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To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: March 17, 2022, 2:00 p.m.
State Capitol, Conference Room 325 and Via Videoconference

Re: Testimony on S.B. No. 2741
Relating to the Commission to Promote Uniform Legislation

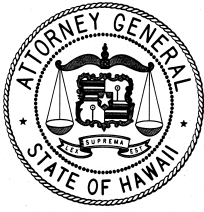
Thank you for the opportunity to submit testimony on this bill, which would allow any number of members of the Hawaii Commission to Promote Uniform Legislation a partial exemption from the Sunshine Law, part I of chapter 92, to attend and participate in meetings hosted by the national Conference of Commissioners on Uniform State Laws, including meetings specifically and exclusively held for or directed at the Hawaii Commissioners. The Office of Information Practices (OIP) offers comments.

OIP understands that most of the meetings hosted by the national conference likely will not involve discussion of Hawaii-specific legislation, but notes that this bill would specifically allow the Commissioners to discuss what legislation should be proposed or recommended to the Hawaii Legislature during meetings hosted by the national conference. They could even do so during a meeting specifically held for the Commissioners, so long as they refrain from voting on it at that time and report their attendance at the next Commission meeting, along with the matters presented or discussed during the meetings hosted by the national conference.

The Sunshine Law's permitted interaction allowing board members' discussion of board business in the course of their attendance at national conferences and other informational meetings is limited to less than a quorum of a board's members and excludes meetings specifically and exclusively organized for the board, whereas this permitted interaction would allow all the Commission members to discuss board business even at meetings specifically and exclusively organized for them. Thus, this bill allows discussion of Commission business, specifically which uniform legislative proposals should be proposed in Hawaii, in circumstances that go beyond what the Sunshine Law would otherwise allow.

On the other hand, the nature of the Commission's work is such that even when it makes a final decision to pursue a particular uniform legislative proposal in Hawaii, that proposal is still subject to the full legislative process, including the opportunity for public scrutiny and comment, before it can become a law. Thus, **OIP believes that whether to provide the proposed Sunshine Law exception is a question for the Legislature to make** by balancing the public interest in access to the Commission's decision-making process against the benefit of fuller participation in the national conference meetings for the Commission's purpose of promoting uniform legislation for ultimate decision-making by the Legislature.

Thank you for considering OIP's testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
THIRTY-FIRST LEGISLATURE, 2022**

ON THE FOLLOWING MEASURE:

S.B. NO. 2741, RELATING TO THE COMMISSION TO PROMOTE UNIFORM LEGISLATION.

BEFORE THE:

HOUSE COMMITTEE ON JUDICIARY AND HAWAIIAN AFFAIRS

DATE: Thursday, March 17, 2022 **TIME:** 2:00 p.m.

LOCATION: State Capitol, Room 325, Via Videoconference

TESTIFIER(S): Holly T. Shikada, Attorney General, or
Stella M.L. Kam, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Attorney General strongly supports this bill.

This bill amends sections 3-1 and 3-2, Hawaii Revised Statutes (HRS), to allow the five members of the Commission to Promote Uniform Legislation (Hawaii Commission) to attend and fully participate in Uniform Law Commission (ULC) meetings on the national level without violating the State's Sunshine Law, part I of chapter 92, HRS. This amendment would allow all Hawaii Commission members to actively work towards the goal of promoting uniformity of legislation for the State. Currently, under Sunshine Law restrictions, only two members of the Hawaii Commission are allowed to attend and participate at the national ULC meetings.

This bill would clarify that the meetings hosted by the ULC shall not be considered to be meetings of the Hawaii Commission and shall be exempt from certain requirements of chapter 92, HRS, with the proviso that the Hawaii Commission members may not vote at the national ULC meetings on which uniform laws should be proposed or recommended to the Legislature for enactment in Hawaii. This bill also would require the Hawaii Commission members to report at their next Sunshine Law Hawaii Commission meeting about their participation at and the matters discussed at the national ULC meetings that relate to official Hawaii Commission business.

We respectfully ask the Committee to pass this bill. Thank you for the opportunity to testify.

Blake K. Oshiro, Esq
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March 17, 2022

Representative Mark Nakashima, Chair
Representative Scot Matayoshi, Vice-Chair
House Judiciary and Hawaiian Affairs Committee Members

Re: SB2741: RELATING TO THE COMMISSION TO PROMOTE UNIFORM
LEGISLATION - SUPPORT

Provides a limited exemption for the Hawaii Commission to Promote Uniform Legislation from certain requirements of part I of chapter 92, HRS, for the purpose of allowing commissioners of the Commission to Promote Uniform Legislation to attend and participate in a full capacity in meetings hosted by the Uniform Law Commission, without any limitation on the number of participating commissioners, in furtherance of its goal of representing and promoting uniformity of legislation for the State.

Dear Chair Nakashima, Vice-Chair Matayoshi and Committee Members:

Thank you for the opportunity to testify in support of Senate Bill (SB) 2741. I am a member of Hawaii's Commission to Promote Uniform Legislation (CPUL or Commission).

The Commission's work is statutorily an "advisory capacity" to the Attorney General and the Hawaii State Legislature on "matters relating to the promotion of uniform legislation." Haw. Rev. Stat. (HRS) Section 26-7. As such, the CPUL here acts in collaboration with the Uniform Law Commission (ULC), during its deliberative work in coming up with the proposed uniform legislation.

The ULC was established in 1892 and provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law. ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

The ULC drafts uniform laws for the states to consider and enact. A uniform act is one that seeks to establish the same law on a subject among the various jurisdictions. When the term "uniform" is used in the nation's laws, it is highly likely that the ULC drafted the act.

Among the ULC's most widely adopted acts are the Uniform Commercial Code, the Uniform Anatomical Gift Act, the Uniform Trade Secrets Act, the Uniform Child Custody Jurisdiction and Enforcement Act, the Uniform Interstate Family Support Act, the Uniform Electronic Transactions Act, and the Uniform Transfers to Minors Act

ULC procedures ensure meticulous consideration of every act.

- 1) Each draft act receives a minimum of two years of consideration. Drafting Committees meet throughout the year in an open process that draws on the expertise of state-appointed commissioners, legal experts, and advisors and observers. All committee drafts are posted on the ULC website for review and comment.
- 2) Draft acts are submitted for initial debate of the entire ULC at an annual meeting. The ULC commissioners sit as a Committee of the Whole and closely consider each act in a deliberative setting. Each act must be considered section by section at no less than two annual meetings.
- 3) Once the ULC Committee of the Whole approves an act at an annual meeting, the final step is a vote by the states, with each state having one vote. A majority of the states present, and no fewer than twenty states, must approve an act before it is officially approved. Upon final approval, ULC uniform acts are then submitted for consideration by the state legislatures for enactment.

The purpose of this bill is to allow the CPUL Members to all attend and participate in the deliberations, discussions and votes taken during the annual meeting. Because the annual meeting goes on for three or more days with multiple sessions, it is helpful to have as many Hawaii CPUL members attend as possible so we can all get a fuller and deeper appreciation and understanding of the issues and bills. Informally, we each take a turn as taking on a session or issue so that we can brief and summarize the deliberations to other members who may or may not have been present. During our time at these annual meetings, no discussions or decisions are made amongst the Hawaii CPUL members.

Instead, all of our “decision-making” meetings for the purposes of deciding which bills to propose in Hawaii, are conducted in a publicly noticed meeting here in Hawaii. As such, the bill does NOT propose to exempt those meetings and discussions as there are actual decisions and Hawaii-related decisions being made.

Thank you for considering this proposal. I am available if you have any questions.

DATE: March 15, 2022

TO: Representative Mark M. Nakashima, Chair
Representative Scot Z. Matayoshi, Vice Chair
And Members, House Committee on Judiciary & Hawaiian Affairs

RE: Testimony in support of **SB 2741**, RELATING TO THE COMMISSION TO PROMOTE UNIFORM LEGISLATION

FROM: Lani Ewart
(808) 547-5702; lewart@goodsill.com

HEARING: Thursday, March 17, 2022, 2:00 p.m., Via Videoconference

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

My name is Lani Ewart, and I am a member and the current chair of the Hawaii Commission to Promote Uniform Legislation (“CPUL”). Thank you for this opportunity to testify in support of S.B. No. 2741 which would provide a limited exemption from certain requirements of the Hawaii sunshine law in order to allow any number of members of the CPUL to attend and participate in meetings hosted by the Uniform Law Commission.

The CPUL was established in Hawaii over a century ago to advise the Legislature and the Attorney General regarding legislation that would be uniformly applicable in Hawaii and other States. The members of the CPUL serve as commissioners to the Uniform Law Commission (“ULC”), a national nonprofit organization that is made up of volunteer attorneys appointed by their States, with a mission to develop and draft model legislation for States in areas in which uniformity is practical and desirable. Such uniform laws would provide predictability and consistency in commercial transactions, family law, and other matters affecting residents of different States. With the enactment of dozens of uniform laws, such as the Uniform Commercial Code, the Uniform Partnership Act, the Uniform Transfers to Minors Act and, most recently in 2021, the Uniform Trust Code, Hawaii has benefited significantly from the work of the ULC and of the CPUL at ULC meetings.

Pursuant to section 3-2, HRS, one of the primary duties of the CPUL is the representation of the State of Hawaii at the annual meeting held by the ULC. At such annual

meetings and related ULC meetings that normally precede each annual meeting, the commissioners from all States, as well as the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, study, draft, discuss, amend and vote on proposed uniform acts. The ULC strongly encourages all the commissioners, regardless of their subject matter expertise, to attend all the meetings and contribute their comments, so uniform acts are truly representative of diverse state experiences.

The ULC annual meetings, which are usually held outside of the State, take place over a period of six to seven consecutive days with sessions scheduled for the entire day and sometimes running into the evenings. CPUL commissioners follow different proposed uniform laws during the annual meeting. However, to comply with section 92-2.5(e), HRS, no more than two members (*i.e.*, less than a quorum of the five members of the CPUL that can attend the same meeting) are able to attend and participate during each session of the meeting hosted by the ULC, even though the ULC might, and often does, schedule more than two proposed uniform laws for presentation and discussion during the same session.

For the State of Hawaii to fully benefit from the representation by CPUL commissioners at the ULC meetings, all of commissioners should be able to attend such meetings and be fully involved in selecting, proposing, drafting and supporting uniform acts as needed according to the agenda set by the ULC. Indeed, the participation of the commissioners at the ULC meetings is crucial in order for the CPUL commissioners to be in a position to fully advise the Legislature and the Attorney General regarding provisions in various uniform legislation.

The amendments made by S.B. No. 2741 to section 3-2, HRS, are intended to provide the limited exemption for the members of the CPUL to fully participate in the ULC meetings. To be clear, the limited exemptions would only apply to the meetings and the sessions of the meetings hosted by the ULC. At the ULC meetings, the CPUL commissioners do not vote on which uniform acts they would propose to the Legislature of the State of Hawaii. Such actions are taken at a duly noticed open meeting of the CPUL convened pursuant to part I of chapter 92, HRS.

I respectfully request your support of S.B. No. 2741. I am available to answer any questions you may have regarding the bill, the CPUL or the ULC.

5567 Pia Street
Honolulu, Hawaii 96821

Testimony of Ken Takayama
Life Member, Uniform Law Commission on S.B. No. 2741
Relating to the Commission to Promote Uniform Legislation

Before the House Committee on Judiciary and Hawaiian Affairs
Thursday, March 17, 2022 9:30 A.M, State Capitol, Via Video Conference

Chair Nakashima, Vice Chair Matayoshi, and Members of the House Committee on
Judiciary and Hawaiian Affairs.

Thank you for this opportunity to testify in **strong support** of S.B. No. 2741, which provides the state Commission to Promote Uniform Legislation (CPUL) a limited exemption from the state open meetings (“Sunshine”) law. My name is Ken Takayama. I served as a commissioner on the CPUL for twenty-four years. By virtue of having served for twenty years, I am a life member of the Uniform Law Commission (ULC).

The members of the CPUL are Hawaii’s delegation to the ULC. All of the states are represented by their own commission. It is through the organizational efforts of the ULC that the commissioners of the various states work together to develop proposals for uniform legislation that the state legislatures are then free to consider for possible enactment.

The development of a “typical” proposal for a uniform law can easily take five years—five years before the state legislatures ever see it. Proposals for uniform laws are:

- (1) Reviewed by both the Scope and Program and Executive committees of the ULC to clarify their parameters;
- (2) Reviewed and considered by a study committee;
- (3) Considered by a drafting committee by means of a line-by-line read through, discussion, and debate;
- (4) In addition, the proposal is also subjected to a line-by-line read through, discussion, and debate at each of two annual meetings of the ULC.

Commissioners carry out the necessary functions in all stages of the development of proposed uniform laws. At each of these stages, the home state of the particular commissioners is immaterial.

In very general terms, it might be said that proposals for uniform laws go through two phases. I personally think of them as the “ULC phase”; and the “state phase”. A uniform law proposal is typically in the “ULC” phase when commissioners and ULC staff are reviewing and otherwise working on drafts of uniform law proposals. Multiple committees may be meeting on a variety of subjects, and the commissioner-members of each committee are typically residents of a variety of states. Many meetings are held by

conference call. But those that need to be held in person are nearly always on the mainland to make access easier for most attendees.

A proposal moves into the “state phase” when the ULC completes its work on a uniform law proposal and makes it available to the states. In Hawaii, the CPUL determines which uniform law proposals it will recommend for enactment.

S.B. No. 2741 eliminates a number of open meeting law compliance problems for the CPUL by among other things:

- (1) Clarifying that meetings hosted by the ULC are NOT meetings of the CPUL; and
- (2) Removing limits on the number of CPUL commissioners allowed to attend meetings hosted by the ULC (such as the ULC’s annual meeting, the format for which is generally similar to the meetings of the National Conference of State Legislatures (NCSL) and the Council of State Governments (CSG)).

S.B. 2741 improves the state open meetings law by making it inapplicable to the work being done by CPUL commissioners during the “ULC phase” when its applicability will: (1) primarily result in notifying the public of various ULC committee meetings occurring on the mainland; and (2) stymie the ability of the CPUL to carry out its mission of participating in the development of uniform law proposals. The CPUL needs to be able to deploy its personnel strategically to cover all the proposals being considered, and it takes multiple shifts of personnel to listen to the drone of the line-by-line readings.

As presently constituted, the CPUL consists of five members. However, to comply with section 92-2.5(e), HRS, no more than two members (i.e., less than a quorum of the five members of the CPUL that can attend the same meeting) are able to attend and participate during each session of the meeting hosted by the ULC. We have it on good authority that the ULC will be holding its annual meeting in Hawaii within the next couple of years. If the restrictions and limitations of section 92-2.5(e) are interpreted and applied strictly, the CPUL will not even be able to have more than two of its members on the floor when the CPUL members are introduced as the host committee.

But despite these changes being proposed with respect to the CPUL, an important feature of the existing law will NOT change; that being: the CPUL’s recommendations on the specific uniform laws that it proposes for enactment will still have to be made at properly noticed meetings that are open to the public—which is as it should be.

Thank you very much for this opportunity to testify.

SB-2741

Submitted on: 3/16/2022 9:25:31 AM

Testimony for JHA on 3/17/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Elizabeth Kent	Individual	Support	Written Testimony Only

Comments:

Aloha,

Thank you for the opportunity to testify in strong support of this bill. I am one of Hawaii's Uniform Law Commissioners. Passage will allow Hawaii's commissioners to do our job and provide coverage at the annual meeting. I urge you to vote in favor of it.

Thank you,

Elizabeth Kent

SB-2741

Submitted on: 3/15/2022 2:25:38 PM

Testimony for JHA on 3/17/2022 2:00:00 PM

Submitted By	Organization	Testifier Position	Testify
Dana Keawe	Individual	Support	Written Testimony Only

Comments:

Support SB2741