

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 13, 2014, at 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 2139
Relating to Public Agency Meetings.

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) opposes this bill in its current form, which would allow any number of county council members to attend a community meeting, convention, conference, or other type of meeting or presentation, so long as the meeting or presentation was open to the public.

The Sunshine Law, part I of chapter 92, HRS, was amended in 2012 to allow less than a quorum of members of any board to attend such meetings, but with protections for the public that this bill lacks. First of all, the permitted interaction added in 2012 was limited to less than a quorum of members, to preclude the possibility that the board’s discussion in the course of an outside event would crystallize the board’s decision on an issue to the point where its eventual vote at a noticed board meeting would be a mere formality. Second, the existing permitted interaction allows discussion of board business only “during and as part of” the event, whereas this bill would allow such discussion “without limitation” – in other words, allowing not just the back-and-forth questioning on the topic during a presentation or conference session as permitted by current law, but also discussion

of any council business they chose by all the board members while eating lunch or otherwise gathering together during a convention. Third, the existing permitted interaction required board members attending such an event to report their attendance and what was discussed at the next board meeting. As OIP observed in 2012, because only a minority of members could have attended an outside event, their report to the full board would need to be sufficiently detailed if they wished to influence any decision on the issues discussed at the event. Under this proposal, by contrast, the council members would have no obligation at all to publicly disclose that they had even attended an event together. And finally, the existing permitted interaction does not allow board members attending an event together to make or seek a commitment to vote on the matter being discussed, whereas this proposal includes no such limitation.

While this proposal does require that the event be open to the public, the inclusion of conventions, seminars, and conferences suggests that an event requiring a registration fee would still be counted as “open to the public” for the purpose of the proposed permitted interaction. In other words, under this proposal, the full membership of a county council could all attend a multi-day conference open to anyone willing to pay a \$600 registration fee, discuss any council business they chose during meals or social sessions, make an agreement as to how they would all vote, and then vote as agreed upon at their next public meeting without discussing the matter further or even mentioning that they had attended the conference.

The permitted interaction proposed by this bill in its current form would essentially take a permitted interaction signed into law less than two years ago and make a new county council version stripping out all the public protections found in the original.

OIP’s recommendation to the Senate Committee on Public Safety, Intergovernmental Relations, and Military (“PSM”), which heard this bill last week,

was to hold the bill. However, PSM was sympathetic to the Maui Council members' situation as elected at-large members with a need to hear and respond to community concerns from throughout Maui County, and asked OIP to draft language 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.

In response to PSM's request, OIP provided the attached language, which creates a "guest meeting" as a type of limited meeting, and PSM voted on February 11 to pass S.B. 2962, S.D. 1, based on that language. While OIP drafted the language at PSM's request and **OIP itself is not advocating for the Sunshine Law to be amended** in the proposed manner, 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 noticing those meetings as regular council meetings. The attached language would provide greater protections for the public than the bill as originally filed, including requirements to notice and keep minutes of "guest meetings" and videotape them unless the requirement is waived, a prohibition on making a decision at a "guest meeting," a prohibition on holding such a meeting outside Hawaii, a restriction on how often a council can be the guest of the same group, and a general prohibition against using such meetings to circumvent the spirit of the Sunshine Law. It would also sunset after four years, allowing an opportunity to assess how the "guest meeting" was used in practice. Thus, if this Committee is inclined to move this bill, OIP would recommend that it use the attached language as a starting point, rather than the original bill language.

Thank you for the opportunity to testify.

SECTION 1. County councils are the elected legislative bodies for the counties, and are subject to the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes. Council members have claimed that they are unduly hampered in communicating with constituents and understanding community concerns because the Sunshine Law restricts the number of members permitted to attend and discuss council business at community groups' meetings or similar events, and that their constituents often do not understand that the limited number of council members attending is due to the law's restriction rather than to a lack of interest by members. At the same time, members of the public have expressed strong reservations about the potential for abuse of the public's right to know and participate in the policy-making process if the Sunshine Law's protections are removed.

The purpose of this bill is to balance these opposing interests and allow greater communication with the public, subject to appropriate limitations. This bill creates a "guest meeting" as a special form of limited meeting, at which any number of county council members could attend a community group's meeting as guests of the community group to discuss council business there, provided that no decisions or commitments to vote are made by the council members. Public notice of the council's intent to hold a guest meeting must be given and a videotape or minutes of the guest meeting must be prepared, but the council is not required to provide an agenda, limit discussions to items on an agenda, or take public testimony. If the community group is already subject to the Sunshine Law, that group would still be required to follow the Sunshine Law's requirements for notice, agenda, testimony, and minutes.

This bill includes a sunset date four years from the present year, in order to allow assessment of how the guest meetings work in practice before any final decision is made as to their permanent placement in the Sunshine Law.

SECTION 2. Section 92-3.1, Hawaii Revised Statutes, is amended to read as follows:

"§92-3.1 Limited meetings. (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:

(1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies the reasons for its determination that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;

(2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

(3) Notice of the limited meeting is provided in accordance with section 92-7.

(b) A county council may hold a limited meeting open to the public as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of its members in attendance or accept oral testimony, provided that:

(1) Notice of the limited meeting is provided in accordance with section 92-7, except that the notice shall indicate the board or community group whose meeting the council is attending and need not include an agenda;

(2) If the board or community group whose meeting the council is attending is subject to part I of chapter 92, Hawaii Revised Statutes, then that group shall comply with the notice, agenda, testimony, minutes, and other requirements of that part;

(3) No more than one limited meeting per month shall be held by the council for any one board or community group;

(4) No limited meeting as provided in this subsection shall be held outside the state of Hawaii; and

(5) Meetings allowed under this section shall not be used to circumvent the spirit of the Sunshine Law.

~~(b)~~(c) At all limited meetings, the board shall:

(1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;

(2) Make the videotape available at the next regular meeting; and

(3) Make no decisions at the meeting. "

SECTION 3. This Act shall take effect upon its approval; provided that on June 30, 2018, section 2 of this Act shall be repealed and section 92-3.1, Hawaii Revised Statutes, shall be reenacted in the form in which it read on the day before the effective date of this Act.

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

Director of Council Services
Ken Fukuoka

February 11, 2014

TO: Honorable Karl Rhoads, Chair
Committee on Judiciary

FROM: Robert Carroll
Council Vice Chair

A handwritten signature in black ink that reads "Robert Carroll".

DATE: Thursday, February 13, 2014

SUBJECT: **SUPPORT HB 2139, RELATING TO PUBLIC AGENCY MEETINGS**

I support HB 2139 for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to support this measure.

Council Chair
Gladys C. Baisa

Vice-Chair
Robert Carroll

Presiding Officer Pro Tempore
Michael P. Victorino

Council Members
Elle Cochran
Donald G. Couch, Jr.
Stacy Crivello
Don S. Guzman
G. Riki Hokama
Mike White

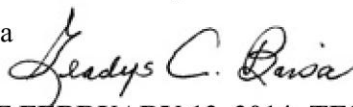


Director of Council Services
David M. Raatz, Jr., Esq.

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

February 12, 2014

TO: The Honorable Karl Rhoads, Chair
House Committee on Judiciary

FROM: Gladys C. Baisa
Council Chair 

SUBJECT: **HEARING OF FEBRUARY 13, 2014; TESTIMONY IN SUPPORT OF HB 2139,
RELATING TO PUBLIC AGENCY MEETINGS**

Thank you for the opportunity to testify **in support** of this important measure. The purpose of this measure, with the suggested amendments, is to allow members of a county council to jointly attend informational meetings or presentations on matters relating to official board business, provided the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board.

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. My intent with this measure, which was graciously introduced by Representative Kyle Yamashita at my request, is to increase interaction between elected officials and the public and to broaden access to educational opportunities as they arise.
2. My recent blog entry discusses the benefits of such interaction:

<http://www.mauicounty.gov/Blog.aspx?IID=208>

Open participation in informational meetings or presentations by elected officials will increase transparency and help to ensure responsiveness of council members to the public they serve.

I have carefully considered written testimony submitted to the Senate Committee on Public Safety, Intergovernmental and Military Affairs on the companion bill, SB 2962 (2014), and would like to propose a workable compromise. May I suggest two amendments: First, delete the following language from Subsection 92-2.5(e), Hawaii Revised Statutes: “, but less than the number of members which would constitute a quorum for the board.”. Second, delete proposed Subsection 92-2.5(i), Hawaii Revised Statutes.

For the foregoing reasons, and with the suggested amendments, I **support** this measure.



House Judiciary Committee
Chair Karl Rhoads, Vice Chair Sharon Har

Thursday 02/13/2014 at 02:00PM in Room 325
HB2139– Relating to Public Agency Meetings

TESTIMONY OF OPPOSITION, WITH SUGGESTED AMENDMENTS
Carmille Lim, Executive Director, Common Cause Hawaii

Dear Chair Espero, Vice Chair Baker, and members of the Committee:

Common Cause Hawaii opposes HB2139, and offers amendments. This bill would allow two or more city council members to jointly attend any public meeting or presentation without violating the sunshine law.

In the proposed section (i), the “without limitation” language is most concerning.

HB2139 should be amended to deal specifically with meetings not related to official board business. Additionally, we would suggest adding a clause that indicates that if anything related to board business comes up, then Section 1-(1)(e) would apply, including reporting at the next meeting of the council/board.

Thank you for the opportunity to testify on HB2139.



49 South Hotel Street, Room 314 | Honolulu, HI 96813
www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

COMMITTEE ON JUDICIARY

Thursday, February 13, 2014, 2:00 p.m., Conference Room 325

REVISED TESTIMONY
HB2139, RELATING TO PUBLIC AGENCY MEETINGS

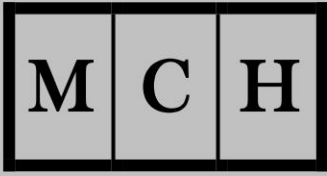
Douglas Meller, Legislative Committee Member, League of Women Voters of Hawaii

Chair Rhoads, Vice Chair Har, and Committee Members:

The League of Women Voters is strongly opposed to amending the "sunshine law" as proposed in this bill.

Abusive practices would be legalized if the bill became law. For example, if the bill became law, a developer could host a meeting open to the public to "educate" a county council about his pending zoning application; a county council quorum could attend; and county council members could "trade votes" (e.g. council members could orally promise to vote a certain way on the developer's application if other council member orally promised to vote a certain way on some other bill before the council.) Unfortunately, HB2139 "without limitation" would allow such abuses.

We urge this Committee to defer this measure. Thank you for the opportunity to submit testimony.



Media Council Hawai'i

Since 1970

President:

Chris Conybeare

Vice-President:

Beth-Ann Kozlovich

Treasurer:

Teresita Bernales

Secretary:

Marya Grambs

Board Members at Large:

Brenda Ching

Josh Frost

Ikaika Hussey

Jeanne Ishikawa

Gerald Kato

Jean King

Bobby Lambrix

Nikki Love

Brien Matson

Richard Miller

Liam Skilling

Lucy Witeck

Honorary Member:

U Win Tin

February 11, 2014

To: House Committee on Judiciary
Hearing: Thursday, February 13, 2013
2:00 pm, Conference Room 325

TESTIMONY IN OPPOSITION TO HB2139 RELATING TO PUBLIC AGENCY MEETINGS

Chair Rhoads, Vice Chair Har, and Members of the Judiciary Committee:

Media Council of Hawaii (MCH) opposes HB2139 Relating to Public Agency Meetings. This bill would amend the sunshine law and legitimize potentially abusive practices.

You will note that our letterhead still proudly has the name of the late, Jean King. As a legislator Jean King was a leader in the fight for Hawaii's sunshine law. Please honor Jean's memory and defer action on this bill.

Thank you for the opportunity to express our views.

Sincerely,

Chris Conybeare



P.O. Box 3141
Honolulu, HI 96802
Feb. 13, 2014

Karl Rhoads
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 2139, Relating to Public Agency Meetings

Chairman Rhoads and Committee Members:

We won't be able to attend your hearing on the bill but wish to state our strong objections to it.

Allowing all members of a county council to attend meetings that are not its official meetings "without limitations" is problematic. County council members could discuss county business at will just because the meeting is open to the public. Who decides how the meeting is declared public, just because a business says it's open to the public? Who tells the public that this meeting is public? County council members should not be given this exemption and should not be allowed to talk at will at such meetings.

This part of the Sunshine Law was worked on for many years with people recognizing that there are times board members have to go to community meetings. This addition is exactly what we feared would happen: Expand the exemptions and drive a stake through the heart of sunshine.

Please shelve this bill.

Sincerely,

Stirling Morita
President
Hawaii Chapter SPJ

HB2139

Submitted on: 2/12/2014

Testimony for JUD on Feb 13, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Chris Manfredi	Hawaii Farm Bureau	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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House Committee on Judiciary

HB2139 Relating to Agency Meetings

Hearing Before Judiciary Committee

February 13, 2014 2:00p.m. Room 325

TESTIMONY OF OPPOSITION

Susan Dursin, Individual Captain Cook, HI

Dear Chair Rhoads, Vice Chair Har and members of the committee:

I write in strong opposition to changes to the present law proposed in HB1239. For a number of years I have followed the Hawaii County Council's deliberations and decisions and have greatly respected its adherence to the sunshine law. The law has ensured the transparency necessary for informed public understanding and input. HB1239 has the potential to jeopardize that transparency and, by extension, public confidence in the local legislative process.

By permitting any number of council members – even the number constituting a quorum – to attend meetings together, the public's ability to understand the council's thinking is limited.

While a meeting may be billed as "public," entrance fees or the timing of a meeting may limit public involvement. Certainly every public meeting which might be attended by council members will not be announced, or if announced, will not give sufficient advance notice.

In Hawaii County we have a highly effective system of video coverage of council meetings. Many of us who live three or four hours away from the meeting venues regularly watch those meetings. Then we have the ability to give comment or testimony by video feed. With council members engaging in discussion outside the traditional forum and making judgments (which they could not help but do,) their constituents' basis for understanding would be limited. While the law would continue to require a report on the meeting attended, surely a report will not be detailed if five or six members have already heard the information.

The current law strongly protects the public's right to know. Please oppose HB2139.



Big Island Press Club

LATE

P.O. Box 1920, Hilo, HI 96721

February 12, 2014

Chairman Karl Rhoads
House Judiciary Committee
reprhoads@capitol.hawaii.gov

IN STRONG OPPOSITION TO HB 2139 - RELATING TO PUBLIC AGENCY MEETINGS.

The Big Island Press Club strongly opposes HB 2139.

Allowing all council members to attend any meeting or presentation 'open to the public,' where they may discuss any topic under the sun without limitation sets a dangerous precedent. The public's business must be done in a public forum where everyone has ample opportunity to be informed and to express their opinions.

Established in 1967, BIPC is Hawaii's oldest continuously active press club.

Thank you for understanding our serious concerns with this legislation.

Please keep the sunshine in!

Yisa Var

Immediate Past President, Big Island Press Club

LATE

HB2139

Submitted on: 2/13/2014

Testimony for JUD on Feb 13, 2014 14:00PM in Conference Room 325

Submitted By	Organization	Testifier Position	Present at Hearing
Stacy Helm Crivello	Individual	Support	No

Comments: I support HB2139 RELATING TO PUBLIC MEETINGS for the reasons cited in testimony submitted by the Maui County Council Chair, and urge you to support this measure

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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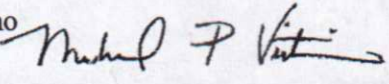
LATE TESTIMONY

Director of Council Services
David M. Raatz, Jr., Esq.

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www.mauicounty.gov/council

February 13, 2014

TO: The Honorable Karl Rhoads, Chair
House Committee on Judiciary

FROM: Michael P. Victorino
Council Member 

SUBJECT: **HEARING OF FEBRUARY 13, 2014; TESTIMONY IN SUPPORT OF HB 2139,
RELATING TO PUBLIC AGENCY MEETINGS**

Thank you for the opportunity to testify **in support** of this important measure. The purpose of this measure is to allow members of a county council to jointly attend informational meetings or presentations on matters relating to official board business, provided the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board.

I am aware that Council Chair Gladys Baisa has submitted testimony, with suggested amendments, in support of this measure. I concur with the testimony submitted by the Council Chair, and urge you to **support** this measure.

ocs:proj:legis:14legis:14testimony:hb2139_paf14-044b_mkz

ALAN M. ARAKAWA
MAYOR



200 South High Street
Wailuku, Hawai'i 96793-2155
Telephone (808) 270-7855
Fax (808) 270-7870
e-mail: mayors.office@mauicounty.gov

LATE TESTIMONY

OFFICE OF THE MAYOR

Ke'ena O Ka Meia
COUNTY OF MAUI – Kalana O Maui

**TESTIMONY OF ALAN ARAKAWA, MAYOR
COUNTY OF MAUI**

**BEFORE THE HOUSE
COMMITTEE ON JUDICIARY**

Thursday, February 13, 2014, 2:00 p.m., Conference Rm. 325

**HOUSE BILL 2139
RELATING TO PUBLIC AGENCY MEETINGS**

The Honorable Karl Rhoads, Chair
Honorable Sharon E. Har, Vice Chair
And Members of the House Committee on Judiciary

Thank you for this opportunity to testify in **support of HB 2139**. The purpose of this measure is to allow members of a county council to jointly attend informational meetings or presentations relating to official board business, provided the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board.

While this measure will not have a direct impact on the executive branch, as a former Maui County Councilmember I can support this measure for the following reason:

- Elected officials are responsible for finding out how people in their communities feel about policy issues, to gather facts, and to educate themselves on the many issues that impact their communities. Allowing county councilmembers to attend informational meetings or presentations can help them gather facts and educate themselves while ensuring their responsiveness to the public they serve.
- I believe that elected officials understand the importance of, and make every effort to, adhere to the protections set-forth in the Sunshine Law, part I of chapter 92, HRS. However, I do not believe that any discussion should be "without limitation". For instance, they should not be deliberating or making decisions on matters that might come before them as this would result in noticed-council meetings having an appearance of validity, but in reality being mere formality and excluding the public from meaningful participation.

Accordingly, I support HB 2139 confident that the legislature will make any necessary revisions to the proposed bill in order to preserve the intent and spirit of the Sunshine Law while allowing county councilmembers to best serve their communities.