

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Government Operations

From: Cheryl Kakazu Park, Director

Date: January 30, 2024, 3:00 p.m.  
State Capitol, Conference Room 225

Re: Testimony on S.B. No. 2116  
Relating to Board Meetings

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Thank you for the opportunity to submit testimony on this bill, which would require boards to hold only remote meetings (not in-person) and to “archive” meeting minutes on their website. The Office of Information Practices (OIP) offers **comments** on this bill.

**OIP’s primary concern is that the requirement that all boards hold remote meetings for all meetings will be infeasible for some boards and challenging for many others that do not have the technical or administrative support to run remote meetings.** Many boards have minimal or even no administrative support from the agency to which they are nominally attached, and the volunteer members may or may not have either the equipment or the technical know-how to successfully run remote meetings. During the COVID-19 pandemic, when boards universally switched to meeting remotely, they were authorized to do so by the then-Governor’s emergency proclamations rather than by the Sunshine Law itself and in light of the emergency, those proclamations encouraged but did not strictly require them to take various steps to ensure public access to remote meetings. In other words, the reason the boards who have

returned to in-person meetings since the pandemic ended were able to successfully use remote meetings during the pandemic was because pandemic-era remote meetings were held under a less rigorous standard. By contrast, the Sunshine Law provision authorizing remote meetings, enacted in 2021 and effective in 2022, does set strict legal requirements for the standards a board must meet to hold a remote meeting under section 92-3.7, HRS, and a board that does not meet those requirements may indeed be found to have violated the Sunshine Law.

**Thus, boards without the technical ability to conduct remote meetings to the required legal standard rely on the option of holding in-person meetings.** A board holding an in-person meeting (*i.e.*, with its members attending only in-person) may still offer the public some form of remote access as a courtesy alternative to in-person attendance, and can do so without the risk of violating the Sunshine Law in the event of a technical failure. **Continuing to allow in-person meetings does not mean that boards preferring in-person meetings will not offer any form of remote public access. Rather, it gives boards that are not comfortable with remote meetings the option to continue to meet and do their business in-person, without precluding them from providing whatever sort of remote public participation they are able and willing to offer.**

OIP also notes as a technical matter that changing “may” to “shall” on page 1, line 3, has the effect of replacing the current option to hold remote meetings with a new requirement that all boards shall conduct meetings remotely. This proposed change to section 92-3.7 would conflict with other provisions of the Sunshine Law. First, this change would render superfluous section 92-3.5, which allows a board to hold an in-person meeting at multiple connected public meeting sites. Second, it would also conflict with section

92-3.1, allowing limited meetings at a location that is either dangerous or impracticable for public attendance, since if limited meetings must be conducted over an online meeting platform it will difficult and often impossible for boards to use a limited meeting to inspect a remote location or a series of remote locations that may be off-road and without power or internet connectivity. **If the Legislature does want to revamp the Sunshine Law to require that all meetings be done as remote meetings, doing so would require looking at all the Sunshine Law’s provisions and amending them as needed to be consistent with the new remote-meeting-only standard.**

**OIP notes that the bill would also add a requirement that the recording of a remote meeting** remain electronically available to the public until the meeting minutes are not just posted on the board’s website, but **must also be “archived.” It is not clear what this additional requirement is intended to do.** The Sunshine Law does not currently refer to archiving minutes or set a standard for how long minutes must be available to the public online before they may be moved to either the State Archives or a board’s own longer-term storage. It is not clear whether the intent is to create a requirement for a board to archive old minutes on its website rather than in off-line storage or by sending them to the State Archives after whatever period a board’s retention schedule provides for, or whether the bill envisions archiving as something that happens at the same time that a board posts meetings on its website. OIP also notes that if the intent is to require boards to keep meeting recordings posted online until such time as the meeting minutes are moved to archival storage, which could be many years, that will present online storage space problems for many boards. **If the Legislature wants to set a new requirement for when and how boards archive meeting minutes, that would more appropriately be done by amending section 92-9,**

Senate Committee on Government Operations  
January 30, 2023  
Page 4 of 4

**which addresses meeting minutes generally, and not by amending the  
Sunshine Law's remote meeting section.**

Thank you for considering OIP's testimony.



Senate Committee on Government Operations  
Chair Angus L.K. McKelvey, Vice Chair Mike Gabbard

Tuesday, January 30, 2024 3 PM Public Hearing in Conference Room 225 on  
SB 2116, RELATING TO BOARD MEETINGS

TESTIMONY

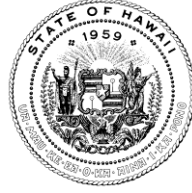
Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair McKelvey, Vice Chair Gabbard, and Committee Members:

**The League of Women Voters of Hawaii supports SB 2116.** However, to minimize problems, the League suggests postponing the bill's effective date.

It is no longer necessary or appropriate to conduct "low-tech" board meetings on matters of regional, island-wide, or statewide interest. When a board conducts a "low-tech" meeting, only people who physically attend will hear what was said and be able to submit oral testimony. By comparison, anyone with a "smart phone" can listen to or participate in board meetings conducted with interactive technology.

Thank you for the opportunity to submit testimony.



STATE OF HAWAII | KA MOKU'ĀINA 'O HAWAI'I  
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NADINE Y. ANDO  
DIRECTOR | KA LUNA HO'OKELE

DEAN I HAZAMA  
DEPUTY DIRECTOR | KA HOPE LUNA HO'OKELE

## Testimony of the Department of Commerce and Consumer Affairs

Before the  
Senate Committee on Government Operations  
Tuesday, January 30, 2024  
3:00 p.m.  
Conference Room 225 and Videoconference

On the following measure:  
**S.B. 2116, RELATING TO BOARD MEETINGS**

Chair McKelvey and Members of the Committee:

My name is Ahlani Quiogue, and I am the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division. The Department appreciates the intent and offers comments on this bill.

The purposes of this bill are to: (1) require boards to use interactive conference technology to remotely conduct public meetings in conjunction with in-person meetings that allow for public participation; and (2) require boards to archive minutes of meetings on their websites.

The Department appreciates the intent of this measure as it recognizes the importance of public participation in all government functions. The Division would like to note that 18 out of 25 boards, commissions, and committees administratively attached currently hold hybrid meetings. The ability to have both an in-person and virtual location

is convenient for all parties, including the public, applicants/licensees, and board, commission, or committee members.

While noting the benefits of virtual meetings, the Department must also note some of the issues it has faced. For example, virtual meetings have been canceled and/or terminated due to technological issues (e.g., equipment was not working appropriately, and the board was unable to reestablish connectivity within the required 30-minute time period) and inappropriate behavior/actions by members of the public, which necessitated the need for a criminal investigation. The Department's preference is that HRS section 92-3.7(a) remain permissive due to some of these issues.

Lastly, this bill proposes to require that meeting minutes be archived on board's website. Please note that the Division does this already and, for most areas, have archived minutes from 2011 to present.

Thank you for the opportunity to testify on this bill.



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**Senate Committee on Government Operations  
Tuesday, January 30, 2024 3:00 P.M.**

**Testimony by:**

**Yvonne Lau, Executive Administrator and Secretary of the Board of Regents**

**S.B. No. 2116 – RELATING TO BOARD MEETINGS.**

Chair McKelvey, Vice Chair Gabbard, and members of the Committee:

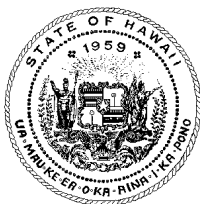
These comments on S.B. No. 2116 are offered in my capacity as the Executive Administrator and Secretary of the Board of Regents.

The Board of Regents of the University of Hawai'i (Board) has not yet had the opportunity to discuss this measure. Discussion is expected to occur at the Board's next meeting on February 16, 2024.

Thank you for the opportunity to offer comments on S.B. No. 2116.



**JOSH GREEN, M.D.**  
GOVERNOR  
KE KIA'ĀINA



**MARI McCAIG BELLINGER**  
Chair

**CLIFTON Y.S. CHOY**  
Commissioner

**JO KAMAE BYRNE**  
Commissioner

**PAMELA FERGUSON-BREY**  
Executive Director

STATE OF HAWAII – KA MOKU'ĀINA 'O HAWAII  
**CRIME VICTIM COMPENSATION  
COMMISSION**

**Ke Komikina Uku Luaahi Kalaima**

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TESTIMONY ON SB 2116  
RELATING TO BOARD MEETINGS

by

Pamela Ferguson-Brey, Executive Director  
Crime Victim Compensation Commission

Senate Committee on Government Operations  
Senator Angus L.K. McKelvey, Chair  
Senator Mike Gabbard, Vice Chair

Tuesday, January 30, 2024; 3:00 PM  
Conference Room 225 & Videoconference

Good afternoon Chair McKelvey, Vice Chair Gabbard, and Members of the Senate Committee on Government Operations. Thank you for providing the Crime Victim Compensation Commission (the Commission) with the opportunity to testify in opposition to Senate Bill 2116.

The Hawai'i State Legislature established the Crime Victim Compensation Commission in 1967 as a quasi-judicial body to provide a safety net for victims of violent crimes. The Commission assists victims of violent crimes with medical costs, counseling costs, lost wages, and funeral and burial expenses not covered by other sources. In order to serve victims, the Commission holds hearings, takes testimony, and has the same powers of subpoena and examination of witnesses as a circuit court.

The Commission's administrative meetings are open to the public, however, the Commission currently does not have an audiovisual connection and therefore, does not have the current capacity to use interactive conference technology to remotely conduct public meetings. The Commission's budget does not include funding to establish an audiovisual connection or to purchase interactive conference technology to remotely conduct public meetings. Without additional funding for resources to remotely conduct meetings, the Commission is unable to meet the requirements as put forward in this bill.

For these reasons, the Commission opposes the meeting requirements as provided in this bill. Thank you for providing the Commission with the opportunity to testify in opposition to SB 2116.



Senate Committee on Government Operations  
Honorable Angus L.K. McKelvey, Chair  
Honorable Mike Gabbard, Vice Chair

**RE: Comments on S.B. 2116, Relating to Board Meetings**  
Hearing: January 30, 2024 at 3:00 p.m.

Dear Chair and Members of the Committee:

My name is Ben Creps. I am a staff attorney at the Public First Law Center, a nonprofit organization that promotes government transparency.

Thank you for the opportunity to submit testimony **in support** of S.B. 2116. This measure amends HRS § 92-2.5 to require boards to use interactive conference technology to remotely conduct public meetings in conjunction with in-person meetings and to archive minutes of meetings on their websites.

The technology that enables remote meetings is now readily available and widely used. Due to the scheduling of public meetings during business hours, in-person attendance is impossible or impractical for broad swaths of our community. They are effectively excluded from the meetings. And those who are able to attend in person may not fully represent the varied interests of the general public.

This measure promotes the public's right to be informed about and participate in important government processes. Remote meetings help build a wider spectrum of public participation. Archiving minutes allows the public to be better informed about the historical and present-day activity of boards.

We also suggest the following **companion amendment** to HRS § 92-3.7(a)(2)(B) to ensure that remote testifiers have the option to be seen *and* heard, as proposed by S.B. 2636 (2024):

(B) Provide remote oral testimony in a manner that allows board members and other meeting participants to hear and, at the testifier's option, see the testimony~~[, whether through an internet link, a telephone conference, or other means]~~.

The above amendment would ensure that testifiers have the option to provide visual testimony – as if in person – and are not limited by the board to providing audio-only testimony.

Thank you again for the opportunity to testify in support of S.B. 2116.

