

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”).

## 2011 Legislative Session

### Got Legislation?

#### Seek OIP Guidance *Before* Submitting Bills Affecting Boards or Records

One of OIP’s roles is to recommend legislation and to provide guidance to agencies and the Legislature concerning legislation affecting records disclosure under the UIPA or access to meetings under the Sunshine Law. This includes offering testimony regarding any proposed bill that would affect the UIPA or Sunshine Law.



OIP wants to remind both the public and government agencies that they may seek legal guidance from OIP prior to submitting any proposed legislation by simply contacting OIP through our Attorney of the Day program. Through this program, OIP offers general, informal advice usually within the same day.

With respect to proposed legislation, a call to OIP prior to submission of legislation is often a more effective and efficient method for both OIP and the submitter to address possible concerns that OIP would otherwise need to raise through testimony.



Accordingly, please call OIP if your board or agency intends to submit legislation that proposes to do any of the following:

- (1) insert, delete or amend any provision in the UIPA (chapter 92F) or the Sunshine Law (part I of chapter 92);



- (2) create a confidentiality provision;
- (3) exempt information or records from the UIPA;
- (4) exempt a board from the Sunshine Law;
- (5) create a hybrid public-private board with various community members and government officials or government board members. 📞

### Invitation to Boards

#### Bill to Allow Members to Hear Testimony When Meeting Must Be Cancelled

To address the desire various boards have expressed to hear testimony or presentations when a meeting must be cancelled for lack of quorum, OIP introduced legislation to add an exception to the Sunshine Law similar to the one created solely for the City & County of Honolulu’s neighborhood boards under Act 153, signed by Governor Lingle on June 9, 2008.

Unfortunately, the OIP bills (H.B. No. 1146/S.B. No. 964) did not pass out of the Legislature in either the 2009 or 2010 legislative sessions.

OIP does not intend to re-introduce these bills in the upcoming legislative session, but continues to believe



See *Invitation to Boards*, p. 2

## Invitation to Boards (cont. from p. 1)

that they would resolve a difficulty faced by many boards in a way that would also promote the public interest.

If you are such a board or its supporting agency, OIP invites you to introduce this legislation as part of your own legislative package. You may contact OIP for the draft bills and any further assistance needed.



### The Proposed Amendment

The OIP bills sought to amend the Sunshine Law by adding a new “permitted interaction” under HRS § 92-2 to allow board members present at a noticed meeting to hear public testimony and presentations on noticed agenda items when the meeting must be cancelled for lack of quorum.

Permitted interactions are specific instances in which the Sunshine Law allows board members to discuss their official board business outside of a noticed meeting.

The members hearing the testimony or presentation would have then been required to report on the substance of the public testimony and presentations at the next scheduled board meeting. To protect the public interest, the board members, in addition to the reporting requirement, would have been barred from deliberating or making decisions concerning any testimony or presentation until a subsequent duly noticed board meeting.

### Why Amend?

Many boards have difficulty from time to time in making quorum to hold meetings because of 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. This is especially true for those members of the public who must travel long distances, or even interisland, to attend a meeting.

OIP’s proposed exception would have resolved an often difficult situation for boards, where testifiers have

come to a noticed meeting prepared to testify but are frustrated that they are unable to do so.

One of the Sunshine Law’s permitted interactions does allow two board members to discuss board business outside of an open meeting (so long as no commitment to vote is made or sought). OIP has previously advised boards that this two-person permitted interaction may be used to allow up to two members – and only two – to remain and listen to public comment or presentations.



However, this option is less than ideal when there are more than two members present, and does not entirely serve the public’s interest because it does not require that any discussions held be subsequently reported to the other members. Thus, the public may not realize that their comments, being made outside of a meeting, do not become part of the official record or constitute official testimony that must be shared with the other members.

The proposed permitted interaction would have allowed the board members present to better accommodate those members of the public and presenters who choose to present their comments before less than a quorum of the board, by ensuring that those comments are considered by the board at a subsequent meeting. 🗳️



### OIP Welcomes E-mail Transmittals



OIP welcomes e-mail transmittals of letters and other documents. If you choose to transmit letters and documents by e-mail (or fax), it is *not* necessary to follow up with paper copies by mail or messenger.

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