

SB-1034-SD-1

Submitted on: 3/12/2021 4:25:35 PM

Testimony for PDP on 3/16/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Wurtzel	Hawai`i Civil Rights Commission	Support	No

Comments:

I am available for comments. testimony will be submitted for the agency through another account.



DISABILITY AND COMMUNICATION ACCESS BOARD

1010 Richards Street, Room 118 • Honolulu, Hawaii 96813
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March 16, 2021

TESTIMONY TO THE HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS

Senate Bill 1034, SD1 – Relating to Sunshine Law Boards

The Disability and Communication Access Board (DCAB) supports Senate Bill 1034, SD1, 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. This measure also includes several provisions that will ensure equal access for persons with disabilities.

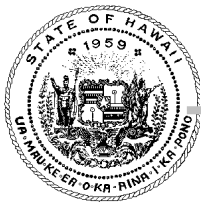
Individuals with disabilities have unique accessibility and accommodation needs when it comes to participating in public meetings. Since the Governor's emergency proclamation suspended provisions of the Sunshine Law, DCAB has been able to conduct meetings remotely and, as a result, meetings are more accessible to Board members and members of the public with disabilities. That said, SB 1034, SD1, 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 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. This measure includes various provisions that will help to eliminate barriers for persons with disabilities and ensure they have equal access to public meetings. Examples include requiring notice of a meeting to include instructions on how to request accommodations due to disabilities for all locations specified in the notice and specifying that "interactive conference technology" is accessible to and usable by individuals with disabilities. DCAB supports these provisions, which are included in the SD1 version of this measure and help ensure that all individuals have an equal opportunity to participate in processes of their government.

Thank you for this opportunity to provide testimony.

Respectfully submitted,

KIRBY L. SHAW
Executive Director



HAWAI‘I CIVIL RIGHTS COMMISSION

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

March 16, 2021

Videoconference, Room 309, 9:00 a.m.

To: The Honorable Linda Ichiyama, Chair
The Honorable Stacelynn K.M. Eli, Vice Chair
Members of the House Committee on Pandemic and Disaster Preparedness

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

Re: S.B. No. 1034, S.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, with concerns discussed below. S.B. No. 1034, S.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;
- Provide names and contact information of guests present at an in-person location;
- 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.

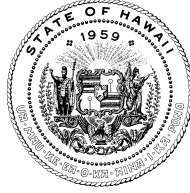
We support most of these revisions, and the efforts to provide transparency and ease of access.

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. While we understand that this is meant to apply to meetings in general, and not only during the pandemic, the bill is being proposed in the midst of a pandemic, and allows for the requirement of facial coverings, but not for closure of the meeting place. Many public buildings, including the State Capitol, are currently closed to the public. **Will the availability of computers (for remote access) at public libraries satisfy the requirement of a public meeting location?** Further, 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.

While generally in support of S.B. No. 1034, S.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, with the concerns noted above.



DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

**STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

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CATHERINE P. AWAKUNI COLÓN
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI
DEPUTY DIRECTOR

Testimony of the Department of Commerce and Consumer Affairs

**Before the
House Committee on Pandemic & Disaster Preparedness
Tuesday, March 16, 2021
9:00 a.m.
Via Videoconference**

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

Chair Ichiyama 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) 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; (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 even if only audio communication can be reestablished; (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; (6) amend the existing option to hold in-person meetings at multiple public meeting sites connected by interactive conference technology to require termination of meeting only if audio communication is lost and cannot be reestablished within an hour and the board had not provided reasonable notice of how the meeting would be continued; (7) allow for additional courtesy sites open to the public for both remote and in-person meetings held by interactive conference technology; and (8) allow for contact tracing and social distancing in a pandemic.

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:

- The Department appreciates the need for the public to participate in board meetings; however, it is concerned that the requirement on page 4, lines 8 through 18, 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.

- The PVL appreciates the Legislature's desire to provide people with disabilities access to virtual board meetings, including through closed captioning. Currently, PVL boards and commissions hold their virtual board meetings via Zoom. Providing closed captioning for these meetings could be accomplished through: an additional staff member providing manual captioning; an integrated third-party captioning service; or Zoom's live transcription feature. However, because Zoom's captioning system is restricted to English, it may inaccurately capture non-English names, and its translation accuracy will depend on variables such as background noise, the volume and quality of the speaker's voice, the speaker's proficiency in English, and lexicons and dialects indigenous to a region, such as Hawaii. Integrating closed captioning software with Zoom meetings will offer people with disabilities the opportunity to participate in board and commission meetings. The PVL is unsure of the cost impacts, given the number of board and commission meetings it holds monthly.

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
PANDEMIC & DISASTER PREPAREDNESS**

**Tuesday, March 16, 2021
9:00 AM**

State Capitol, Via Videoconference, Conference Room 309

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

Senate Bill 1034, Senate 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. Senate Draft 1 of the measure proposes to make a number of changes to elaborate on the technical requirements for such remote meetings and enhance the 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.

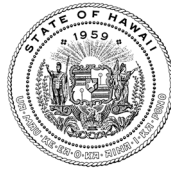
Thank you for the opportunity to comment on this measure.

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
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS



STATE OF HAWAII
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
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ADMINISTRATOR
DEREK M. MIZUNO

ASSISTANT ADMINISTRATOR
DONNA A. TONAKI

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 PANDEMIC AND DISASTER PREPAREDNESS
ON SENATE BILL NO. 1034 S.D. 1

March 16, 2021
9:00 a.m.
Conference Room 309 & Via Videoconference

RELATING TO SUNSHINE LAW BOARD

Chair Ichiyama, Vice Chair Eli, and Members of the Committee:

The Hawaii Employer-Union Health Benefits Trust Fund (EUTF) Board of Trustees supports the general intent of this bill, but has concerns on an amendment.

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.

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 the amendment that requires all votes 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 voting is not unanimous.

Thank you for the opportunity to testify.



STATE OF HAWAII
STATE COUNCIL
ON DEVELOPMENTAL DISABILITIES
1010 RICHARDS STREET, Room 122
HONOLULU, HAWAII 96813
TELEPHONE: (808) 586-8100 FAX: (808) 586-7543
March 16, 2021

The Honorable Representative Linda Ichiyama, Chair
House Committee on Pandemic & Disaster Preparedness
The Thirty-First Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Ichiyama and Committee Members:

SUBJECT: SB1034 SD1 Relating to Sunshine Law Boards

The Hawaii State Council on Developmental Disabilities **SUPPORTS SB1034 SD1** 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**.

Sincerely,

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 PANDEMIC & DISASTER PREPAREDNESS

ON

SENATE BILL NO. 1034, S.D. 1

March 16, 2021
9:00 A.M.
Conference Room 309

RELATING TO SUNSHINE LAW BOARDS

Chair Ichiyama, Vice Chair Eli and Members of the Committee,

S.B. 1034, S.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, 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

SB-1034-SD-1

Submitted on: 3/15/2021 8:38:05 AM

Testimony for PDP on 3/16/2021 9:00:00 AM

Submitted By	Organization	Testifier Position	Present at Hearing
Luke Sarvis	DLNR	Support	No

Comments:

I am available for questions. Please allow me Zoom access. Thank you.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

MAX N. OTANI
DIRECTOR

Maria C. Cook
Deputy Director
Administration

Tommy Johnson
Deputy Director
Corrections

Jordan Lowe
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL 1034, SENATE DRAFT 1
RELATING TO SUNSHINE LAW BOARDS.

by
Max N. Otani, Director

House Committee on Pandemic and Disaster Preparedness
Representative Linda Ichiyama, Chair
Representative Stacelynn K.M. Eli, Vice Chair

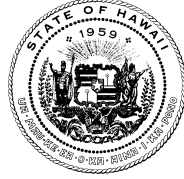
Tuesday, March 16, 2021; 9:00 a.m.
VIA VIDEOCONFERENCE

Chair Ichiyama, Vice Chair Eli, and Members of the Committee:

The Department of Public Safety supports Senate Bill (SB) 1034, Senate Draft (SD) 1, which allows boards the option to use interactive conference technology to conduct remote meetings under the Sunshine Law. This bill would 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.

Thank you for the opportunity to present this testimony.

DAVID Y. IGE
GOVERNOR



STACEY A. ALDRICH
STATE LIBRARIAN

STATE OF HAWAII
HAWAII STATE PUBLIC LIBRARY SYSTEM
OFFICE OF THE STATE LIBRARIAN
44 MERCHANT STREET
HONOLULU, HAWAII 96813

HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS

Tuesday, March 16, 2021

9:00 am

Via Video Conference, State Capitol Room 309

**By Stacey A. Aldrich
State Librarian**

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

To: Chair Linda Ichiyama
Vice Chair Stacelynn K.M. Eli
Members of the House Committee on Pandemic & Disaster Preparedness

The Hawaii State Public Library System (HSPLS) appreciates the opportunity to provide comments regarding S.B. 1034 S.D.1 relating to use of interactive conference technology for Sunshine Law board meetings.

We note that S.B.1034 is similar to H.B.503. The House Pandemic & Disaster Preparedness Committee adopted H.D.1 to H.B.503 which raised concerns for HSPLS, particularly with respect to suggestions made in testimony of the Hawaii Civil Rights Commission about the possibility of naming public libraries as an alternative site for the public to attend Sunshine Law board meetings.

HSPLS urges the Committee to **not** specifically name public libraries as a courtesy site for remote interactive conference technology locations. Our primary concern is that by naming the public libraries, it will shift the expectation for managing the additional courtesy site to library staff, as well as encourage a perception that all public libraries have the physical layout to be identified as an courtesy site.

By naming the public libraries, there is an assumption that the public libraries will be open to the public on days/times that the boards and commissions have their meeting. Due to short staffing systemwide, there are many days when our staffing level drops down to one person at a library with little prior notice, particularly in the case of illness. When staffing levels drop down to one person, we close the building to the public and instead provide door-side service only. Many times we have less than 24 hours' notice that this will occur.

Additionally, none of the public libraries have any permanent staff on site that can help address connectivity issues if problems suddenly arise. While public libraries have technology to access a meeting, we do not have the technical staff necessary to ensure continuity for the purpose of meeting Sunshine Law interactive conference technology requirements. By naming public libraries as a courtesy site, the public will expect library staff to provide access to the building and/or ensure connectivity to the meeting.

The public may also want to participate in board and commission meetings by providing oral testimony. Many of our public libraries do not have a separate space for the public to attend without disturbing other library patrons. Also, at this time, we are not loaning out technology to the public if they want to attend a meeting that continues beyond the public service hours of the library; our Chromebooks do not work on any wifi network outside of the library that it is located at.

Thank you for the opportunity to provide comments on this measure and the Committee's continued support of the Hawaii State Public Library System.

OFFICE OF INFORMATION PRACTICES

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

To: House Committee on Pandemic & Disaster Preparedness

From: Cheryl Kakazu Park, Director

Date: March 16, 2021, 9:00 a.m.
Via Videoconference

Re: Testimony on S.B. No. 1034, S.D. 2
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. **However, OIP is concerned that the addition of language in S.D.1 setting out disability access requirements within the Sunshine Law itself will result in more appeals to OIP and litigation in the courts to void a board's final action. In addition to the existing state and federal laws requiring disability access, the S.D. 1 language would allow people to also sue for Sunshine Law violations and seek to void a board's action for alleged violations of disability access standards. Furthermore, by adding disability access requirements to the notice and "additional meeting locations," the S.D. 1 amendments would discourage boards from expanding sites for the public to view online meetings and would have the negative effect of reducing public access. OIP therefore recommends amendments as set out below.**

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 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.

In recognition of the digital divide, which may affect the general public as well as board members, all three options require 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.

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 sending in written comments as well.

Before the Senate amendments, the bill originally incorporated the current practice and recognized 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 original proposal encouraged 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 original proposal also required 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 would then be free to 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. People are also 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 original bill had provided 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 have chosen 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 original bill, a board could have further expanded 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 have allowed 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 have provided 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.

The intended benefits of boards continuing to provide additional locations have been lost for remote meetings under the S.D. 1 amendments, as further discussed in the next section.

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, and list the required physical location linked to the meeting where the public can go in person to participate. **The S.D. 1 version of this bill now adds a requirement for the notice to state how to access captioning services during the meeting.** While this requirement appears to just require the notice to contain the specified information and does not appear to create a cause of action under the Sunshine Law for a failure of accessibility, **OIP does have concerns about the inclusion of disability access requirements in the Sunshine Law generally, as discussed further below.**

The notice may also list additional locations open for public participation and 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 S.D. 1 amendments, however, would hold additional remote meeting locations for public participation to the same connectivity standard as the meeting's required physical location for the purpose of ADA accommodations and would require the formal meeting to be automatically terminated if the audio-visual communication is lost in a way that interferes with ADA accommodations.**

The S.D. 1 amendments requiring the termination of a meeting that loses audio-visual connection under ADA standards would now substantially increase boards' risk of having to terminate a meeting and would discourage them from providing additional locations for the public's convenience. Thus, the benefits discussed in the previous section of establishing additional locations would be likely be eliminated. With the prospect of having to terminate a meeting if ADA accessible communication is lost, boards are unlikely to incur this increased risk and the trouble of setting up additional locations. In order to expand public access through additional locations, OIP strongly urges this Committee to restore the original language of the bill regarding additional physical locations for remote meetings and delete the Senate amendments on bill page 4, lines 13-18, page 6 lines 8-11, and page 8 lines 1-6.

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 the S.D. 1 version of the bill, 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.** 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 those matters under the Sunshine Law. **Thus, to avoid confusion, government inefficiency, and potential conflicts between laws and agencies, OIP recommends that ADA provisions be addressed in the relevant laws by the agencies already administering them, and not in the Sunshine Law to be administered by OIP.**

Nonetheless, the S.D. 1 version of this bill inserted ADA accessibility requirements in several places. Although the Senate Judiciary chair stated that it was not his intent to create a new ADA cause of action based in the Sunshine Law, the S.D. 1 does not include any statutory provision to that effect. **Thus, as written, S.D. 1 appears to create new causes of action under the Sunshine Law, such that the alleged failure to meet the ADA accessibility standards incorporated into the Sunshine Law could be enforced through complaint to OIP, through a court action to void a board's final action, or through any other Sunshine Law remedy. OIP is very concerned that the effect of this will be to add ADA enforcement, an**

area in which OIP has no expertise or more general interpretive authority, to OIP's duties, will make ADA violations a potential basis for voiding board decisions under the Sunshine Law, and could result in potential conflicts with existing federal and state agencies charged with enforcing the ADA.

OIP's preference would be to leave ADA enforcement out of the Sunshine Law altogether, given that the ADA and state laws on the same issue have their own enforcement scheme and interpreting agencies. If the Legislature believes it is desirable to provide additional means of enforcement of disability access beyond what is currently available, that would best be done by amending those laws to add such enforcement, not by effectively hijacking the enforcement scheme under the Sunshine Law. **Thus, OIP would recommend deleting the ADA and captioning provisions at bill page 3 line 21 to page 4 line 2, 4 lines 13-18, page 5 lines 4-8, page 6 lines 8-11, and page 8 lines 1-6.**

Alternatively, if this Committee nonetheless wishes to include references to ADA requirements in the Sunshine Law, OIP would recommend that it **at least make clear that those references do not authorize an appeal to OIP or a suit to void a board action under the Sunshine Law based on alleged violations of the ADA or similar laws.** This would not bar including the alleged ADA violations in a Sunshine Law court action under section 92-12, but would prevent accessibility complaints from being inappropriately enforced through remedies otherwise unique to open meeting complaints. **Thus, as an alternative, OIP recommends adding a new section to the Sunshine Law to do this, as follows:**

92- Enforcement of Disability Access. Any other provision in this part to the contrary notwithstanding, the office of information practices shall not have jurisdiction to resolve complaints regarding whether a board met standards for captioning or other forms of accessibility to individuals with disabilities under state and federal disability laws and such accessibility shall not be a basis for voiding a board action as provided in section 92-11.

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. To give OIP time to create new training materials and communicate the Sunshine Law amendments to boards, the effective date should be no earlier than July 1, 2021. However, if new accessibility standards are imposed for enforcement by OIP, the effective date should be no earlier than July 1, 2022, to give OIP additional time to understand its new ADA responsibilities, update training materials, communicate the new ADA requirements to the Sunshine Law boards. OIP notes, however, that until the Sunshine Law is amended to allow remote meetings as proposed by this bill, only the Governor’s continuation of emergency orders will allow such meetings to continue.

Thank you for considering OIP’s testimony in support of this bill, with the suggested amendments.



The Waikiki Neighborhood Board supports the concept of the following bill: SB1034

At the February 9, 2021 Regular Meeting of the Waikiki Neighborhood Board the Board voted in favor of the concept of this bill.

As a result of the Emergency Proclamation(s) issued by Governor David Ige and follow-on Proclamation(s) by the Honolulu Mayor the official business and corporate business in Honolulu have been conducting meetings normally prohibited by HRS 92 (Sunshine Law) using various audio-teleconferencing platforms like WEBEX or Zoom.

This bill will allow future use of audio-teleconferencing to conduct official meetings in both electronic or hybrid manner following the COVID-19 or other Emergencies.

Changes made in SD 1 clarify procedures to be followed in the original bill.

Robert J. Finley
Robert J. Finley
Chair

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

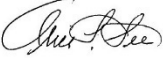


Director of Council Services
Traci N. T. Fujita, Esq.

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

March 14, 2021

TO: Honorable Linda Ichiyama, Chair
House Committee on Pandemic & Disaster Preparedness

FROM: Alice L. Lee
Council Chair 

DATE: March 16, 2021

SUBJECT: **SUPPORT OF SB 1034 SD1, 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 Package contains legislation with a similar purpose (HB 190 and SB 442).

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

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 15, 2021

TO: Honorable Linda Ichiyama, Chair
House Committee on Pandemic & Disaster Preparedness

FROM: Councilmember Kelly Takaya King

SUBJECT: **SUPPORT OF SB1034 SD1, 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.

Hawaii
*Holding Power Accountable*Statement Before The
HOUSE COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS

Tuesday, March 16, 2021

9:00 AM

Via Videoconference and Conference Room 309

in consideration of
SB 1034, SD1
RELATING TO SUNSHINE LAW BOARDS.

Chair ICHiyAMA, Vice Chair ELI, and Members of the House Pandemic & Disaster Preparedness Committee

Common Cause Hawaii supports with suggested amendments SB 1034, SD1, which (1) 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, (2) authorizes 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) 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 (not due to a member of the public's inability to maintain such communication) and allows the meeting to be reconvened even if only audio communication can be reestablished, (4) 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, (5) amends existing option to hold in-person meetings at multiple public meeting sites connected by interactive conference technology to require termination of meeting only if audio communication is lost and cannot be reestablished within twenty minutes and the board had not provided reasonable notice of how the meeting would be continued, and (6) allows for additional courtesy sites open to the public for both 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 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 5, lines 10-14, of SB 1034, SD1, 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.

Common Cause Hawaii supports having all votes be by roll call with meetings conducted by interactive conference technology, pursuant to Part II, Section 2 at page 6, line 1, of SB 1034, SD1. It is hard to discern, at times, whether there is unanimity of vote with computer lag and even phone static, on behalf of the viewer and, perhaps even, board members. To address any issues regarding this, a roll call vote therefore will solve this concern.

Common Cause Hawaii suggests that the time a meeting may be recessed to correct a technical or connection problem be restored to one hour from twenty minutes, as provided in Part II, Section 2 at page 6, lines 12-18 and Section 4 at page 10, lines 16-21, of SB 1034, SD1. This is to provide for enough time to correct any issues without calling for another meeting at a subsequent date and time, which may be difficult to do, given board members schedules.

Thank you for the opportunity to testify in support of SB 1034, SD1, 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



NATIONAL FEDERATION OF THE BLIND OF HAWAII

Testimony before the Committee on Pandemic and Disaster Preparedness (PDP))
Hawaii State House of Representatives
Thirty-First Legislature, Regular Session of 2021
March 16, 2021, 9:00 AM, hearing on SB1034 SD1

Good morning Madam Chair, Vice Chair, and committee members. I am James Gashel, testifying for the National Federation of the Blind of Hawaii (NFBH), fully supporting SB1034 SD1 as passed by the Senate.

The NFB of Hawaii supports this bill as essential legislation, not only in the time of a pandemic, but also at other times as described in the bill. Greater remote access to public meetings can be an important means of participation for many people for whom in-person access is often limited due to distance, time, and expense. This is the case in particular for members of NFBH who live on our neighbor islands and are simply left out unless there is a remote connection.

Perhaps you recall that I submitted similar testimony in February on HB503, which is virtually the same as SB1034 SD1. During decision making on HB503 we were pleased when this committee adopted language we suggested to include disability access language in the definition of interactive conference technology. Language similar to that which this committee approved for HB503 has been incorporated into the same definition in SB1034 SD1. I explained the importance of requiring disability access when I last testified before this committee in February. As experienced by blind people, not all interactive conference technology is created equal.

For example, the interactive conference technology being used in the legislature this year is the Zoom platform. Zoom is an excellent platform both for people who can see and for people who can't see. Don't know who chose to use the Zoom platform here at the legislature, but those responsible get high marks from the blind of Hawaii for doing so.

On the other hand, some state agencies, perhaps most state agencies, the city and county of Honolulu, and perhaps other counties too, are using another platform called Webex; definitely not the best platform to try to use if you are blind. So, the result is, we find ourselves not being able to connect and not able to participate. This is not government in the sunshine.

Frankly we have been rather surprised and disappointed to hear remarks from the Office of Information Practices to the effect that they oppose having any disability access requirements stated in SB1034 or any other bill enacted to extend government in the sunshine to meetings using remote conference technology. Their apparent concern appears to be enforcement of disability access laws. However, any board subject to the government in the sunshine law is also subject to both state and federal disability access requirements. That's true, but in practice, too many agencies and boards don't seem to be aware of their legal obligations. This forces people such as the NFBH members into filing complaints and having to make a federal case out of an issue of lack of access that should be quickly resolved right here in Honolulu, Hilo, or anywhere else in our state, not in Washington, DC.

Please pass SB1034 SD1 to enable and encourage greater use of interactive conference technology by boards and other public bodies in our state. 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.



All Hawaii News * P.O. Box 612 * Hilo, HI 96721 * www.allhawaiinews.com

14 March 2021

House Committee on Pandemic & Disaster Preparedness

From: Nancy Cook Lauer, publisher, All Hawaii News

www.allhawaiinews.com nclauer@gmail.com 808.781.7945

In SUPPORT of SB 1034 SD1 RELATING TO SUNSHINE LAW BOARDS

All Hawaii News, a state government and political news aggregate blog covering Hawaii since 2008, supports SB 1034 SD1 allowing for remote online meetings of boards and commissions.

If a global pandemic can even have a silver lining, it's this: Public access to state and local government meetings has never been easier, especially for neighbor island and rural residents.

Where previous state board meetings and press conferences were held primarily in Honolulu and accessible only to those able to be there in person, emergency response to the coronavirus pandemic has sent many of the meetings online, where the public can participate without hopping on an airplane or battling freeway traffic. This practice should continue past the pandemic, as experience has proven it's technologically practicable and successful in increasing public participation in government.

The proposed bill carries safeguards to accommodate those on the wrong side of the digital divide by also providing in-person meeting locations where members of the public can come to observe the virtual meeting or testify in person using interactive conference technology.

Amendments can accommodate the disability community without creating an undue hardship. It's understood that the details of those amendments are being fine-tuned, but the basic premise remains one worth supporting.

Mahalo nui for supporting this bill that enhances government transparency.

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March 16, 2021
House Committee on Pandemic & Disaster Preparedness
Hawai'i State Capitol, Room 309 and Videoconference

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

Chair Ichiyama, Vice Chair Eli, 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 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 SD 1 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



March 16, 2021

Rep. Linda Ichiyama
House Pandemic and Disaster Preparedness Committee
State Capitol
Honolulu, HI 96813

Re: Senate Bill 1034, SD1

Chairwoman Ichiyama and Committee Members:

Remotely conducted meetings can be a good thing – if properly implemented.

We support efforts to allow boards to continue to remotely conduct public meetings, while keeping the opportunity to conduct in-person meetings.

The emergency procedures 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 would be faulty.

In fact, we hope the Legislature will also retain this method of working in public.

This bill is a good thing.

Thank you for your time and attention,

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

Stirling Morita
President. Hawaii Chapter SPJ

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Honolulu, HI 96813

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House Committee on Pandemic & Disaster Preparedness
Honorable Linda Ichiyama, Chair
Honorable Stacelynn K.M. Eli, Vice Chair

RE: Testimony Supporting S.B. 1034 S.D. 1, Relating to Sunshine Law Boards
Hearing: March 16, 2021 at 9:00 a.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.

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.

During the pandemic, the State of Hawai`i Office of Information Practices (OIP) prepared a proposal that recognized the public benefits of remote conferencing to serve the purposes of the Sunshine Law. OIP circulated its ideas to a broad group of stakeholders and modified its proposal in response to comments. H.B. 503 tracks OIP's proposal based on several iterative drafts and wide input from the community.

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.

The Law Center acknowledges the disability accommodation issues. But we have two concerns about addressing these issues through this amendment to Chapter 92. First, by incorporating such standards into the Sunshine Law, it would require the Office of

Information Practices to provide guidance and rule on disability access issues, taking away from its diminished and already stretched resources for issues that are not within its expertise. The Disability Access Communications Board, as well as federal and state laws, regulations, and directives outside the Sunshine Law, already address the accommodations that must be made by public agencies for the disability community. See HRS § 384F-3 (defining the functions of DCAB to include serving as the designated state agency for ADA compliance and providing compliance guidance). If there are concerns about ADA compliance, those concerns are better addressed by DCAB, not OIP.

Second, the newly proposed subsection (b)(1) goes beyond existing law in requiring captioning of all meetings irrespective of a request from the public for such service. Captioning of live meetings must be available *on request* under the ADA. While automatic captioning of all meetings would be ideal, it typically is expensive and technically difficult. Remote meeting technology is optional for boards. If the Legislature imposes more obstacles, boards simply will not provide remote meetings because it is too difficult to implement.

Thank you again for the opportunity to provide **strong support** for S.B. 1034.



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**House Committee on Pandemic and Disaster Preparedness
Tuesday, March 16, 2021, 9:00 a.m.**

Testimony by:

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

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

Chair Ichiyama, Vice-Chair Eli, and members of the Committee:

The Office of the Board of Regents (Board Office) supports S.B. No. 1034 S.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. 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 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 is worthy of further discussion and consideration and the Board Office supports this measure.

Thank you for the opportunity to testify.

SB-1034-SD-1

Submitted on: 3/12/2021 8:32:04 PM

Testimony for PDP on 3/16/2021 9:00:00 AM

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.

PETER L. FRITZ

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E-MAIL: PLFLEGIS@FRITZHQ.COM

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

COMMITTEE ON PANDEMIC & DISASTER PREPAREDNESS

S.B. 1034 S.D. 1

RELATING TO BOARD MEETINGS

March 16, 2021 - 9:00 a.m.

Chair Ichiyama, Vice Chair Eki, and members of the Committee. My name is Peter Fritz. I am 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 provided that it includes provisions that ensure the ability of persons with disabilities to participate in remote meetings and receive the needed accommodations for the meeting.**

The purpose of the Sunshine Law is to provide transparency for all citizens, including individuals with disabilities. Administrative Directive 12-06 directs agencies to “ensure that all individuals with disabilities be they consumers, companions, or family members have equal opportunity to participate in programs, services, and activities of the State of Hawaii . . .”. Participation by certain individuals with disabilities requires accommodations for the entire time of the meeting.

Accommodations Are Provided For A Specific Period Of Time

I am hard of hearing. To participate in a meeting, I request that the agency provide live captioning. Captioning services are scheduled for a specific period of time. The captioning services end at the scheduled end time. It is not possible to arrange for a captioner to stay longer. Once a captioner leaves, I may not be able to participate effectively in the meeting. Once captioning services stop, the agency would violate the Americans with Disabilities Act (“ADA”) because the agency was no longer providing the accommodation that I needed to participate in the meeting.

Written Captions Are Not An Effective Accommodation For The Deaf.

The grammatical structure of American Sign Language (“ASL”) is different than English. As a result, many deaf individuals do not read well even though they are fluent in ASL and written captioning may not be an effective accommodation. These individuals often use online sign language services that interpret the proceedings of the meeting and provides interpretation for the deaf individual’s testimony. A court found that the written captions provided by the Trump administration were not an effective means of communication for the deaf and required it to provide sign language interpreters for press conferences. Sign language interpreters are scheduled for a specific time. A sign language interpreter does not provide services beyond the

scheduled time. Without a sign language interpreter, the individual cannot participate in the meeting. The agency will have failed to provide an effective accommodation for that individual.

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 end time for the meeting.

To address the concerns of individuals that require accommodations, I suggest that language be added to this bill that states that any meeting that is interrupted by technical difficulties may be recessed; however, the meeting must conclude within the original scheduled time. This language would protect individuals with disabilities when accommodations have been reserved for the scheduled length of the meeting.

All Written Materials Must Be Accessible for the Blind and Low Vision

Current meeting notices include language that states that accommodations are available for individuals with disabilities and that materials are available in alternate accessible format. Alternate formats might include large print and documents that can work with the text to speech programs used by individuals with vision disabilities. To the extent that materials are used for a meeting conducted by interactive conference technology, the materials used in that meeting need to be accessible. The Office of Information Practices (“OIP”) is very skilled at producing accessible PDF documents as all of its recent newsletters have satisfied requirements for accessibility. I can provide the language that is in the Florida Revised Statutes that set a standard requiring Florida government documents to be accessible.

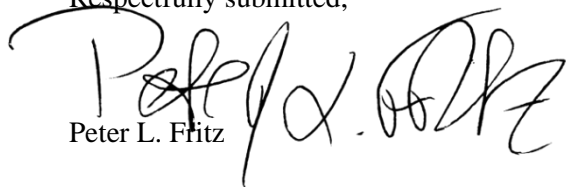
There Is No State Remedy for Disability Discrimination by an Agency

A citizen must bring an action in federal court to seek a remedy against a state agency discriminatory conduct by state agency when conducting a public meeting. DCAB has no enforcement powers. A Hawaii Supreme Court decision removed the enforcement authority of the HCRC to remedy this disability of discrimination for agencies that receive certain federal funds.

The provisions that I suggested would protect agencies from conducting meetings where an accommodation stops being provided because the meeting ran over time.

Thank you for the opportunity to testify.

Respectfully submitted,


Peter L. Fritz