

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary
From: Paul T. Tsukiyama, Director
Date: February 19, 2008, 3:30 p.m.
State Capitol, Room 325
Re: Testimony on H.B. No. 1968
Relating to Public Meetings

Thank you for the opportunity to submit testimony on H.B. No. 1968. The Office of Information Practices ("OIP") generally supports the proposed amendments, but offers the following comments and recommendations.

Assignment of Board Members to Committees

This bill seeks to amend subsection (c) of section 92-2.5, HRS, which allows less than a quorum of board members to discuss officer selection outside of a meeting, to allow discussion of assignment of members to the board's committees. OIP supports this amendment. Further, OIP would support an amendment removing the "less than the number of members which would constitute a quorum of the board" requirement.

Several boards, particularly the county councils, have expressed that officer selection and committee assignment cannot be accomplished, as a practical matter, within the confines of this permitted interaction's "less-than-quorum requirement." Because OIP generally believes that these matters are more administrative rather than policy matters, OIP believes that eliminating the "less than quorum" restriction would not conflict with the Sunshine Law's purpose and intent of ensuring public participation in the formation and conduct of public policy.

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Board Members' Participation at Other Boards' Meetings

This bill proposes a new subsection (f) to section 92-2.5, HRS, that would allow more than two board members, but less than a quorum, to offer their individual positions regarding matters that are their board's business before another board or at a legislative hearing. OIP supports this amendment.

Board members frequently complain that the Sunshine Law does not allow them to testify or make presentations to other boards or the Legislature regarding their official board business. For example, City Council members whose districts overlap one neighborhood board district may want to participate in that neighborhood board's meeting on an issue that is City Council business. By permitting attendance at the meetings of other boards, OIP believes that this bill will eliminate a source of frustration for board members, improve coordination between boards on issues that affect multiple boards, and provide for better communication with and responsiveness to the Legislature.

OIP suggests that to keep the public informed and to protect the public's interest, since the public might not expect one board's business to be discussed at another board's meeting, this committee may want to consider amending the bill by adding to the end of the proposed new subsection (f):

provided that:

- (1) The members announce their intention to attend and participate in the meeting or hearing at a prior meeting of their board, where that attendance and participation is anticipated; and
- (2) The members report their attendance and the matters discussed at the meeting or hearing at the next duly noticed meeting of their board.

Board Members' Attendance at Presentations

This bill proposes a new subsection (g) to section 92-2.5, HRS, that would allow two or more board members, but less than a quorum, to attend certain

presentations, including seminars, conventions, and community meetings, at which official business of their board is or may be discussed.

OIP supports this amendment. OIP believes that safeguards included in the bill, such as limiting the number of members who may participate to less than a quorum, and allowing discussion only during and as part of the presentation, balances the needs of boards and the rights of the public. However, OIP suggests that the Committee consider adding the following safeguard to the end of the new proposed subsection (g):

The board members shall, at the next duly noticed meeting of their board, report their attendance and the matters presented and discussed at the presentation that relate to their official board business.

This amendment will provide added protection in that the reporting will need to be sufficiently detailed to influence the quorum of the board.

Quorum Not Required for Informational Presentations

Section 2 of this bill adds a new section (c) to section 92-15, HRS, that requires a quorum “for the purpose of discussion prior and related to voting, and for voting.” It also provides that “[i]nformational presentations shall not require a quorum.” OIP supports this provision, but recommends the following clarification be added:

provided that such informational presentation is noticed on an agenda under section 92-7.

With this clarification, less than a quorum of board members would be allowed to hear an informational presentation where a noticed meeting lacks quorum while the public would have notice of and be afforded the right to attend the informational presentation.

Thank you for the opportunity to testify.

Date of Hearing: Tuesday, February 19, 2008

Committee: House Committee on Judiciary

WRITTEN TESTIMONY ONLY

Board: Education

Person Testifying: Donna R. Ikeda, Chairperson, Board of Education

Title of Bill: H.B. No. 1968, Relating to Public Meetings

Purpose of Bill: Permits board members numbering less than quorum, to: (1) discuss their individual positions relating to official board business at a meeting of another board or legislative public hearing; (2) attend presentations, including seminars, conventions, and community meetings, that involve matters relating to official board business, provided the presentation is not specifically for or directed toward the board members; and (3) participate in discussions, including among themselves, provided the discussions occur during and as part of the presentation and there is no commitment to vote on official board business. Requires a quorum for discussion prior and related to voting and for voting required to validate board actions.

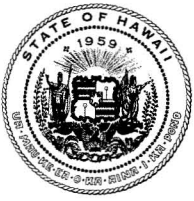
Board's Position: Chairperson Waters, Vice Chairperson Oshiro, and members of the House Committee on Judiciary, thank you for this opportunity to provide written testimony on H.B. No. 1968.

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While the Board of Education (Board) has not taken an official position on H.B. No. 1968 at this time, the Board would like to offer the following comments:

- H.B. No. 1968 broadens the scope of permitted interactions among board members and the scope of allowable actions by board members under the Sunshine Law to enable boards to carry out their responsibilities reasonably and efficiently in serving the public.
- H.B. No. 1968 also amends existing law to include provisions that ensure continued transparency and accountability in the actions and decisions of boards, such as specifying that board members' discussions must occur during and as part of presentations and no commitment to vote on official board business is made or sought.
- The provisions in the H.B. No. 1968 are reasonable and support the work of boards in carrying out the public's business efficiently and effectively without compromising the public process.

Thank you for the opportunity to submit written comments on H.B. No.1968.



HAWAI'I CIVIL RIGHTS COMMISSION

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February 19, 2008

Rm. 325, 3:30 p.m.

To: The Honorable Tommy Waters, Chair, and Members of the House Committee on Judiciary

From: Sara Banks, Acting Chair, and Commissioners of the Hawai'i Civil Rights Commission

Re: H.B. No. 1968

The Hawai'i Civil Rights Commission (HCRC) has enforcement jurisdiction over state laws prohibiting discrimination in employment, housing, public accommodations, and access to state and state-funded services. The HCRC carries out the Hawai'i constitutional mandate that "no person shall be discriminated against in the exercise of their civil rights because of race, religion, sex or ancestry". Art. I, Sec. 5.

H.B. No. 1968 allows two or more board members, but not a quorum, to discuss their individual positions on board issues when discussing or testifying on those positions before another board or a public hearing of the legislature, and to attend other informational meetings, presentations, seminars, conventions and community meetings at which matters related to board business are discussed.

The HCRC supports H.B. No. 1968.

Currently, nothing precludes an individual board member from discussing his or her views and positions on matters relating to board business, but the Sunshine Law does not allow interaction between board members regarding their positions on board business, outside a duly noticed public meeting. The proposed substantive change, a new HRS 92-2.5(f), would allow such a discussion involving two or more board members, but not a quorum, under certain proscribed circumstances. This would encourage and allow public discourse without circumventing the open meeting and public decision-making requirements of the Sunshine Law.

The HCRC supports H.B. No. 1968, while recognizing the important policy value behind the open meeting and public decision-making requirements of the Sunshine Law.

C00124

**Testimony to the House Committee on Judiciary and Labor
Tuesday, February 19, 2008 at 3:30 p.m.
Conference Room 325, State Capitol**

RE: HOUSE BILL NO. 1968 RELATING TO PUBLIC MEETINGS

Chair Waters, Vice Chair Oshiro, and Members of the Committee:

My name is Christine H. H. Camp, Chair of the Chamber of Commerce of Hawaii, Land Use and Transportation Committee.

The Chamber is the largest business organization in Hawaii, representing 1100 businesses. Approximately 80% of our members are small businesses with less than 20 employees. The organization works on behalf of members and the entire business community to improve the state's economic climate and to foster positive action on issues of common concern.

H.B. No. 1968 proposes to amend Chapter 92 to allow board members, numbering less than quorum, to: (1) discuss their individual positions related to official board business at other board meetings and legislative public hearings; (2) attend and participate in discussions at presentations, such as community meetings; and (3) discuss membership to a board's committees in private.

The City Council of Honolulu created a Neighborhood Board Task Force to review the Neighborhood Board system and make recommendations to the Council. The Task Force met from November 2006 thru December 2007 and prepared a final report to the Council. The final report is available at the Neighborhood Commission website:

<http://www.honolulu.gov/nco/counciltaskforcefinalreport.pdf>

It may be prudent for the legislature to review the report and its recommendations prior to considering legislation. The Neighborhood Board System was created through the Honolulu City Charter with the specific purpose:

Section 14-101. Neighborhoods and Neighborhood Boards to increase and assure effective citizen participation in the decisions of government shall be established in accordance with a neighborhood plan.

The focus of the neighborhood board should be on creating a forum that allows for resident discussion on activities that impact their neighborhood. The focus should not be on the actions/recommendations of the neighborhood boards but on empowering the citizens to get involved to influence public policy makers (i.e. call your elected representative).

We would recommend that the legislature review the Task Force Report and solicit input from the Neighborhood Commission prior to considering legislation at this time.

Thank you for this opportunity to express our views.

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<written only>



**SOCIETY OF
PROFESSIONAL
JOURNALISTS
Hawaii Chapter**

P.O. Box 3141
Honolulu, HI 96802
Feb. 19, 2008

Chairman Tommy Waters
House Judiciary Committee
State Capitol
Honolulu, HI 96813

Re: House Bill 1968

Judiciary Committee members:

We oppose this bill.

It broadens already existing exemptions to the state Sunshine Law.

Boards and commissions are already authorized to send members made up of less than a quorum to "outside meetings" as long as they vote on and approve in advance their attendance at the meeting. A neighborhood board could send members to a community association meeting if the board voted on the issue in advance.

The most troublesome part of the bill is the language:

Board members may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the presentation and no commitment to vote on official board business shall be made or sought.

This bill affects all boards, county councils, regulatory commissions. Board members should not be able to discuss issues among themselves, except as provided by law.

Discussion is deliberation, and this bill allows THAT to happen out of sight of people attending the board's own meeting.

Thank you for your time,

Stirling Morita
FOI Committee Chairman
Hawaii Chapter SPJ

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