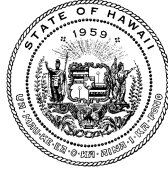


DAVID Y. IGE
GOVERNOR



CURT T. OTAGURO
COMPTROLLER
AUDREY HIDANO
DEPUTY COMPTROLLER

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
CURT T. OTAGURO, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE ON JUDICIARY

WEDNESDAY, JUNE 24, 2020, 3:05 P.M.
CONFERENCE ROOM 325, STATE CAPITOL

LATE

S.B. 2038, S.D. 2, PROPOSED H.D. 1

RELATING TO BOARD MEMBERS

Chair Lee, Vice Chair San Buenaventura, and members of the committee, thank you for the opportunity to submit testimony for S.B. 2038, S.D. 2, Proposed H.D. 1.

The Department of Accounting and General Services (DAGS) provides the following comments for this bill. DAGS **strongly supports the section of this bill** which would explicitly permit two or more members of a Sunshine Law board to jointly attend a State of the State, State of the City, State of the County, or State of the Judiciary address. **However, DAGS does have concerns with the provision requiring boards and commissions to provide a meeting location that is open to the public. If State facilities are closed due to the Governor's declaration of a state of emergency because of a contagious illness, the in-person public participation site will not be possible to provide.**

Thank you for the opportunity to submit testimony on this matter.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: June 24, 2020, 3:05 p.m.
State Capitol, Conference Room 325

Re: Testimony on S.B. No. 2038, S.D. 1, Proposed H.D. 1
Relating to Board Members

LATE

Thank you for the opportunity to submit amended testimony on this bill, which would explicitly permit two or more members of a Sunshine Law board to jointly attend a State of the State, State of the City, State of the County, or State of the Judiciary address. The proposed HD 1 further provides for a temporary amendment that will be repealed on June 30, 2021, permitting boards to hold a meeting by interactive conference technology with the board members attending from different non-public locations, so long as certain conditions to ensure public participation are met. **The Office of Information Practices (OIP) supports this measure, with amendments described herein.**

With regard to the bill language taken from the original bill and SD 1, when members of a county council or other board subject to the Sunshine Law attend a State of the State or State of the County or similar address together, they may find themselves listening together to proposals that will be coming before their board in the foreseeable future and thus are potentially board business. For instance, suppose the Board of Education's members sat together listening to the Governor propose a new plan for education that would require their approval, or a

County Council's members sat together listening to the Mayor propose building a new County facility that would require their approval. Given the highly public and ceremonial nature of such addresses, OIP believes it is appropriate for board members to be able to jointly attend such events and to exchange occasional remarks, clap when appropriate, and otherwise jointly participate in the event, without risking a potential complaint that they had violated the Sunshine Law by taking part in a discussion of board business outside a meeting. Consequently, **OIP supports this proposal, which would make it clear that board members' joint attendance at the largely ceremonial events specified is permitted under the Sunshine Law, even when it arguably involves discussion of board business, so long as the only discussion of board business occurs during and as part of the event and no commitment to vote is made or sought**

OIP also supports amending the Sunshine Law to allow virtual meetings during the current COVID-19 emergency. Because OIP had anticipated that virtual meetings would be necessary during the COVID-19 pandemic, it had supported the provisions of the HD 1 proposal in its testimony prepared for this committee's March 16, 2020 hearing, which was cancelled due to the Capitol's shut down. Since then, under the Governor's various emergency proclamations, Sunshine Law boards have actually held virtual meetings to conduct necessary business. Indeed, it is only through virtual meetings that boards have been able to continue doing critical work and the public has been able to participate in meetings, despite travel restrictions, quarantines, and stay-at-home measures necessitated by the COVID-19 pandemic. While those without internet access or equipment have been at a disadvantage, more members of the public have been able to readily access to public meetings, especially those from neighbor island and

remote communities or who may normally be working when meetings are usually held. Given the ongoing need for virtual meetings to address the continuing pandemic while still protecting and expanding the public's right to open meetings, OIP continues to support the temporary section that the proposed HD 1 would add to part I of chapter 92, with additional revisions that OIP recommends in the attached amendments to Section 1 of the bill.

Like the temporary section set out in the proposed HD 1, OIP's suggested language would trigger the use of this new Sunshine Law provision when the Governor declares a state of emergency for a contagious illness (as he already has done), and the temporary section will sunset on June 30, 2021. Next session, the Legislature would be able to review this provision to assess how it worked and whether any portion of it should be extended.

Various lawsuits have recently been filed challenging the Governor's authority under section 127A-14(d), HRS, to continue a state of emergency beyond sixty days. Whether or not any of those lawsuits are successful, OIP's proposed amendment would allow the Sunshine Law's temporary section to remain in effect so long the COVID-19 pandemic continues to pose a public health threat even if the state of emergency is no longer in effect, until the entire section is automatically repealed on June 30, 2021. Thus, OIP's attached amendment recommends a new subsection (a) in Section 1 of the bill, stating:

(a) The provisions set forth in this section shall apply only when the governor has previously declared a state of emergency for a contagious illness and, without regard to whether the state of emergency is still in effect, a board reasonably believes that holding an in-person meeting subject to the usual

requirements of this part would present an unreasonable health risk to board members and the public because of the continuing prevalence of the contagious illness for which the state of emergency was declared.

Subsection (b) in OIP's suggested language incorporates the changes to certain of the current requirements for holding an interactive conference technology meeting, but further recognizes that the other requirements of section 92-3.5, HRS, would remain in effect, such as section 92-3.5(b), (c), and (d). OIP's recommended subsection (b) states:

(b) A board holding a meeting by interactive conference technology pursuant to section 92-3.5 shall not be required to allow members of the public to join board members at the meeting locations where board members are physically present or to identify those locations in the notice required by section 92-7, notwithstanding the usual requirement in section 92-3.5(a) that board members participate only from identified locations at which the public may join them; provided that at the meeting each board member shall identify where the member is located and who, if anyone, is present at that location with the member;

and provided further that the notice required by
section 92-7 shall:

(1) List at least one meeting location that is
open to the public; and

(2) Inform members of the public how to:

(A) Remotely view the meeting through
internet streaming or other means;
and

(B) Provide oral testimony through an
internet link, telephone
conference, or other means.

Like the temporary section in the proposed HD 1, OIP's amended version would temporarily allow Sunshine Law boards to provide public access to a meeting via interactive conference technology without admitting the public to each room or home where a board member is physically present; however, the board must provide the public with both remote access to view and testify at the meeting **and** a physical meeting location available for public participation and testimony, which would accommodate those without internet access. For example, board members could be physically located in their separate offices or homes while participating in the meeting via an internet meeting platform, while some members of the public participate and testify from a room set up for that purpose linked to the meeting via a TV monitor, camera, and microphone, and still other members of the public participate and testify remotely from their own offices or homes via the livestream access link provided in the board's notice.

OIP's proposed language would add a requirement for board members attending from a private location to identify at a virtual meeting where they are and who else is present in the room with them, just as members with a disability must do under the current law. It would also continue other requirements of section 92-3.5, such as the requirement that if a connection cannot be maintained among all noticed meeting locations the meeting cannot continue,

Like the temporary section set out in the proposed HD 1, OIP's suggested amendment is intended to allow boards to continue their work and promote public participation, while taking reasonable precautions to prevent the spread of illness during the current COVID-19 emergency, by following procedures that have already proven to be feasible. Through virtual meetings, boards have been able to continue their work despite travel restrictions, quarantines, and stay-at-home requirements, while reducing or eliminating the risk of infection between board members, employees, and the general public. Boards have also been able to meet quorum requirements through virtual meetings without having to open up board members' homes to the public and despite travel restrictions or travel budget cuts. By using a variety of interactive conference technologies, it is possible to hold a video meeting with some participants while allowing others to orally testify via the telephone or internet, or to participate in person with appropriate social distancing and hygiene at a physical meeting site.

Finally, OIP recommends adding a subsection (c) to the temporary section to specifically allow for contact tracing information to be collected from persons attending a meeting in person. Normally, the Sunshine Law would allow people to attend meetings anonymously and not have to sign in or provide their names and contact information, so the following amendment is necessary to allow for contact tracing during this pandemic:

(c) Notwithstanding section 92-3, a board may require members of the public attending a meeting in person to provide their names and contact information for the purpose of contact tracing if the board reasonably believes doing so is necessary due to the contagious illness as described in subsection (a)."

Thank you for considering OIP's support of and recommended amendments to S.B. 2038, S.D. 1, proposed H.D. 1.

OIP's Suggested Amendment to Section 1 of the
Proposed H.D. 1 of S.B. 2038 S.D.1

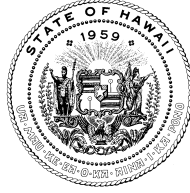
"§92- Meetings conducted during certain states of emergency; in-person requirement waived. (a) The provisions set forth in this section shall apply only when the governor has previously declared a state of emergency for a contagious illness and, without regard to whether the state of emergency is still in effect, a board reasonably believes that holding an in-person meeting subject to the usual requirements of this part would present an unreasonable health risk to board members and the public because of the continuing prevalence of the contagious illness for which the state of emergency was declared.

(b) A board holding a meeting by interactive conference technology pursuant to section 92-3.5 shall not be required to allow members of the public to join board members at the meeting locations where board members are physically present or to identify those locations in the notice required by section 92-7, notwithstanding the usual requirement in section 92-3.5(a) that board members participate only from identified locations at which the public may join them; provided that at the meeting

each board member shall identify where the member is located and who, if anyone, is present at that location with the member; and provided further that the notice required by section 92-7 shall:

- (1) List at least one meeting location that is open to the public; and
- (2) Inform members of the public how to:
 - (A) Remotely view the meeting through internet streaming or other means; and
 - (B) Provide oral testimony through an internet link, telephone conference, or other means.

(c) Notwithstanding section 92-3, a board may require members of the public attending a meeting in person to provide their names and contact information for the purpose of contact tracing if the board reasonably believes doing so is necessary due to the contagious illness as described in subsection (a)."



LATE

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

335 MERCHANT STREET, ROOM 310

P.O. BOX 541

HONOLULU, HAWAII 96809

Phone Number: 586-2850

Fax Number: 586-2856

cca.hawaii.gov

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 Judiciary
Wednesday, June 24, 2020
3:05 p.m.
State Capitol, Conference Room 325**

**On the following measure:
S.B. 2038, S.D. 1, PROPOSED H.D. 1, RELATING TO RELATING TO BOARD
MEMBERS**

WRITTEN TESTIMONY ONLY

Chair Lee and Members of the Committee:

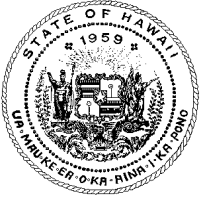
My name is Charlene Tamanaha, and I am the Licensing Administrator of the Department of Commerce and Consumer Affairs' (Department) Professional and Vocational Licensing Division (PVL). The Department supports this bill and requests an amendment.

The purposes of this bill are to: (1) permit two or more members of a board to attend a state of the city, state of the county, state of the State, or state of the judiciary address, provided that the board members do not discuss board business and no commitment to a vote is made; and (2) authorize boards to exclude the public from the meeting locations where board members are physically present if the board meetings are held by interactive conference technology during a state of emergency due to a contagious illness.

Due to the global COVID-19 pandemic that has disrupted regular board operations, the Department supports this measure. Collectively, the PVL holds approximately 225 chapter 92 meetings each year, and it frequently holds several meetings simultaneously in different conference rooms within the Department. Many board meetings are well-attended by members of the community. The Department is concerned that existing statutory public meeting requirements compel board members and members of the public to physically congregate in a manner that runs counter to recommended public health protocols. Consequently, the Department appreciates the Committee's consideration of alternatives, including this measure, that will allow the boards to continue performing their important duties, while simultaneously enhancing the safety and welfare of board members and attendees.

The Department respectfully requests that the Committee consider the following amendment to page 1, lines 12 to 13 of the bill: "physically present **or to list those locations**; provided that the notice required by section 92-7 shall[.]" This amendment would protect the privacy and health of board members.

Thank you for the opportunity to testify on this bill.



HAWAI'I CIVIL RIGHTS COMMISSION

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

June 24, 2020
Rm. 325, 3:05 p.m.

To: The Honorable Chris Lee, Chair
The Honorable Joy A. San Buenaventura, Vice Chair
Members of the House Committee on Judiciary

From: Robin Wurtzel
Chief Counsel for the Hawai'i Civil Rights Commission

LATE

Re: S.B. No. 2038, S.D. 1, Proposed H.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 (on the basis of disability). 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.

As HCRC Chief Counsel, I serve as the attorney for the Commission. As Chief Counsel, it is my responsibility to provide legal advice to the Commission on procedural and substantive issues, including compliance with the open meetings law. In this role, I offer comments on S.B. No. 2038, S.D. 1, Proposed H.D. 1.

S.B. No. 2038, S.D. 1, Proposed H.D. 1 addresses Sunshine Law requirements, and waives the in-person requirements during certain states of emergency. As Chief Counsel for the Hawaii Civil Rights Commission, the proposed language allowing suspension of the requirement that board members must be in a location where members of the public may join them will be helpful to the Commission, and allow remote meetings.

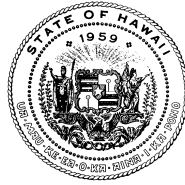
However, I am concerned about the addition that boards provide at least one meeting location that is open to the public. If State buildings are closed to the public, as they are now, it

is not possible for departments to provide such a location. A possible amendment would include a caveat that a public location will be required if the department is open to the public.

The proposed bill clarifies that testimony be allowed telephonically. The pandemic has required all of us to change our habits and embrace more use of technology. However, technology for remote streaming is not available to each department, nor is staff trained in the technology required for streaming. Until that time, we welcome this amendment allowing telephone access to meetings.

Chief Counsel appreciated the opportunity to testify regarding S.B. No. 2038, S.D. 1, Proposed H.D. 1 amendments waiving the in-person requirement for State boards and facilitating remote meetings.

DAVID Y. IGE
GOVERNOR OF HAWAII



CAROLINE CADIRAO
DIRECTOR

BRUCE S. ANDERSON, Ph.D.
DIRECTOR OF HEALTH

STATE OF HAWAII
EXECUTIVE OFFICE ON AGING
NO. 1 CAPITOL DISTRICT
250 SOUTH HOTEL STREET, SUITE 406
HONOLULU, HAWAII 96813-2831
eoa@doh.hawaii.gov

Telephone
(808) 586-0100

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(808) 586-0185

**Testimony in SUPPORT of SB2308 SD1 Proposed HD1
Relating to Board Members**

COMMITTEE ON JUDICIARY
REP. CHRIS LEE, CHAIR
REP. JOY A. SAN BUENAVENTURA, VICE CHAIR

Testimony of Caroline Cadirao
Director, Executive Office on Aging
Attached Agency to the Department of Health

LATE

Hearing Date: June 24, 2020
3:05 PM

Room Number: 325

- 1 **EOA's Position:** The Executive Office on Aging (EOA), an attached agency to the Department
- 2 of Health, supports **SB2038, SD1 Proposed HD1.**
- 3 **Purpose and Justification:** The Proposed HD 1 version of the bill includes an emergency
- 4 clause that authorizes boards to exclude the public from the meeting locations where board
- 5 members are physically present if the board meetings are held by interactive conference
- 6 technology during a state of emergency due to a contagious illness. Currently HRS 92, the
- 7 Sunshine Law, requires that Boards must meet in public locations that allow for the physical
- 8 presence of Board members and anyone from the public to meet remotely or via internet
- 9 streaming. As a result, the Sunshine Law does not allow a Board member to attend a Board
- 10 meeting remotely from their home to protect their personal safety and maintain and abide by
- 11 CDC guidelines for social distancing during the pandemic. The amendment proposed by the
- 12 Office of Information Practices (OIP) in SB2038 SD1 PROPOSED HD1 will allow boards to

1 hold meetings remotely via interactive conference technology and provide for proper social
2 distancing.

3 The Executive Office on Aging (EOA) holds monthly meetings for the Policy Advisory Board
4 for Elder Affairs (PABEA), which is composed primarily of older adult consumers, who may
5 have compromised health conditions, as well as service providers, and others that work directly
6 with older adults throughout the State of Hawaii. With positive COVID 19 cases still being
7 identified the Executive Office on Aging is extremely concerned about the health and safety of
8 our board members and would like to keep their exposure to large groups and flying interisland
9 limited, as much as possible. The EOA supports SB2038 SD1 Proposed HD1, which
10 allows board members and the public to continue to attend meetings remotely via interactive
11 conference technology and will help to ensure the safety of our vulnerable populations.

12 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

June 24, 2020

The Honorable Representative Chris Lee, Chair
House Committee on Judiciary
Thirtieth Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Lee and Members of the Committee:

SUBJECT: SB 2038 SD1– Relating to Board Members

The Hawaii State Council on Developmental Disabilities **SUPPORTS the INTENT of SB 2038, SD1**. We support the emergency clause that was written into the proposed HD1 version of this bill. This emergency clause authorized boards to exclude the public from the meeting locations where board members are physically present if the board meetings are held by interactive conference technology during a state of emergency due to a contagious illness.

According to CDC individuals with developmental disabilities have a higher mortality rate if they should get COVID-19 compared to the general population. We do not want to expose our high risk vulnerably population to the possibility of catching the coronavirus.

Currently the Sunshine Law does not allow for a waiver of its requirements in an emergency situation, therefore, boards must allow the physical presence of the public at all locations where the board members meet remotely or via streaming. For example; if a board member wanted to ZOOM in from their home to a Council meeting, the board member must list their home address as a meeting place and allow any person from the public into their home to participate.

The amendment proposed by the Office of Information Practices (OIP) in SB2038 SD1 PROPOSED HD1 will allow boards to hold meetings remotely via interactive conference technology. The State Council on Developmental Disabilities holds monthly meetings and many of our members are individuals with a developmental disability who have compromised health condition which makes 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 the health and safety of our board members and would like to keep their exposure to large groups and flying interisland limited, as much as possible.

The Council respectfully ask for your favorable support to proceed with SB2038 SD1 PROPOSED HD1.

Thank you for this opportunity to submit testimony.

Sincerely,



Daintry Bartoldus
Executive Administrator

DAVID Y. IGE
Governor

JOSH GREEN
Lt. Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512
Phone: (808) 973-9600 FAX: (808) 973-9613

PHYLLIS SHIMABUKURO-GEISER
Chairperson, Board of Agriculture
MORRIS ATTA
Deputy to the Chairperson

TESTIMONY OF PHYLLIS SHIMABUKURO- GEISER
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON JUDICIARY

June 24, 2020

3:05 P.M.

CONFERENCE ROOM 325

LATE

SENATE BILL NO. 2038 HD1 Proposed
RELATING TO BOARD MEMBERS

Chairperson Lee and Members of the Committee:

Thank you for the opportunity to testify on Senate Bill 2038 HD1 Proposed permits 2 or more members of a board to attend certain events, provided that the board members do not discuss board business and no commitment to vote is made or sought, without violating the Sunshine Law. The bill additionally authorizes boards to exclude the public from the meeting locations where board members are physically present if the board meetings are held by interactive conference technology during a state of emergency due to a contagious illness. The Department supports the intent of this measure and offers comments and concerns regarding its implementation, especially in the context of an emergency due to a contagious illness.

Section 1 of the proposed HD1 requires the meeting notice for meetings held by interactive conference technology to list at least one meeting location that is open to the



public (page 1 lines 14-15). The Department's is currently assessing its ability to provide a public meeting space pursuant to Section 1 in terms of infrastructure, technology and staffing. However, in the context of an emergency due to a contagious illness, the Department is concerned about its capacity to enforce adherence to CDC guidelines, emergency public health orders and other public health guidelines, such as social distancing, mask use, etc., in the public meeting location. Furthermore, the Department has concerns regarding disease transmission among meeting attendees and staff. The Department respectfully requests clarification of the physical and technological requirements of the public meeting location, as well as its role, responsibilities, and authority for ensuring adherence to emergency public health guidelines.

Thank you for the opportunity to testify on this measure.



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

June 24, 2020

The Honorable Representative Chris Lee, Chair
House Committee on Judiciary
Thirtieth Legislature
State Capitol
State of Hawai'i
Honolulu, Hawai'i 96813

Dear Representative Lee and Members of the Committee:

SUBJECT: SB 2038 SD1– Relating to Board Members

The Hawaii State Council on Developmental Disabilities **SUPPORTS the INTENT of SB 2038 SD1**. We support the emergency clause that was written into the proposed HD1 version of this bill. This emergency clause authorized boards to exclude the public from the meeting locations where board members are physically present if the board meetings are held by interactive conference technology during a state of emergency due to a contagious illness.

According to CDC individuals with developmental disabilities have a higher mortality rate if they should get COVID-19 compared to the general population. We do not want to expose our high risk vulnerably population to the possibility of catching the coronavirus.

Currently the Sunshine Law does not allow for a waiver of its requirements in an emergency situation, therefore, boards must allow the physical presence of the public at all locations where the board members meet remotely or via streaming. For example; if a board member wanted to ZOOM in from their home to a Council meeting, the board member must list their home address as a meeting place and allow any person from the public into their home to participate.

The amendment proposed by the Office of Information Practices (OIP) in SB2038 SD1 PROPOSED HD1 will allow boards to hold meetings remotely via interactive conference technology. The State Council on Developmental Disabilities holds monthly meetings and many of our members are individuals with a developmental disability who have compromised health condition which makes 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 the health and safety of our board members and would like to keep their exposure to large groups and flying interisland limited, as much as possible.

The Council respectfully ask for your favorable support to proceed with SB2038 SD1 PROPOSED HD1.

Thank you for this opportunity to submit testimony.

Sincerely,



Daintry Bartoldus
Executive Administrator



**House Committee on Judiciary
Wednesday, June 24, 2020, 3:05 p.m.**

Testimony by:

Kendra Oishi, Executive Administrator and Secretary, Board of Regents

S.B. No. 2038, S.D. 1, H.D. 1 Proposed – RELATING TO BOARD MEMBERS

Chair Lee, Vice Chair San Buenaventura, and members of the Committee:

The Office of the Board of Regents (Board Office) supports the intent of S.B. No. 2038, S.D. 1, H.D. 1 Proposed, which would: (1) Explicitly permit two or more members of a board to attend a State of the State, State of the City, State of the County, or State of the Judiciary address; and (2) Authorize boards to hold meetings by interactive conference technology during a state of emergency declared due to a contagious illness without requiring members of the public to join board members at a physical location.

The Board of Regents of the University of Hawai'i (Board), which is currently made up of 12 Regents from all four counties, holds monthly, in-person meetings across the University of Hawai'i's campuses statewide. Under normal circumstances, these meetings are open to the public and are often attended by members of the community. The COVID-19 pandemic and stay-at-home orders issued by the state and counties made it difficult to conduct meetings under the current guidelines. The Governor's proclamation suspending certain specific provisions of Hawai'i's Sunshine Law "to the extent necessary to enable boards to conduct business in person or through remote technology without holding meetings open to the public," addressed this concern.

The Governor's proclamation has minimized COVID-19-related disruptions to Board operations and meetings. Through the use of interactive conference technology to hold its meetings, the Board has been able to continue meaningful engagement among its members on matters of importance to the University of Hawai'i and the State of Hawaii, while allowing for both oral and written public testimony. The ability to conduct Board meetings without requiring the physical presence of Regents, University administrators and personnel, or the general public has allowed the Board to continue to conduct its business while maintaining the safety and welfare of all participants.

The Board Office believes that this measure is a reasonable solution that will allow boards to continue to carry-out their duties and responsibilities during specific emergency situations while maintaining transparency and public accountability.

Thank you for the opportunity to testify in support of the intent of S.B. No. 2038, S.D.1, H.D. 1 Proposed.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

700 Bishop Street, Suite 1701
Honolulu, HI 96813

Office: (808) 531-4000
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info@civilbeatlawcenter.org

House Committee on Judiciary
Honorable Chris Lee, Chair
Honorable Joy A. San Buenaventura, Vice Chair

RE: Testimony Opposing on S.B. 2038 S.D. 1, Relating to Board Members

Hearing: June 24, 2020 at 3:05 p.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 **strongly oppose the Proposed H.D. 1.**

On May 14, the Office of Information Practices called for comments on draft legislation to address public access issues that have arisen in light of COVID-19. OIP asked members of the public to provide comments by the end of July in anticipation of possible legislation for next session. The “contagious illness” provisions of the proposed H.D. 1 thus are premature.

Moreover, the proposed H.D. 1 is unnecessary to address the current pandemic. Governor Ige has implemented protocols tailored to this particular crisis. Those protocols are working adequately under the circumstances. There is no reason to rush legislation at this point.

The public needs the Legislature to revisit the outdated provisions of the law for interactive conference technology in HRS § 92-3.5. A properly balanced and thoughtful conference technology provision would obviate the need for any special “contagious illness” section to the Sunshine Law. It should be easy for the public to observe and testify before boards and commissions using conferencing technology irrespective of a pandemic.

This truncated session is not the time for half-baked ideas that serve no immediate purpose. The public deserves more careful deliberation and thorough community input when it concerns laws that impact public access to government information.

Thank you again for the opportunity to oppose the Proposed H.D. 1.

Statement Before The
HOUSE COMMITTEE ON JUDICIARY
Wednesday, June 24, 2020
3:05 PM
State Capitol, Conference Room 325

in consideration of
SB 2038, SD1, HD1 [PROPOSED]
RELATING TO BOARD MEMBERS

Chair LEE, Vice Chair SAN BUENAVENTURA, and Members of the House Judiciary Committee

Common Cause Hawaii provides comments on the proposed SB 2038, SD1, HD1, which (1) permits 2 or more members of a board to attend state of the city, state of the county, state of the State, or state of the judiciary addresses, provided that the board members do not discuss board business and no commitment to vote is made or sought, and (2) authorizes boards to exclude the public from the meeting locations where board members are physically present if the board meetings are held by interactive conference technology during a state of emergency due to a contagious illness.

Common Cause Hawaii is a nonprofit, nonpartisan, grassroots organization dedicated to strengthening our democracy through transparency and accountability in our government institutions.

Common Cause Hawaii comments are specific to the proposed HD1 to permit meetings by interactive conference technology when a state of emergency for a contagious illness is declared by the governor and to provide that members of the public are not to join board members at the meeting locations where the members are physically present. This is a curious proposal. Once a state of emergency is declared, the Governor has very broad powers under Hawaii Revised Statutes § 127A-13(a)(3) to suspend laws.

County Councils (specifically the Maui County Council and the Honolulu City Council) and boards and commissions are meeting remotely already during these COVID-19 emergency times. The most recent Governor's emergency proclamation – [Ninth Emergency Proclamation dated June 10, 2020](#) at Exhibit H – provides guidelines and a framework for remote meetings during this pandemic.

It stands to reason that a revision of the Sunshine Law specific to remote testimony is necessary to more broadly allow for remote access, given the changing times and technology. This, however, should not be done in a rushed manner when the State Legislature is unable to accommodate remote testimony but should be done thoughtfully with input from government agencies, boards, and commissions, technology experts, public attendees, and other interested parties.

Thank you for the opportunity to comment regarding the oddity of the proposed SB 2038, SD1, HD1. If you have further questions of me, please contact me at sma@commoncause.org.

Very respectfully yours,
Sandy Ma
Executive Director, Common Cause Hawaii

LATE

SB-2038-SD-1

Submitted on: 6/23/2020 4:39:55 PM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Deborah Kobayakawa	Developmental Disabilities Council	Support	No

Comments:

Deborah Kobayakawa
45-312 Koa Kahiko Street
Kaneohe, HI 96744
(808) 271-3887
alohadebbk@yahoo.com

June 23, 2020

The Honorable Representative Chris Lee, Chair

House Committee on Judiciary

Thirtieth Legislature

State Capitol, State of Hawai'i

Honolulu, Hawai'i 96813

Dear Representative Lee and Members of the Committee:

SUBJECT: SB 2038 SD1-Relating to Board Members

As a new member to the Hawaii State Council on Developmental Disabilities I would like to submit my testimony in support of SB 2038, SD1. This emergency clause takes into account the need for board members such as myself, to have their privacy protected while we continue to participate in our board meetings. The intent appears clear, it is to allow board members during this global pandemic to participate in meetings using interactive conference technology and not to exclude the public from meeting locations or from participating.

Under the current Sunshine Law, it allows the physical presence of the public at all locations where the board members meet remotely or via streaming. Most of us on the Developmental Disabilities Council are volunteers like myself, participating from our homes, this is be a huge health and safety concern for us. Some on the council are individuals with a developmental disability themselves which puts them at risk for compromised health conditions and being part of the more vulnerable population during the current COVID-19 crisis.

By passing the amendment proposed by the Office of Information Practices in SB2038 SD1 PROPOSED HD1 it will allow boards to hold meetings remotely using interactive conference technology. This includes the State Council on Developmental Disabilities which holds monthly meetings. Our board members need to remain healthy and safe during these unprecedented times but also be allowed to fulfill their obligations to the Developmental Disability Council as board members.

I respectfully ask for your support to proceed with SB2038 SD1 PROPOSED HD1.

Thank you for the opportunity to submit my testimony.

Respectfully,

Deborah Kobayakawa

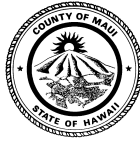
Chair Elect, Developmental Disabilities Council

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

Presiding Officer Pro Tempore
Tasha Kama

Councilmembers
Riki Hokama
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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

June 23, 2020

TO: The Honorable Chris Lee, Chair
House Committee on Judiciary

FROM: Alice L. Lee
Council Chair

A handwritten signature in black ink, appearing to be "AL", is written over the name "Alice L. Lee" in the "FROM:" field.

SUBJECT: **HEARING OF JUNE 24, 2020; TESTIMONY IN SUPPORT OF SB2038, SD1, RELATING TO BOARD MEMBERS, WITH PROPOSED REVISIONS**

Thank you for the opportunity to testify in **support** of this important measure, **with proposed revisions** to allow Sunshine Law boards to meet by video conference without opening up each board member's location to the public, subject to the following conditions.

- All members of the public may testify from anywhere via phone or video conference.
- At least one physical location is listed on the meeting agenda as a site where in-person testimony will be accepted.

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, with the proposed revisions referenced above, for the following reasons:

1. I have been pleased by public participation over the last few months during which the Maui County Council and its committees conducted meetings solely by video conference and maintained social distancing, in accordance with the Governor's COVID-19 emergency proclamations partially suspending the Sunshine Law. During its Fiscal Year 2021 Budget Session, the Council's Economic Development and Budget Committee received live testimony via telephone and video conference from hundreds of constituents on all three populated islands of the County.
2. Members of the public and media have responded favorably to the Council's conduct of meetings by video conference. May I please call your attention to the following articles:

The Honorable Chris Lee, Chair
House Committee on Judiciary
June 23, 2020
Page 2

- “Maui Council Has Figured Out How To Do Virtual Meetings Right,” May 10, 2020, *Civil Beat*:
<https://tinyurl.com/MauiRemote>
 - “Maui officials rely on technology to conduct business in time of social separation,” April 5, 2020, *Honolulu Star-Advertiser*:
<https://tinyurl.com/MauiNuiMeetings>
3. I would like to keep a similar system in place even after the Governor fully reinstates the Sunshine Law. The proposed revisions would promote public participation while providing safety and convenience for board members and the public.
 4. Allowing for meetings by video conference, without opening up each board member’s location to the public, would minimize the need for board members to travel to a central meeting location, saving money for county and State taxpayers and reducing greenhouse-gas emissions.

For the foregoing reasons, I **support** this measure, **with proposed revisions**.

cc: Maui County Councilmembers
Executive Committee, Hawaii State Association of Counties
Arryl Kaneshiro, Chair, Kauai County Council
Aaron Chung, Chair, Hawaii County Council
Ikaika Anderson, Chair, Honolulu City Council

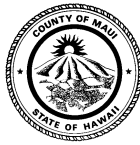
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Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

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Traci N. T. Fujita, Esq.

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June 23, 2020

TO: The Honorable Chris Lee, Chair
House Committee on Judiciary

FROM: Tamara Paltin, Councilmember *Tamara D. M. Paltin*

SUBJECT: **HEARING OF JUNE 24, 2020; TESTIMONY IN SUPPORT OF SB2038, SD1, RELATING TO BOARD MEMBERS, WITH PROPOSED REVISIONS**

Thank you for the opportunity to testify in **support** of this important measure, **with proposed revisions** to allow Sunshine Law boards to meet by video conference without opening up each board member's location to the public.

I endorse Maui County Council Chair Alice L. Lee's testimony submitted today. But, I want to add the following point of emphasis.

To promote openness, efficiency, and safety by facilitating meetings by video conference, it is important to eliminate the following antiquated and counterproductive provision in Section 92-3.5(c), Hawaii Revised Statutes:

A meeting held by interactive conference technology shall be terminated when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held

This provision makes it risky to hold meetings by video conference and, therefore, discourages county councils and other boards from conducting meetings by video conference. In various parts of Maui County, telecommunications infrastructure can have occasional failures. A meeting should not be suddenly adjourned when such a failure occurs.

The Council's Economic Development and Budget Committee conducted 16 lengthy meetings by video conference during the Council's Fiscal Year 2021 Budget Session, with Councilmembers and testifiers participating from remote locations. Members of the public and Councilmembers all found the process to promote openness, efficiency, and safety. But, the process was only made possible by the Governor's suspension of the Sunshine Law because of COVID-19. With the existing Sunshine Law back in effect, meetings by video conference will likely cease, largely because of the provision quoted above requiring immediate termination when there is an infrastructure failure.

Thank you for your consideration of my testimony.

LATE

SB-2038-SD-1

Submitted on: 6/24/2020 12:38:33 AM

Testimony for JUD on 6/24/2020 3:05:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Gerard Silva	Individual	Oppose	No

Comments:

Council Chair
Alice L. Lee

Vice-Chair
Keani N.W. Rawlins-Fernandez

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LATE

COMMITTEE ON JUDICIARY
Rep. Chris Lee, Chair
Rep. Joy A. San Buenaventura, Vice Chair
Wednesday, June 24, 2020
3:05pm

**SUBJECT: TESIMONY IN STRONG SUPPORT OF SB2083 SD1 HD1 WITH
PROPOSED AMENDMENTS**

Aloha e Chair Lee, Vice Chair San Buenaventura, and honorable committee members,

Mahalo for recognizing the importance of amending the Chapter 92, referred to as our "Sunshine Law," for decision-making bodies that are held to it by scheduling SB2083 SD1 HD1. I testify in strong support of this measure with proposed revisions that I believe will better address the barriers decision-making bodies, like ours, face in trying to continue meeting while remaining in compliance with our Sunshine Law.

My proposed amendments are in bold below:

Hawai'i Revised Statutes § 92-3.5: Meeting by interactive conference technology; notice; quorum. (a) A board may hold a meeting by interactive conference technology; provided that the interactive conference technology used by the board allows interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. **If the meeting is held online and provides live audio and video testimony, identifying and making public the locations where participating board members will be physically present is not required.**

(c) A meeting held by interactive conference technology shall be **terminated recessed** when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location, **until communication is reestablished or a member consents to the board proceeding without the member.** If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.

This section was first drafted in 1994 and last amended in 2012. Thanks to rapid advancements of technology, in just eight years, we have seen significant improvement in videoconferencing software development, accessibility, and bandwidth capacity. Our laws should reflect this advancements.

Without Governor Ige's suspension of the Sunshine Law, our Council would not have been able to continue meeting safely and ensure public participation in the creation of our Council's Fiscal Year 2021 Budget Session. Looking ahead, if Governor Ige terminates the suspension to Sunshine Law, the antiquated sections of Sunshine Law would require members to list their home addresses on the agendas and make their personal residence open to the public. In this time of uncertainty, facing this contagious virus without a vaccine, a stay-at-home order could foreseeably be issued again. This would require us to return to meeting from our residences.

This section also requires Council to adjourn any meeting if Council Members lose connection, rather than just calling a recess until connection is reestablished. I don't think this Legislature would intend to put those types of unnecessary restrictions on our Council in this day and age.

As the Chair of the Council's Economic Development and Budget Committee, I conducted a month-long marathon of meetings that went into late the night by videoconference for the Budget Session, with Council Members and testifiers participating from remote locations, most times, from their residences. We have demonstrated the success of videoconferencing technology under these extreme conditions, have facilitated ethical meetings ensuring Council Members

would not be excluded from deliberations or a vote due to connectivity issues, and have even improved public engagement.

While I can support the newly proposed "Section 92-____. Meetings conducted during certain states of emergency; in-person requirement waived" attempts to address Sunshine Law held bodies, it does not do enough, and would require an emergency to be initiated.

As a Molokai resident, I have long advocated for the ability to testify remotely at County and State meetings. It took a pandemic to force us to make it happen for our constituents and now, we should never going back. Everyone has raved about how much easier and more accessible it has been to participate in government, something we, as policymakers should always strive for. I have personally provided advice to the State Commission on Water Resource Management and the State Clerk on how to move their meetings online and accept live testimony. Let's push forward into the 21st Century!

Mahalo for your time and consideration.

Mahalo,

Keani Rawlins-Fernandez

KEANI RAWLINS-FERNANDEZ
Council Vice-Chair