

**HB2139**

**HD1 SD1**

**LATE**

**TESTIMONY**

# OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII  
NO. 1 CAPITOL DISTRICT BUILDING  
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TELEPHONE: 808-586-1400 FAX: 808-586-1412  
EMAIL: oip@hawaii.gov

To: Senate Committee on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: April 1, 2014, at 10:30 a.m.  
State Capitol, Conference Room 016

Re: Testimony on H.B. No. 2139, H.D. 1, S.D. 1  
Relating to Public Agency Meetings.

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Thank you for the opportunity to submit additional comments on this bill to clarify the effect of amendments made in Senate Draft 1. The Office of Information Practices (“OIP”) does not take a position for or against this bill in its current form, which would amend section 92-3.1, HRS, to allow more than a quorum of county council members to attend community meetings hosted by another group by holding a new form of limited meeting, or “guest meeting.”

As provided in the S.D. 1, the council holding a guest meeting would not be required to accept public testimony and any number of council members could attend – a quorum would not be required. However, the S.D. 1 would not exempt the council from any of the other public meeting requirements of the Sunshine Law: notably, it would still need to provide notice as required by section 92-7, **including filing an agenda describing what will be discussed** at the guest meeting, and indicate the board or community group hosting the meeting. Other public meeting requirements, such as the requirement to open the meeting to the public as provided in section 92-3, HRS, and to keep minutes as provided in section 92-9, HRS, would likewise apply. The guest meetings would also include additional requirements: a council would have to videotape the meeting unless the requirement was waived by OIP, would be limited to holding

one guest meeting per community group per month, and would be prohibited from holding a guest meeting outside the state or using it to circumvent the purpose of the Sunshine Law.

At PSM's request, OIP had provided language creating the "guest meeting" form of limited meeting that would allow the council members to attend community meetings without restricting their numbers to less than a quorum, but also without having to take public testimony and limit discussion to items on a filed agenda, as would be required if a community group's event were noticed as a regular council meeting. The S.D. 1 was based on that language, but PSM amended it to change a provision that would have stated that a guest meeting Notice "need not include an agenda," to instead state that the notice "may include an agenda." Because the S.D. 1 language also requires notice to be "provided in accordance with section 92-7," which already includes the agenda requirement, **the effect is to leave the agenda requirement intact for the limited meetings.** OIP has no objection to, and indeed prefers, the S.D. 1 guest meeting language requiring a council to include an agenda as part of its filed Notice. **However, it is not clear whether this was PSM's intended effect, which is why OIP brings to this Committee's attention that the S.D. 1 requires a council holding a guest meeting to file a detailed agenda as required by section 92-7, HRS.**

OIP believes that it is ultimately a policy decision for the Legislature to decide whether county council members should be permitted to attend community meetings in unlimited numbers without hearing public testimony, but following the requirements set out in the S.D. 1. The S.D. 1 would also sunset after four years, allowing an opportunity to assess how the "guest meeting" was used in practice. OIP therefore does not take a position on H.B. 2139, S.D. 1.



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## COMMITTEE ON JUDICIARY AND LABOR

Tuesday, April 1, 2014, 10:30 a.m. Room 016  
HB 2139, HD1, SD1 RELATING TO PUBLIC AGENCY MEETINGS  
TESTIMONY

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

Chair Hee, Vice-Chair Shimabukuro, and Committee Members:

The League of Women Voters requests that you hold this bill. It is not appropriate to amend Hawaii's "Sunshine Law" to authorize a county council quorum to hold a "limited meeting" to engage in discussions with private special interests which want to influence council decisions. It is even less appropriate to prohibit the public from disputing what gets said to a council quorum attending such a meeting.

Currently, Hawaii's Sunshine Law ensures that county councils conduct the public's business in public. The existing law guarantees the public both advance notice and the opportunity to hear, question, and disagree with any private presentation to a council quorum. The existing law also guarantees the public both advance notice, the opportunity to listen to all discussions and decisions by a council quorum, and access to official minutes of the meeting. The objective of the existing law is to prevent one-sided presentations, discussions, and vote-trading in private followed by pro-forma public council meetings where official votes are taken.

HB 2139 SD 1 were enacted into law, a private "community group" could invite all members of a county council to hold a "limited meeting". Unlike a normal council meeting, such a "limited meeting" could consist of a one-sided private presentation - - and the public would have no right to question or oppose the presentation. Moreover, the private "community group" hosting such a "limited meeting" could discuss council policy with a council quorum - - and exclude the public from participating in the discussion. Both these outcomes would be legalized by the following language from HB 2139 SD 1.

"... (b) A county council may hold a limited meeting open to the public as the guest of a ... community group holding its own meeting, and the council shall not be required to ... accept oral testimony...."

It is common for private interests seeking county land use approvals, private businesses seeking county contracts, private organizations which lobby county councils on multiple issues, and ad hoc private "NIMBY" alliances to form non-profit "community groups". HB 2139 SD 1 treats "community groups" formed for advocacy purposes the same as "community groups" formed to solicit public comments and concerns. In effect, when authorizing county councils to hold a "limited meeting" as the guest of a "community group", HB 2139 SD 1 allows county councils to meet and discuss public policy with private special interests which wish to influence council decisions.



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[www.lwv-hawaii.com](http://www.lwv-hawaii.com) | 808.531.7448 | [voters@lwv-hawaii.com](mailto:voters@lwv-hawaii.com)

The League of Women Voters of Hawaii is not unsympathetic with county councils members who are elected at large and wish to remain actively engaged with their constituents. However, this does not justify amending the Sunshine Law to allow county council quorums to attend one-sided private presentations and discuss council policy with private special interests without public participation.

Thank you for the opportunity to submit testimony.

**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [Don.Couch@mauicounty.us](mailto:Don.Couch@mauicounty.us)  
**Subject:** \*Submitted testimony for HB2139 on Apr 1, 2014 10:30AM\*  
**Date:** Monday, March 31, 2014 4:46:50 PM

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**HB2139**

Submitted on: 3/31/2014

Testimony for JDL on Apr 1, 2014 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Councilmember Don Couch	Individual	Support	No

Comments:

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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**From:** [mailinglist@capitol.hawaii.gov](mailto:mailinglist@capitol.hawaii.gov)  
**To:** [JDLTestimony](#)  
**Cc:** [thirr33@gmail.com](mailto:thirr33@gmail.com)  
**Subject:** Submitted testimony for HB2139 on Apr 1, 2014 10:30AM  
**Date:** Tuesday, April 01, 2014 5:29:13 AM  
**Attachments:** [HB 2139 SD1 SSCR 2935 Countil Council Any Number.gif](#)

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## **HB2139**

Submitted on: 4/1/2014

Testimony for JDL on Apr 1, 2014 10:30AM in Conference Room 016

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Arvid Tadao Youngquist	1,978 "Conventional People"	Support	No

Comments: Chair Sen. Clayton Hee, Senate JDL Committee Vice Chair Sen. Maile S. L. Shimabukuro Right Honorable JDL Committee Members We thank the maker of this measure, Rep. Kyle Yamashita (District 12). It is a timely and thoughtful legislation. We ask that the Neighborhood Board members be likewise included in the provision so that they may benefit from a Joint Council Informational Briefing and other occasios without violating the Sunshine Law. To be allowing the City and County Council to have a more relaxed way in which to communicate directly with the Community and the Neighborhood, without the same number of presence in the audience from the Neighborhood Boards, would be patetly unfair. It will give unelected members of the Neighborhood a much stronger and louder "voice" in the feedback of support and approval of what a Council is about to do. Therefore, it is our position that a further amendment needs to be incorporated to permit this oversight, and in this sense we agree with the Common Cause, League of Women Voters and the Office Information Practices, that a transparency and access need to be a two way street, and not adjusted merely for the City ad County Councils, or even the accompanying Administration stakeholders. Mahalo for hearing this measure and supportig it to this extent. We request that excused absentees thus far be present in committee and in Senate Floor debates to assure that your voice and vote is counted. Arvid Tadao Youngquist Founder, Administrator, & Spokesman  
\*Note: Registered voter, CD1, U.S. House of Representatives (Kalihi Valley resident)

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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James R. Smith  
P.O. Box 790403  
Paia, Maui, Hawaii 96779

April 1, 2014

Chairperson, Senator Clayton Hee, Vice Chair Senator Maile S.L. Shimabukuro and Members of the Senate Committee on Judicial and Labor

WRITTEN TESTIMONY

In oppositon to HB 2139, HD1, SD1

Dear Chairperson Hee, Vice Chair Shimabukuro and Members of this Committee,

The Maui County Council's Council Services Budget exceeds 5 Million dollars. In 2014, it stood at \$5,466,036. Last week, I received in the mail a communication from Council Member Mike White regarding Regional Budget Hearings, guided by our Sunshine Law. He represents my area at the Council. (Attached here is a copy of this communication as Attachment A and A1). It all seems to be working just fine. The problem is promoters appear in denial of the fact that voter turn out relates to non-performance of duty. I opposed this legislation for the following reasons:

I

This proposed Bill HB2139, seems premised on a notion that I and my representative on Council are somehow "hindered" by open government protection. A look at the use of the word "finding" in Section 1 of this legislation indicates an examination of facts, but the record discloses only testimony by a mayor, not in capacity as mayor; members of Council in individual capacity. More importantly, promoters don't appear to bring you any tangible evidence of need, except an underlying personal desire for voter approval, reelection. This concerns me.

This legislation creates ambiguity specific to provisions related to interaction (HRS 92-2.5) and becomes internally inconsistent - this Section of existing law needs amendment. And, it presumes that a balance between contending interests must be reached; when the only issue is preserving openness through equality of participation.

It doesn't make good sense to allow a Council to participate in unlimited number of meetings with private interests, as language in this Bill does, without requiring rules for selection of groups and taking into account an election cycle. (e.g. prohibit participating in limited meetings three months prior to a primary election.)

II

I am pursuing a Complaint/Appeal with the Office of Information Practices specific to the question of "matters" that must be noticed on an agenda, when there will be deliberation by legislators at a meeting of the Council. (S Appeal 14-15) The County's position appears to be that our Sunshine Law does not "require" identification of proposed action upon legislation listed



in a generic category, on a Council agenda, so notice in this case becomes an issue of “format” (Attached here is page 1 of Corporation Counsel’s letter in response as Attachment B. Note: I dispute this argument, but my position in that Appeal is not the issue here.)

This Bill fails to “require” that I not be charged a fee to attend a board meeting. So, fees of any amount can be charged to attend a private board or community meetings, open to the public; since this legislation does not require a fee not be charged. This indicates that the county operates under a different political structure. In our structure, I must be allowed to participate in deliberation, at any meeting of my legislative aspect, and with this legislation my “right” my opportunity to participate, recognized as a matter of law, goes away. This concerns me.

### III

The word “deliberation” does not appear in Section 1 of HB 2139, why? We know that viewing and participating in this deliberative process establishes public trust. An open meeting of our Council is where I have an equal right to be engaged in government decision-making. Our Hawaii Supreme Court recognized this procedural right in *Kanahele v. Maui County Council and County of Maui*, \_\_\_HAW\_\_\_ pg 51, 52 - SCWC 29649 August 8, 2013. This proposed legislation as written, creates a certain inequality.

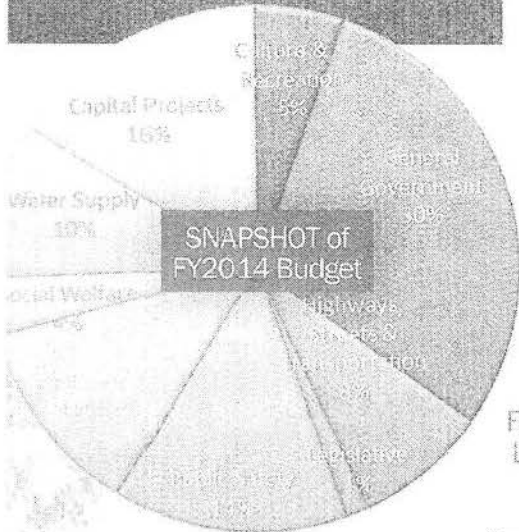
Members of a private board certainly will have more opportunity to participate in Council deliberation than I, if there is a fee. I can’t pay to participate. And, at a meeting of a private Board of Directors, with its own procedural rules etc. will my interests be heard or considered by our Council? What words in this legislation guarantee equal opportunity to participate? I can find none.

I respectfully request that you not act until the concerns of this voter (the closest one gets to meaning anything in a political culture) receive consideration and are addressed.

Jim Smith  
04\_01\_14

## What is the Budget?

The Budget is the County's financial plan for the fiscal year. It determines how much money each County department receives to carry out services. It also sets forth the amount of grant money offered to community organizations and Capital Improvement projects, such as road paving, park improvements, and water system upgrades. The Budget also dictates how much it will cost you to utilize county services and the amount of money the County will collect through taxes and fees.



## 4 ways to participate

### 1. Send a letter or the detachable postcard

Councilmember Mike White (BF-1)  
200 S. High Street, 8<sup>th</sup> floor  
Wailuku, HI 96793

### 2. Email the committee

[bf.committee@mauicounty.us](mailto:bf.committee@mauicounty.us)

### 3. Testify at a budget hearing

Wednesday, April 2, 2014 Mayor Hannibal Tavares Center PUKALANI, 6 p.m.	Friday, April 11, 2014 Kalaniana'ole Hall MOLOKAI, 6 p.m.
Friday, April 4, 2014 Lanai Senior Center LANAI, 6 p.m.	Monday, April 14, 2014 Kihei Community Center KIHEI, 6 p.m.
Monday, April 7, 2014 Lahaina Civic Center LAHAINA, 6 p.m.	Thursday, April 17, 2014 Lihikai Elementary School KAHULUI, 6:30 p.m.
Wednesday, April 9, 2014 Paia Community Center PAIA, 6 p.m.	Tuesday, April 22, 2014 Helene Hall HANA, 6 p.m.
	Thursday, April 24, 2014 Council Chamber WAILUKU, 6 p.m.

Other important dates:  
Tuesday, March 25, 2014

Mayor submits his proposed FY2015 Budget

Tuesday, June 10, 2014\*

Deadline for Council to pass the budget

\* If Council fails to pass a balanced budget by the deadline, the proposed budget from the Mayor will take effect on July 1, 2014.

4. Get connected:

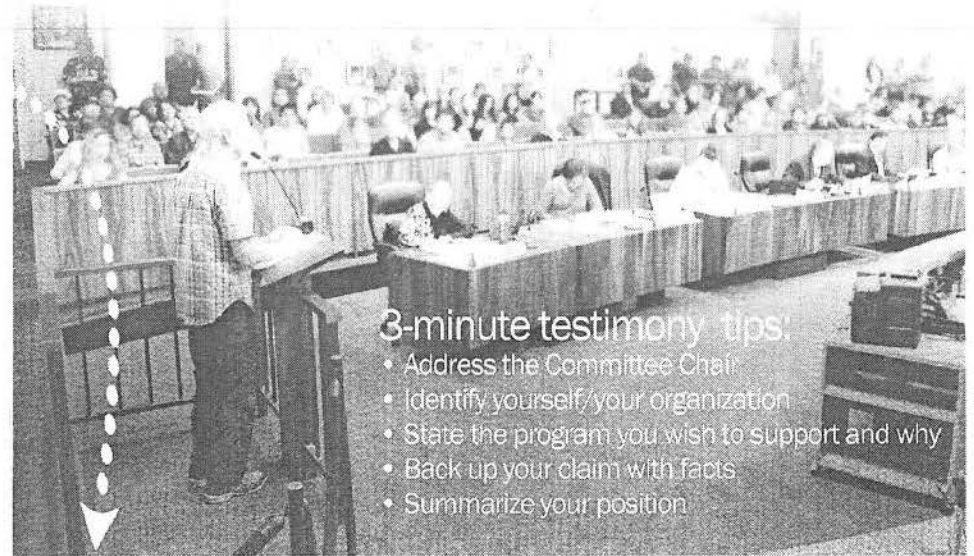


Maui County Council



#Maui #mcc20

[www.mauicounty.gov/2015budget](http://www.mauicounty.gov/2015budget)



### 3-minute testimony tips:

- Address the Committee Chair
- Identify yourself/your organization
- State the program you wish to support and why
- Back up your claim with facts
- Summarize your position

## Councilmember Mike White

Kalana O Maui building  
200 S. High Street, 8<sup>th</sup> floor  
Wailuku, HI 96793

MAUI COUNTY COURTHOUSE  
200 S. High Street, 8th floor  
Wailuku, HI 96793

\*\*\*\*\*AUTO\*\*SCH 5-DIGIT 96732



Smith Residence  
OR CURRENT RESIDENT

Haiuku HI 96708-5201  
1 1

### We want your feedback

Last Name: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Should the Council focus on balancing the budget? (select only one)

- Increase taxes and fees to expand programs
- Maintain current levels, no changes
- Reduce County expenditures

Comments:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Help us identify funding priorities among the following County programs and services.

- 3 - High priority, consider more funding
- 2 - Moderate priority, needs attention
- 1 - Low priority, no funding increase needed
- 0 - Neutral

- Parks & recreation
- Cultural & arts programs
- Highways & roads
- Transportation programs
- Audits of County departments & programs
- Public safety
- Refuse & wastewater
- Affordable housing
- Water resources
- Planning & building permits
- Capital funding

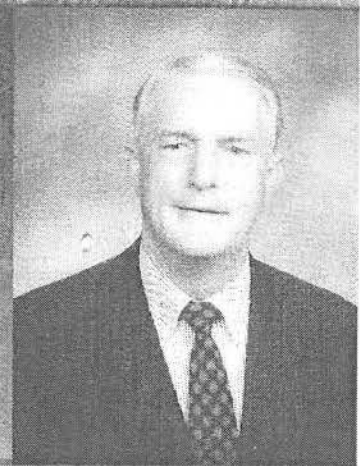
## Why should you participate?

MAUI COUNTY COUNCIL

FISCAL YEAR

# 2015 BUDGET

Councilmember Mike White  
Chair, Budget and Finance Committee



Will taxes be raised this year?

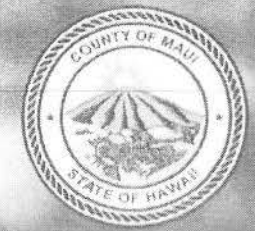
Eh brah, when you goin' fix my road?

Thank you for the expanded bus routes.

Can we have more park facilities for the kids?

Your input is critical in the review and decision-making process for the Fiscal Year 2015 Maui County Budget.

It is in your best interest to speak out and inform your elected officials how tax dollars should be spent.



## Because it is your money.

ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

EDWARD S. KUSHI  
First Deputy

LYDIA A. TODA  
Risk Management Officer  
Tel. No. (808) 270-7535  
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DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
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January 17, 2014

Via Email at [ois@hawaii.gov](mailto:ois@hawaii.gov) and U.S. Mail

Mr. Winfred Pong  
Staff Attorney  
250 S. Hotel Street, Suite 107  
Honolulu, HI 96813

Re: Jim Smith Complaint about Maui County Council Agenda for December 6, 2013.  
(Your file no. APPEAL 14-15)

Dear Winfred,

First, thank you for the extension of time to respond. This letter responds to your letter of December 27, 2013 about Jim Smith's complaint regarding the Maui County Council's agenda. You indicate he has narrowed his complaint to only the agenda for the December 6, 2013 meeting, specifically County Communications numbered 13-371, 13-372, 13-374, and 13-375. He alleges violations of the Sunshine Law's provisions on policy and intent, and notice. HRS §§ 92-1(1) and 92-7(d). If there are any other complaints, please let me know and I will address them immediately.

Smith's first complaint is that the agenda did not give the public sufficient notice "to allow a member of the public to know when decision-making of a board will affect a significant number of people; so that an affected party can make an "informed decision" whether to attend and participate in that decision-making." Smith email of December 27, 2013 at 08:55am. However, the OIP has written that an agenda does not need to specifically state that a decision or action may be made on an item or the exact nature of that decision, as long as it reasonably arises under the subject matter listed. OIP Opin. Ltr. No. 07-06. His complaint assumes there is a "requirement" that an agenda list decision-making or when action will be taken. That assumption is without any legal foundation. He is referring to a "requirement" that does not exist under the Sunshine Law.

March 30, 2014

WRITTEN TESTIMONY on HB 2139

(1) page

Testifier Lloyd Fischel

Dear Respected Members of the Senate Committee on Judicial and Labor:

HB 2139 is proffered as an attempt to improve government by allowing meetings that include elected officials that today are not allowed as regulated by the Sunshine Law to protect the public.

In the proposed legislation there is no distinction made between a "Board" for profit versus a non-profit corporation. This means that Council members can freely attend a meeting for any business entity and the Sunshine Law as we know it will become meaningless.

For example if I as a citizen wish to attend such a meeting to hear what my elected official hears, the meeting organizers of a private corporation have every right to deny me entrance. I won't be able to hear or be heard, and in fact I could be thrown out as a trespasser. **If I don't have any business at such a meeting, then neither does an elected official.**

Further, the proposed Bill HB 2139 is internally inconsistent with HRS 92-2.5. The language creates a presumption that fairness will be reached, when in fact lack of fairness is the *raison d'être* of the Sunshine Law's enactment in the first place. Any additional legislation should help insure the Sunshine Law is followed to the letter; certainly ambiguity will become a disservice to our system and our democracy, because **ambiguity works to degrade the quality of any legislation.**

If the legislation passes as is, the quality of your office in the public's eye will also be diminished in time. Please do not act on the proposed bill.

Lloyd Fischel  
20 N. Lanikai Place  
Haiku, Maui, HI 96708  
Tel. 808-572-2269