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To: Senate Committee on Judiciary and Government Operations

From: Paul T. Tsukiyama, Director

Date: March 2, 2009, 10:00 a.m.  
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 1661  
Relating to Public Agency Meetings

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Thank you for the opportunity to submit testimony on S.B. No. 1661.

OIP does not take a position on the policy question of whether to allow board members to attend other meetings where board business will be discussed, but offers technical suggestions and comments.

First, OIP notes that the Sunshine Law applies when board members are discussing board business, but would not be implicated when there is not a discussion between board members or when the discussion does not involve board business. Thus, the law in its current form would not restrict a single board member from attending another meeting, since no discussion with other board members would be involved. Nor would it prevent board members from attending a meeting at which the matters discussed were not within the board's authority or were not reasonably likely to appear on an upcoming agenda, since in that case no "board business" would have been discussed. For this reason, proposed subsections (b) and (c) are unnecessary, since (b) permits a single member's attendance at a legislative hearing and (c) permits board members' attendance at a meeting where

no board business is discussed. Both those situations are already permitted under current law.

Second, as to subsection (a), OIP notes that a very similar permitted interaction limited to neighborhood boards was signed into law last year as Act 153. OIP would recommend using the language of that permitted interaction as a model here, both for consistency and because the language proposed in the current bill is confusingly worded in places. The language from Act 153, amended to refer to boards generally and to be in a single subsection, would be as follows:

( ) Two or more members of a board, but fewer than the number of members necessary to constitute a quorum for the board, may attend informational meetings or presentations on matters relating to official board business, including meetings of another entity, seminars, and community meetings; provided that the presentation is not specifically and exclusively organized for or directed toward members of the board. Board members may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation allowed by this subsection; and provided further that there is no commitment made relating to a vote on the issue. The board members, at the next duly noticed meeting of the board, shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.

Finally, OIP notes that these provisions would be more appropriately inserted into section 92-2.5, HRS, which sets forth permitted interactions for board members. Permitted interactions are situations in which board members may discuss board business outside a board meeting without violating the Sunshine Law. Since this bill would create additional permitted interactions, it would be clearer to include them in the same section as the existing permitted interactions.

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Thank you for the opportunity to testify.