

2004 Legislative Session**OIP Bills Affecting Information Practices and Open Meetings**

The 2004 session of the Hawaii State Legislature opened on January 21, 2004. As part of the administration's package, the OIP submitted four bills for consideration by the Legislature.

Each of the bills is summarized below, with links to the full text. To check on the status of bills, including hearing dates and committee reports, go to the Legislature's web site at www.capitol.hawaii.gov and click on "Bill Status & Docs."



in the meeting of another board or a public hearing of the legislature as long as, among other things, the board members report to their board at their board's next meeting: (1) their attendance, and (2) the topics discussed.

Certain boards have complained that their jurisdiction overlaps with that of other boards, and the present law

See *OIP Bills*, p. 2

► Vexatious Requester

HB 2333/SB 2808 would allow an agency to request the OIP to place limits on a record requester whose established pattern of requests the OIP determines amounts to an abuse of process under chapter 92F, HRS.



Currently, there is no mechanism for review of an agency's belief that a requester is abusing the process provided by

chapter 92F, HRS. As a result, an agency frequently assumes that its perception of abuse is correct and may come to regard all record requests as nuisances, often erecting barriers to the public's access to agency records.

The OIP believes that the bill will result in increasing the public's ability to access agency records by providing a mechanism for an agency and the OIP to determine and address abusive requesters.

For the full text of these bills:

www.capitol.hawaii.gov/sessioncurrent/bills/hb2333_.htm

www.capitol.hawaii.gov/sessioncurrent/bills/sb2808_.htm

► Permitted Interactions

HB 2334/SB 2809 seeks to clarify the OIP's interpretation of section 92-2.5(a), HRS, and would allow two members of a board to discuss official board business outside of a meeting.



In addition, the bill allows less than the number of board members constituting a quorum to attend and participate

**Recent OIP Opinion:
Legislative Testimony Polling**


The Hawaii Civil Rights Commission ("HCRC") asked the Office of Information Practices ("OIP") whether it could poll the Commissioners relating to the agency's legislative testimony.

The OIP advised that the Sunshine Law requires that all decisionmaking take place in meetings open to the public, unless the Sunshine Law authorizes an executive meeting. Where the purpose of calls or e-mails to board members is to receive their position, i.e., their vote, on proposed legislation involving the HCRC's powers, the voting is in effect a decision concerning official Commission business.



Therefore, the OIP opined that the HCRC staff cannot poll individual Commissioners outside of a properly noticed meeting for the purpose of determining and/or approving the HCRC's legislative testimony.

That does not mean that staff cannot gather information from Commissioners to assist staff in drafting testimony, so long as staff ensures that there is no facilitation of deliberation through staff's discussion with multiple Commissioners.

The OIP also suggested alternatives to assist the HCRC to consult with Commissioners and still follow the Sunshine Law. [*OIP Op. Ltr. No. 04-04, February 20, 2004*] 

OIP Bills (from p. 1)

does not permit board members to attend the other board's meeting to discuss issues and coordinate the boards' efforts.

For the full text of these bills:

www.capitol.hawaii.gov/sessioncurrent/bills/hb2334_.htm

www.capitol.hawaii.gov/sessioncurrent/bills/sb2809_.htm

► *Transferring Administration of the Sunshine Law*



HB 2335/SB 2810 is intended to ensure that the OIP has the authority to civilly enforce the Sunshine Law. The bill also authorizes the OIP, rather than the Attorney General, to determine whether a board may conduct an emergency meeting under section 92-8, HRS.

For the full text of these bills:

www.capitol.hawaii.gov/sessioncurrent/bills/hb2335_.htm

www.capitol.hawaii.gov/sessioncurrent/bills/sb2810_.htm

► *Site Inspections*

HB 2336/SB 2811 would allow a board, where public participation is impractical, to conduct a site inspection without the public.

Currently, because it is part of a board member's deliberation and decision-making process, the OIP interprets the Sunshine Law as allowing a board to participate in a site inspection relating to a matter that is official board business only if the public is also able to participate in the site inspection.

In certain instances, for example, where the site inspection is on private property, the public may not be able to attend and, consequently, the board is deprived of information that may be important for its decision.

Because the bill requires the OIP director to concur that the public's participation in the on-site inspection is impracticable and requires, in most cases, videotaping of the site inspection, the OIP believes that the bill reasonably balances the boards' ability to make an informed decision with the public's interest in participating in the boards' decision-making process.

For the full text of these bills:

www.capitol.hawaii.gov/sessioncurrent/bills/hb2336_.htm

www.capitol.hawaii.gov/sessioncurrent/bills/sb2811_.htm 

Recent OIP Opinion

► *Office of Disciplinary Counsel and Disciplinary Board*

The Office of Disciplinary Counsel ("ODC") and the Disciplinary Board of the Supreme Court of Hawaii ("Board") are subject to the Uniform Information Practices Act (Modified), chapter 92F, HRS ("UIPA"), based on the totality of the circumstances.


Both the ODC and the Board are created and, to a significant extent, controlled by the Supreme Court of Hawaii.

A majority, if not all, of the ODC's and the Board's activities relating to attorney disciplinary matters are powers inherently belonging to the Supreme Court that have been delegated to them.


In addition, while their budgets do not come from government, the Supreme Court retains the power to approve their budgets.



The ODC and the Board are not subject to the UIPA insofar as they perform, on behalf of the Hawaii Supreme Court, the Court's nonadministrative functions of disciplining attorneys because the UIPA's definition of "agency" excludes the nonadministrative functions of the courts. Haw. Rev. Stat. § 92F-3 (1993).

Purely administrative records of the ODC and the Board are subject to the UIPA. [*OIP Op. Ltr. No. 04-02, February 3, 2004*] 



Editor's Note . . . Summaries of all the OIP opinion letters, from 1989 to the present, as well as the full text of these opinion letters, are available at www.hawaii.gov/oip/opinions. 

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