

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 12, 2020, 2:31 p.m.
State Capitol, Conference Room 325

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

Thank you for the opportunity to submit amended testimony on this bill, which would explicitly permit two or more members of a board to jointly attend a State of the State, State of the City, State of the County, or State of the Judiciary address. **The Office of Information Practices (OIP) supports this measure. Due to the recently declared COVID-19 pandemic, OIP further recommends amending this bill by adding a new section temporarily allowing boards subject to the Sunshine Law to provide public access to meetings via interactive conference technology through a combination of streaming technology and a site for in-person public attendance that may be physically separate from the one where board members are.**

OIP has recently heard concerns from multiple boards that the public meetings the Sunshine Law requires of them provide a potential vector for the spread of COVID-19, which the World Health Organization has declared to be a global pandemic and for which the Governor has declared a state of emergency. The Sunshine Law does not allow for waiver of its usual requirements in the event of an emergency situation, so despite the existing pandemic, boards cannot prevent the

physical presence of the public at board meetings held remotely or via streaming, without leaving themselves open to complaints that they have violated the Sunshine Law's requirement to allow all persons to attend any meeting that is not closed by law.

OIP is therefore recommending in a proposal attached to this testimony that this Committee insert a provision temporarily allowing boards to hold meetings remotely via interactive conference technology, on the condition a site be provided for members of the public who may not have their own internet access to view the meeting and have the opportunity to provide oral testimony. For example, a board could hold a meeting in one room and have a TV monitor in another room for the public to be able to participate in the hearing and testify via audiovisual technology, similar to what the Legislature currently does for House Finance, Senate Ways and Means, and other committee hearings with overflow audiences. The proposal also requires that access information be provided for those members of the public who do have the ability to participate in a streaming meeting. OIP proposes a sunset date of June 30, 2021, for this provision, so as to give the Legislature the opportunity to consider whether to extend it after its effectiveness has been tested. While this proposal is intended as a pilot project during the current COVID-10 emergency, it may ultimately help to speed up and encourage the use of technology to provide greater access to public meetings.

With regard to the current bill language, 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. Someone could argue that those members had violated the Sunshine Law by taking part in a discussion of board business outside a meeting, especially if they made comments to one another while listening or even reacted in nonverbal ways such as by clapping. This proposal 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

Given the highly public and ceremonial nature of such addresses, OIP believes it is appropriate for board members to be able to jointly attend them and to exchange occasional remarks, clap when appropriate, and otherwise jointly participate in the event. This proposal would explicitly allow such joint participation. **Thus, OIP supports this bill, with the addition of a bill section as shown in the attached language that temporarily allows boards subject to the Sunshine Law to provide public access to meetings via interactive conference technology through a combination of streaming technology and a site for in-person public attendance that may be separate from the one where board members are..**

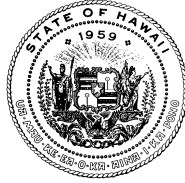
Thank you for considering OIP's suggested amendment and support for the bill.

OIP's proposed amendment to SB 2038, S.D. 1 for emergency board meetings held by interactive conference technology (3/11/2020) – replace the current bill section 3 with the following two sections.

SECTION 3. Notwithstanding section 92-3.5 or any other law to the contrary, when a state of emergency declared by the governor is in effect for a contagious illness, a board holding a meeting by interactive conference technology as provided in 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; provided that the notice required by section 92-7 shall list at least one meeting location open to the public and shall inform members of the public how to remotely view the meeting via internet streaming or other means and how to provide oral testimony via internet link, telephone conference, or other means.

SECTION 4. This Act shall take effect upon its approval, provided that section 3 shall be repealed on June 30, 2021.

DAVID Y. IGE
GOVERNOR OF HAWAII



CAROLINE CADIRAO
DIRECTOR

BRUCE ANDERSON
DIRECTOR OF HEALTH

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**Testimony in SUPPORT of SB2038 SD1
Relating to Board Members**

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

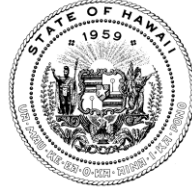
Testimony of Caroline Cadirao
Director, Executive Office on Aging
Attached Agency to the Department of Health

Hearing Date: March 12, 2020
2:31 pm

Room Number: 325

- 1 **EOA's Position:** The Executive Office on Aging (EOA), an attached agency to the Department
- 2 of Health, **SUPPORTS** SB 2038 SD1, specifically regarding the recommended proposal by the
- 3 Office of Information Practices (OIP) to temporarily allow boards subject to the Sunshine Law to
- 4 provide public access to meetings via interactive conference technology.
- 5 **Purpose and Justification:** Currently the Sunshine Law does not allow for a waiver of its
- 6 requirements in an emergency situation, therefore, boards must still allow the physical presence
- 7 of the public at board meets held remotely or via streaming. The amendment proposed by OIP
- 8 will allow boards to hold meetings remotely via interactive conference technology, with the
- 9 condition that a site be provided for the public who may not have their own internet access to
- 10 view the meeting and have the opportunity to provide oral testimony.
- 11 EOA's Policy Advisory Board for Elderly Affairs (PABEA) holds monthly meetings and many
- 12 of its members are elderly. The elderly are the most vulnerable population during this COVID-19

- 1 pandemic. We are extremely concerned about the health and safety of our seniors board
- 2 members and their exposure to large groups should be limited as much as possible.
- 3 **Recommendation:** The EOA supports the OIP amendment that would allow the public to
- 4 participate in PABEA meetings remotely.
- 5 Thank you for the opportunity to testify.



LATE

DAVID Y. IGE
GOVERNOR

JOSH GREEN
LT. GOVERNOR

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

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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
Thursday, March 12, 2020
2:31 p.m.
State Capitol, Conference Room 325**

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

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' (DCCA or Department) Professional and Vocational Licensing Division (PVL). The Department has been apprised of proposed amendments to this bill by the Office of Information Practices (OIP). The Department takes no position regarding the language of S.D. 1, and its comments are limited to the OIP's proposed subsection 3.

Due to the global COVID-19 pandemic that has disrupted regular board operations, the Department supports the OIP's proposed amendments that will temporarily allow boards to hold meetings remotely via interactive conference technology.

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 currently lacks the ability to conduct board meetings that can be streamed and viewed online, and it also is unable to receive testimony through a hyperlink. The DCCA is actively evaluating the operational and fiscal issues pertaining to implementation of this bill. It is also exploring the extent to which deviation from Hawaii Revised Statutes chapter 92 may need to be accomplished through an emergency proclamation.

Thank you for the opportunity to testify on this bill.



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David Y. Ige
Governor

Chris Tatum
President and Chief Executive Officer

Statement of
CHRIS TATUM



Hawai'i Tourism Authority
before the
HOUSE COMMITTEE ON JUDICIARY

Thursday, March 12, 2020
2:31 PM
State Capitol, Conference Room #325

In consideration of
SENATE BILL NO. 2038 SD1
RELATING TO BOARD MEMBERS

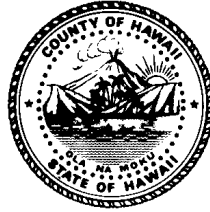
Chair Lee, Vice Chair San Buenaventura, and members of the Committee on Judiciary: the Hawai'i Tourism Authority (HTA) **supports** Senate Bill 2038 SD1, which permits two or more members of a board to attend state of the city, state of the county, state of the State, or state of the judiciary addresses; provided that the board members do not discuss board business and no commitment to vote is made or sought.

HTA has a Board of Directors, made up of 12 members from our four counties, that's scheduled to meet monthly in person at the Hawai'i Convention Center. These meetings are open to the public. Board approval is required for key HTA functions and initiatives.

COVID-19 is a pandemic and a global public health emergency. The Sunshine Law does not allow for waiver of its usual requirements in the event of an emergency situation, such as what we are dealing with now because of COVID-19. We are asking that you amend this measure to add a provision temporarily allowing boards to hold meetings remotely via interactive conference technology, on the condition a site be provided for members of the public who may not have their own internet access to view the meeting and have the opportunity to provide oral testimony.

It is for these reasons that HTA **supports** SB2038 SD1 with amendments. We appreciate this opportunity to provide testimony.

Harry Kim
Mayor



Roy Takemoto
Managing Director

Barbara J. Kossow
Deputy Managing Director

County of Hawai'i Office of the Mayor

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March 10, 2020

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

Dear Chair Lee, Vice Chair San Buenaventura, and Committee Members:

RE: SB 2038, SD1 Relating to Board Members

SB 2038, allowing board members to attend certain named functions, is so narrow a reform that one would hope it is unobjectionable.

It is a good thing for board members to be as active and educated in the workings of government as possible, and to the extent that those members are willing and able to attend a public address by a government leader, we should be encouraging such involvement.

It seems to me that even broader reform should be considered, but if that is not feasible, SB 2038, SD1 should receive your favorable vote.

Respectfully Submitted,

Harry Kim
MAYOR

SB-2038-SD-1

Submitted on: 3/11/2020 7:34:25 AM

Testimony for JUD on 3/12/2020 2:31:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Mike Golojuch, Sr.	Individual	Support	No

Comments:

As a past and current Board/Commission member, I strongly support SB2038.

Mike Golojuch, Sr.

LATE

SB-2038-SD-1

Submitted on: 3/12/2020 8:52:53 AM
Testimony for JUD on 3/12/2020 2:31:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Robin Kaye	Individual	Support	No

Comments:

As a member of a State of Hawaii Commission, I fully support this bill WITH the proposed amendments from OIP. Thank you.