

*The Office of Information Practices ("OIP") is charged with the administration of Hawaii's open records law, the Uniform Information Practices Act (Modified), chapter 92F, HRS (the "UIPA"), and Hawaii's open meetings law, part I of chapter 92, HRS (the "Sunshine Law").*

## OIP Bills Pending for the 2010 Legislative Session

*The following OIP bills introduced in the 2009 legislative session are still pending for the 2010 session.*

*If you would like to support any of these bills, OIP urges you to voice your support by sending an e-mail or otherwise contacting Rep. Jon Riki Karamatsu, Chair of the House Committee on Judiciary, and Sen. Brian T. Taniguchi, Chair of the Senate Committee on Judiciary and Government Operations.*

### Receipt of Public Testimony or Presentations When Board Lacks Quorum (HB 1146 and SB 964)

OIP introduced these bills to amend the Sunshine Law to allow board members to receive public testimony or hear presentations when the board fails to make quorum. Although not considered last session, these bills are still alive, and OIP believes they are worthy of the Legislature's consideration during the upcoming 2010 session.

Many boards have difficulty from time to time in making quorum to hold meetings due to vacant positions or other factors. When a board fails to make quorum, members of the public who came to testify or individuals scheduled to make a presentation to the board often want the option to give the testimony or make the presentation to the members present instead of returning for the next scheduled meeting.

The proposed bills would add another permitted interaction to allow the board members present to listen to members of the public and to presentations on items on the canceled meeting's filed agenda. Subsequent reporting of the substance of the public comments and presentations would be required at the next scheduled board meeting to ensure that they become part of the record.

A permitted interaction under the Sunshine Law currently allows two board members to listen to and discuss any

piece of board business, including presentations and public comment, outside of an open meeting so long as no commitment to vote is made or sought. OIP generally advises against more than two members remaining to listen to public comment or presentations because of this two member limitation and because the public may not realize that comments outside of an open meeting do not constitute official testimony that will be shared with the

other members or become part of the record. These bills would allow boards to accommodate public participation while ensuring that public comments and presentations made to less than a quorum of the members are considered by a quorum of the board at the next meeting and included in the minutes of the board.



### Electronic Filing of Meeting Notices (HB 1148 & SB 966)

*HB 1148 SD1 is in conference committee.* OIP sought legislation to amend the Sunshine Law to substitute electronic filings of state board meeting notices on the state calendar maintained on the designated central state Internet website (State Calendar) in place of hard copy filings with the Office of the Lieutenant Governor.

The Governor's Executive Memorandum No. 08-06 currently directs state boards to post their regular meeting notices electronically on the State Calendar. However, boards are still required under the Sunshine Law to file their meeting notices in hard copy with the Lieutenant Governor's office. These bills would eliminate the need for boards to file two notices for every meeting and for the Lieutenant Governor's office to receive, maintain, and verify the filing date of the hard copies. Verification of filing date is done automatically on the State Calendar. The elimination of these duplicate filings would thus save staff resources for the board and the Lieutenant Governor's office, as well as paper resources, creating

*See OIP Bills, p. 2*

**OIP Bills** (cont. from p. 1)

greater government efficiency while providing greater public access through the Internet.



Boards would still be required to provide hard copies of filed notices of meetings, protecting the interests of those members of the public who do not have Internet access.

Hard copies would still be required to be posted at the board's office and, when feasible, at the site of the meeting. Further, boards would still be required to mail copies of notices to persons who request notification in such form. These bills do not apply to county boards that must file notices with their county clerks.

**Concurrence to Hold an Emergency Meeting (HB 1147 and SB 965)**

These bills propose to transfer to the OIP Director the responsibility of providing concurrence when a board finds it necessary to hold an emergency meeting under the Sunshine Law.

Under the Sunshine Law, a board is authorized to hold an emergency meeting when it finds it necessary to hold a meeting in less time than the notice provision allows in response to either: (1) an imminent peril to the public health, safety, or welfare, or (2) an unanticipated event. For emergency meetings in response to an unanticipated event, a board currently must obtain the concurrence of the Attorney General that the conditions necessary for an emergency meeting exist.

The OIP Director currently provides concurrence for limited meetings, which are not open to the public, when boards need to meet at a location that is dangerous to health or safety or when boards must conduct an on-site inspection of a location where attendance by the public is not practicable.

OIP believes that consolidating the responsibility for providing concurrence for both emergency and limited meetings to the OIP Director will prevent confusion and is consistent with OIP's overall responsibilities in administering the Sunshine Law. 📄

**Recent OIP Announcements**

Please visit OIP's website for the full text of the following recent OIP announcements:

**OIP Bids Aloha to****Director Paul Tsukiyama**

In early November, OIP Director **Paul Tsukiyama** left OIP to take another state position. Governor Lingle had appointed Paul as OIP's fourth director in November 2007. Congratulations to Paul and mahalo for your service to OIP!

**✓ Notice Regarding Furlough Days**

Under the UIPA and OIP's administrative rules, the time limits for agencies to respond to records requests are set forth as specified numbers of business or working days. For purposes of calculating the agency response time limits, a furlough day shall not be considered a business or working day, unless the agency or division thereof is open for the transaction of public business.

**✓ Effect of Current Budget Restrictions on OIP Operations**

Similar to many state agencies, OIP has had a reduction in staff and staff hours and may be facing further budget restrictions in the coming months. To provide assistance to the greatest number of individuals, boards, and agencies requesting OIP's services, OIP is instituting measures that it believes will best utilize its limited resources to fulfill its broad mission to provide legal guidance and assistance to the public as well as all state and county boards and agencies under both the State's public records law and open meetings law.

**✓ Recent Court Ruling Regarding Disclosure of Executive Meeting Minutes**

The Hawaii Supreme Court recently affirmed the Intermediate Court of Appeals' opinion in Kauai County's lawsuit against OIP. The County sought to overturn OIP's determination that the minutes from a Kauai County Council executive (closed) meeting must be disclosed with limited redaction for attorney-client communications. 📄

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