing locations. The distributed remote conferencing options offered by Zoom, WebEx, and numerous other applications have proven reliable and convenient during the pandemic. Now, citizens on Maui or the Kaula`i can testify on items of interest being heard by the Land Use Commission or Office of Hawaiian Affairs even if the board members are located primarily on Oahu.

But we cannot put the burden on members of the community to request in-person meeting locations. Whether it is because of economic status, technological aptitude, or various other reasons, the benefits of technology do not reach everyone equally. In light of this digital divide, boards must continue to provide – by default – at least one official in-person meeting location where individuals unable to use remote technology can continue to participate in and observe board meetings.¹ **Please delete the language for**

¹ This bill concerns the use of remote technology in non-pandemic circumstances. That is why the designation of an official in-person meeting location is critical. Wherever the board met before the pandemic would be sufficient to meet this requirement, so long as the location has an Internet connection that can use the remote technology.

the newly proposed section (a)(1) that current reads “If requested by a member of the public at least seventy-two hours before the meeting.”²

The Law Center acknowledges the disability accommodation issues raised in prior testimony. The House Committee on Pandemic & Disaster Preparedness properly commented in its report that those concerns can be addressed elsewhere. And we note that this Committee recently advanced S.B. 538, which will expand the options for resolving such accommodation issues in a more appropriate forum than OIP.

S.B. 1034 shines a light on a silver lining from the COVID-19 pandemic, and the Law Center hopes that boards and commissions will continue to embrace remote conferencing technology (and thus broader civic engagement) even after the emergency period lifts.

Thank you again for the opportunity to provide **strong support** for S.B. 1034 with a minor amendment.

² Even if the Committee were to disregard the digital divide concerns, it is unclear that 72 hours notice would work for the public or for the boards. The public receives notice of a meeting six *calendar* days before a meeting. An intervening weekend (and holiday) may leave boards with insufficient opportunity to reserve an in-person meeting space and sufficient technology resources – assuming that 72 hours would be sufficient in the first instance. And giving the board more notice would provide members of the public insufficient opportunity after receiving the meeting notice to make the request for an in-person location.



March 30, 2021

Rep. Mark Nakashima
House Committee on Judiciary and Hawaiian Affairs
State Capitol
Honolulu, HI 96813

Re: Senate Bill 1034 SD1, HD1

Chairman Nakashima and Committee Members:

Remote meetings, instituted during the pandemic, are a good thing, and we support a move to keep this as a permanent part of government.

They have actually increased public participation. People unable to personally attend meetings can now do so by logging into the meetings online. Certainly it benefits all residents, particularly those on neighbor islands, and saves in travel and other costs.

The key to this system is proper implementation. Without this, the measure bill is faulty.

We ask you to remove an addition to the bill by the House Committee on Pandemic and Disaster Preparedness to set up an in-person meeting location with audio-visual capability ONLY IF a person requests it 72 hours in advance. We think this could be an imposition on people who cannot afford access to the Internet. Also this provision supposes that people can act quickly after an agenda is posted; this is not realistic.

We hope the Legislature will also retain this method of working in public.

Thank you for your time and attention,

Stirling Morita
President. Hawaii Chapter SPJ

Hawaii
*Holding Power Accountable*Statement Before The
HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
TUESDAY, March 30, 2021
2:00 PM
Via Videoconference, Conference 325in consideration of
SB 1034, SD1, HD1
RELATING TO SUNSHINE LAW BOARDS.

Chair NAKASHIMA, Vice Chair MATAYOSHI, and Members of the Judiciary & Hawaiian Affair Committee

Common Cause Hawaii supports with suggested amendments SB 1034, SD1, HD1, which (1) authorizes boards, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings, (2) authorizes boards to exclude the public from nonpublic locations where board members are physically present when remote board meetings are held by interactive conference technology, (3) establishes requirements for the conduct of remote meetings, (4) requires remote meetings held by interactive conference technology to recess for a maximum prescribed period when audiovisual communication cannot be maintained by the board and allows the meeting to be reconvened under certain circumstances, (5) establishes a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail, which also applies to remote meeting agendas, and (6) allows for additional courtesy sites open to the public for remote and in-person meetings held by interactive conference technology.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization focused on upholding the core values of American democracy through increasing civic engagement and breaking down the barriers to participation in our government.

Common Cause Hawaii has been a proponent of remote testimony and SB 1034, SD1, HD1 will amend the current Sunshine Law to more easily allow for remote meetings for the benefit of board members and the public. Government meetings may be held entirely remotely, entirely in-person, or a combination of both and satellite locations may be opened to have the public, meaning those who need assistance with remote technology and/or those without computers and/or broadband, attend to view the meeting.

Common Cause Hawaii notes that under Part II, Section 2 at page 4, lines 20-21, and at page, 5 lines 1-4, of SB 1034, SD1, HD1, it appears that only a quorum of board members are required to be visible and audible during a remote meeting. All board members on a remote meeting should be visible at all time. The public should know who the board members are of a board and commission. If the public is making a presentation or commenting on a matter, it is crucial that the public sees that all members are paying full attention to the matter at hand to ensure that the concerns are being heard and properly received.

Thank you for the opportunity to testify in support of SB 1034, SD1, HD1 with suggested amendments. If you have questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,
Sandy Ma
Executive Director, Common Cause Hawaii



IN REPLY REFER TO:
HART-COR-00879

HONOLULU AUTHORITY for RAPID TRANSPORTATION

Lori M. K. Kahikina, P.E.
INTERIM EXECUTIVE DIRECTOR AND CEO

Rick Keene
DEPUTY EXECUTIVE DIRECTOR AND COO

BOARD OF DIRECTORS

House Committee on Judiciary and Hawaiian Affairs
March 30, 2021
2 PM
Via Video Conference
Conference Room 325
State Capitol

Tobias Martyn
CHAIR

Hoyt H. Zia
VICE CHAIR

Michele Chun Brunngraber
Kika G. Bukoski
Jade Butay
Jeffrey S. Cudiamat
Dean Hazama
Natalie Iwasa
Lynn McCrory
J. Roger Morton
Glenn M. Nohara
Joseph V. O'Donnell
Dean Uchida
Joseph P. Uno

Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

On behalf of its Board of Directors, the Honolulu Authority for Rapid Transportation (HART) provides comments on **SB1034 SD1** relating to sunshine law boards.

The **HART Board of Directors supports** legislative measures and language that amends the Sunshine Law to allow boards and commissions to meet via interactive videoconferencing technology and favors legislation that provides options in how boards conduct public meetings, such as all participants attending in person, in person with some participants attending via video conference technology, or all participants attending via video conference technology.

The COVID-19 pandemic has necessitated the implementation of emergency measures suspending certain requirements of the Sunshine Law, in order to allow boards and commissions to continue conducting business in a manner that maintains the health and safety of board members, staff, and members of the public, such that public meetings via interactive conference technology is allowed.

The HART Board and its Committees meet twice a month on average. Since April 2020, the HART Board and its committees have met utilizing video conferencing technology. Prior to April 2020, the HART Board had been experiencing challenges in achieving quorum to do business and securing a voting majority by which to act. Meeting via interactive videoconferencing technology has alleviated these challenges by eliminating Board members' travel time and enabling participation by members who are unable to attend meetings at a single designated location or at a publicly accessible remote location.

The HART Board members have expressed a desire to have the option to continue meeting via interactive videoconferencing technology or meeting in person. Mahalo for this opportunity to testify.

TRANSFORM
HAWAI'I GOVERNMENT
Every Citizen • Every Service • Every Island

March 30, 2021
House Committee on Judiciary & Hawaiian Affairs
Hawai'i State Capitol, Room 325 and Videoconference

RE: Testimony in Support of SB 1034 SD1 HD1
Relating to Sunshine Law Boards

Aloha Chair Nakashima, Vice Chair Matayoshi, and Committee Members:

My name is Christine Sakuda and I serve as the executive director of Transform Hawai'i Government (THG), a coalition of organizations and individuals who advocate for an accessible, accountable and responsive state government that leverages technology to help citizens, communities, and businesses throughout Hawai'i to thrive. We provide a consistent and persistent voice to keep modernization a top priority of state government.

SB 1034 SD1 HD1 expands board and public participation by giving boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings under the Sunshine Law, even when no emergency has been declared by government authorities, among other provisions. The pandemic has brought to light the opportunity to be more accessible and responsive to its citizens. Using technology to expand accessibility to public meetings is consistent with the Hawaii Information Technology Strategic Plan.

We urge you to pass Senate Bill 1034 SD1 HD1 and thank you for the opportunity to provide testimony in support.

Respectfully submitted,



Christine Sakuda
Executive Director
Transform Hawai'i Government
email: csakuda@TransformHawaiiGov.org | phone: (808) 321-2811

NATIONAL FEDERATION OF THE BLIND OF HAWAII

Testimony before the Committee on Judiciary and Hawaiian Affairs (JHA))

Hawaii State House of Representatives

Thirty-First Legislature, Regular Session of 2021

March 30, 2021, 2:00 PM, hearing on SB1034, SD1, HD1

Good afternoon Mr. Chair, Vice Chair, and committee members. I am James Gashel, testifying for the National Federation of the Blind of Hawaii (NFBH), supporting this important bill and offering an amendment.

The NFBH support of various versions of what is now SB1034, SD1, HD1, has been presented in several prior hearings in both the House and Senate. Our position has emphasized the importance of assuring access for persons with disabilities to public meetings, using interactive conference technology that is accessible to and usable by persons with disabilities. In my case, I use a technology called a screen reader which speaks the words and controls you see on the screen and allows me to interact in the same way you interact when you can see the screen. Not all technologies expose their visual content to screen readers, making them inaccessible to people who are blind.

Responding to this concern, the Office of Information Practices has testified clearly that the Americans with Disabilities Act and other state and federal laws require public agencies and boards to assure disability access to their public meetings. Therefore, OIP has asked to have disability access language removed from this bill to avoid confusion and inconsistency with other applicable laws. This position was presented to the PDP Committee on March 16, 2021. Consequently, references to require disability access, which were part of SB1034, SD1, passed by the Senate, have been removed.

Rather than just being oppositional to OIP's position on this, NFBH feels that the back and forth about whether or not to include disability access language has been constructive. Our concern is that the present posture of SB1034 is not to mention disability access at all, which we are certain will lead to less, not greater, access. We would like the legislature to find a middle ground which does not burden OIP with new enforcement responsibility but does acknowledge and remind public agencies of their responsibilities to provide for disability access. We are certain that silence on this subject is not the answer.

Therefore, the amendment we request this committee to consider could read something like: “add at the appropriate place the following new section: “disability access. In providing training to public agencies and boards on their public access obligations, OIP shall identify agencies and other sources, including the Disability and Communications Access Board, National Federation of the Blind of Hawaii, and the Aloha Association of the Deaf as resources for technical assistance to assure use of interactive conference technology that is accessible to and usable by persons with disabilities, better assuring compliance with applicable state and federal laws.””

Specifically, to respond to OIP’s concern, we do not believe the suggested amendment language would impose any enforcement burden on OIP, but would at least create awareness for public agencies that disability access must be addressed when planning a public meeting. Please include this or similar language in passing SB1034. Clearly this is the best way to ensure that the public's business is conducted in view of and with participation by the public. Please continue to insure that the public includes individuals with disabilities along with all others. Mahalo for your concern and consideration.

SB-1034-HD-1

Submitted on: 3/25/2021 6:50:24 PM

Testimony for JHA on 3/30/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
lynne matusow	Individual	Support	No

Comments:

If one good thing arose from this terrible pandemic it has been the increased access to public participation via interactive technology, zoom, etc.

It appears that only a quorum of board members are required to be visible and audible during a remote meeting. That is not pono. All board members and staff on a remote meeting should be visible at all times. If the public is making a presentation or commenting on a matter, it is crucial that the public sees that all members and staff are paying full attention to the matter at hand to ensure that the concerns are being heard and properly received, just as they would see this if the meeting were in person.

Also, roll call votes should be required. Without a roll call vote, there is no way of knowing if a member has temporarily or permanently left the meeting.

Thank you for the opportunity to testify.

Brandon G. Young
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Testimony before the Committee on Judiciary and Hawaiian Affairs (JHA)

Hawaii State House of Representatives

Thirty-First Legislature, Regular Session of 2021

March 30, 2021, 2:30 AM, hearing on SB1034 SD1 HD 1

March 27, 2021

Dear Chair and Vice-Chair,

My name is Brandon Young, and I am a member of the National Federation of the Blind of Hawaii. I am writing testimony in support of SB 1034 SD 1 HD 1. This bill would allow transparency in our state government. This bill would also allow for virtual meetings when there were a Pandemic or other types of natural disasters. This would prevent members of a committee from meeting in person. Our group would like to add an amendment to this bill. In our testimony to the Pandemic and Disaster Preparedness committee, we asked for an amendment to be added to include the procurement of accessible for the blind and visually impaired when these virtual meetings occur. This would be the desire of myself and our organization. We would also like to be referred to as the National Federation of the Blind in this measure. This would be our amendments to this bill. I would urge your passage in this bill. I think that some type of virtual meetings allows for more opportunities for those to contribute than if the meetings were solely in person. I want to thank you for considering my testimony on this matter and hearing this bill. Have a wonderful day.

PETER L. FRITZ

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HOUSE OF REPRESENTATIVES
THE THIRTY-FIRST LEGISLATURE
REGULAR SESSION OF 2021

COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
S.B. 1034 S.D. 1 H.D. 1

RELATING TO BOARD MEETINGS

March 30, 2021 - 2:00 P.M.

Chair Nakashima, Vice Chair Matayoshi, and members of the Committee. My name is Peter Fritz. I am an attorney and an individual with a disability. I am hard of hearing (“HOH”). I have served on the Disability and Communication Access Board (“DCAB”) and also served as its chair. **I support this bill with an amendment** to provide that any meeting that is interrupted by technical difficulties may be recessed; however, the meeting must conclude that the scheduled time.

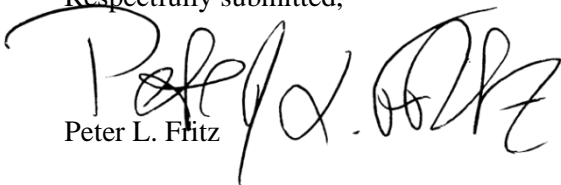
Currently, HRS §92-3.5(c) provides that a “meeting held by interactive conference technology shall be terminated when audio communication cannot be maintained.” This bill proposes to amend the law to provide that a meeting may be recessed for a period of time to correct technical problems; however, would no longer require that a meeting to be terminated when there are technical problems.

Amending this bill to provide that a meeting that reconvenes after curing technical difficulties end at the scheduled time **protects an agency** from failing to provide an accommodation required by the Americans with Disability Act (“ADA”). Accommodations are scheduled in advance for a specific time period and if the meeting is extended, the accommodation will not be available. **This proposed amendment does not require the Office of Information practices to enforce the ADA.** All it requires is that meetings end at the scheduled time. The amendment is no different than requiring a meeting notice to provide the time and date of the meeting.

As a practical matter, board members make commitments based upon a meeting ending at a specific time. Board members may arrange to pick up their children at school, run errands or make appointments based on the scheduled end time for the meeting. A board member may stop participating in a meeting because they made commitments based on the scheduled time for the meeting.

Thank you for the opportunity to testify.

Respectfully submitted,


Peter L. Fritz

Jaclyn Borsa

Testimony Before the Committee on Judiciary and Hawaiian Affairs (JHA)

Hawaii State House of Representatives

Thirty-First Legislature, Regular Session of 2021

March 30, 2021, 2:00 PM, hearing on SB1034, SD1, HD1

Good afternoon committee chair, vice chair, and committee members. My name is, Jaclyn Borsa, I am a blind woman residing in Ewa Beach, HI. I am a member of The National Federation of the Blind of Hawaii.

I am in strong support SB1034, SD1, HD1 and ask that you pass the measure.

I strongly support the testimony submitted by The National Federation of the Blind of Hawaii and ask that you take our testimony into serious consideration.

Mahalo for your commitment to blind people of Hawaii and your consideration of my testimony supporting SB1034, SD1, HD1.

Hoku Burrows

Testimony Before the Committee on Judiciary and Hawaiian Affairs (JHA)

Hawaii State House of Representatives

Thirty-First Legislature, Regular Session of 2021

March 30, 2021, 2:00 PM, hearing on SB1034, SD1, HD1

Good afternoon committee chair, vice chair, and committee members. My name is, Hoku Burrows, I am a blind woman residing in Honolulu, HI. I am a member of The National Federation of the Blind of Hawaii.

I am in strong support SB1034, SD1, HD1 and ask that you pass the measure.

I strongly support the testimony submitted by The National Federation of the Blind of Hawaii and ask that you take our testimony into serious consideration.

Mahalo for your commitment to blind people of Hawaii and your consideration of my testimony supporting SB1034, SD1, HD1.

Katie Keim

Testimony before the House Committee on JUDICIARY & HAWAIIAN AFFAIRS

Thirty-First Legislature, Regular Session of 2021

March 30, 2021, 2:00 PM, hearing on SB1034, SD1, HD1

Good morning Chair, Vice Chair, and committee members. My name is Katie Keim, a blind business woman residing in Honolulu and an active member of The National Federation of the Blind of Hawaii, in strong support of SB1034, SD1, HD1.

Additionally, I am in strong support of the position submitted by The National Federation of the Blind of Hawaii as essential legislation supporting accessible platforms for disabled individuals participation in remote public meetings and boards.

Full access for all citizens of Hawaii to accessible remote access to public meetings is an important means of participation for many of us for whom in-person access is often limited due to distance, time, and expense. This is the case in particular for many of my peers, members of NFBH who live on our neighbor islands and are simply left out unless there is a remote connection.

I am thankful for the legislations choice to use Zoom as their remote access, it is accessible and inclusive of blind individuals. yet, I have been surprised and extremely disappointed in attempts to attend many other state, city and county entities who have chosen to use platforms that are not accessible to us at all, baring our participation as is our right as tax paying voting citizens of Hawaii.

Please pass SB1034, SD1, HD1 SD1 to enable and encourage greater use of interactive conference technology by boards and other public bodies in our state ensuring disabled individuals can participate in public community meetings along with our non-disabled peers.

Mahalo for your commitment to full participation by all citizens of Hawaii

Virgil Stinnett

Testimony before the House Committee on JUDICIARY & HAWAIIAN AFFAIRS

Thirty-First Legislature, Regular Session of 2021

March 30, 2021, 2:00 PM, hearing on SB1034, SD1, HD1

Good morning Chair, Vice Chair, and committee members. My name is Virgil Stinnett, a blind businessman residing in Honolulu and a leader and member of The National Federation of the Blind of Hawaii, in strong support of SB1034, SD1, HD1 and the position submitted by The NFB of Hawaii as essential legislation supporting accessible platforms for disabled individuals participation in remote public meetings and boards.

Please pass SB1034, SD1, HD1 SD1 to enable and encourage greater use of interactive conference technology by boards and other public bodies in our state ensuring disabled individuals can participate in public community meetings along with our non-disabled peers.

Mahalo for your commitment to full participation by the citizens of Hawaii

SB-1034-HD-1

Submitted on: 3/30/2021 7:18:20 AM

Testimony for JHA on 3/30/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
John D. Smith	Individual	Support	No

Comments:

I support this bill and pass it through.

SB-1034-HD-1

Submitted on: 3/30/2021 8:19:45 AM

Testimony for JHA on 3/30/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Nikki	Individual	Support	No

Comments:

Aloha,

I advocate for the deaf, hard of hearing, deaf blind community because I have a deaf child. In my advocacy, we attend many different forums to share the large gap in providing adequate and appropriate services. With that, I have attended many legislative hearings in which accommodations were either not available, or inadequate. The pandemic adds a new layer which encompasses virtual forums limited in time and resources. I support this bill but request an amendment to address technical difficulties that could potentially extend or reconvene within a few hours. Although it may not affect every hearing, if a citizen with a disability would like to participate in the hearing and provide testimony, the amendment should include the hearing to be concluded and rescheduled to allow for those accommodations.

The "voice" of this community is heavily underserved and we lack the support when addressing the new platforms available to our state. Please consider the amendment and pass this bill.

Mahalo,