

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Ways and Means

From: Cheryl Kakazu Park, Director

Date: March 29, 2012, 9:00 a.m.
State Capitol, Room 211

Re: Testimony on H.B. No. 2404, H.D. 1, S.D. 1
Relating to Public Information

Thank you for the opportunity to submit testimony on H.B. No. 2404, H.D. 1, S.D. 1. The state Office of Information Practices (OIP) supports this bill, which would require legally required notices to be posted electronically on the state or county website, and would make the current requirement of print publication an additional option; would change the Sunshine Law's notice requirement from a paper filing with the Lieutenant Governor or appropriate County Clerk to an online filing on the state or county website; and would require State boards to post their minutes online and to include in their minutes publicly disclosable written materials distributed to the board at a meeting. The bill also appropriates funding to establish a centralized website for electronic publication of notices and to provide website access from the public libraries. **OIP is requesting an additional appropriation of \$60,000 and one staff attorney position to fulfill the new requirements proposed in this bill. OIP is also requesting an amendment to remove a portion of Section 3 of this bill, to avoid a potential conflict with another bill that is progressing through the Legislature.**

Currently, the Sunshine Law requires public meeting notices to be physically filed with the Office of the Lieutenant Governor, and copies are posted on

the bulletin board in the Capitol Chambers. By Executive Order, Governor Abercrombie and the previous administration also required state boards to electronically post their notices on the state calendar. This bill will require boards' official meeting notices of state boards to be electronically filed on the state's or the appropriate county's electronic calendar. The emergency meeting provisions have also been amended to require electronic posting of the emergency meeting agendas and findings justifying the emergency meeting, so as to prevent any confusion that could result from inconsistent filing methods.

The electronic filing provisions of this bill will make it easier for the public to be notified of state and county board meetings as well as emergency meeting notices and findings because all the notices will be centrally located on the state calendar (or the county's official website) where they are easily accessible and searchable over the Internet. For those members of the public who do not have access to the Internet, the proposed bill will continue to provide individuals with the option of receiving notice through mail, or they can use the public library internet facilities. Additionally, for members of the public with internet access, the proposed bill will add the option of receiving notice through electronic transmission.

In addition to cost savings resulting from the near elimination of paper, copying, and delivery costs, use of electronic posting will promote government efficiency by reducing staff resources and duplication of effort spent to maintain and physically post the notices with the Office of the Lieutenant Governor, in the Chambers, and on the state calendar.

Although the provisions of this bill amending sections 1-28.5 and 92-41, HRS, are outside the Sunshine Law and thus not within OIP's purview, OIP notes that the electronic notice provided for will be consistent with the proposed electronic notice under the Sunshine Law and thus will make it easier for citizens to find notices of all types in one location.

Appropriation request

OIP would like to request an additional appropriation in H.B. 2404, H.D. 1, S.D. 2 for one full-time, exempt/excluded staff attorney position and \$60,000 for personnel, computer, and operating expenses to implement the provisions of this bill requiring all state and county Sunshine Law boards to electronically post notices and all state boards to electronically post minutes of public meetings and materials distributed to the board. While existing law requires boards to provide such materials only upon request, this bill would make it an affirmative obligation of the boards to post such materials within 30 days after a meeting, even if no one was interested in seeing the materials.

Before complying with this new Sunshine Law obligation, the board would first have to implicitly meet its obligation under the Uniform Information Practices Act (UIPA) to review and segregate all materials, which may sometimes be voluminous, by redacting any confidential, personal, or excluded information. Not all boards are properly staffed or knowledgeable to be able to do this, yet the failure to properly redact materials may expose the board to potential legal liability. Although OIP already has many online training videos and guides that explain the Sunshine Law and UIPA, it expects to face additional requests for advice, agency training, assistance to the public, and the investigation and resolution of complaints if these provisions of the bill are passed. Thus, OIP will need additional staffing and resources to implement this bill.

OIP is further concerned about the financial implications of any attempt to amend this bill to create a new Sunshine Law cause of action based on disability access. At the Senate's request, stakeholders have been informally discussing the need to provide electronic access to disabled persons in compliance with the federal Americans with Disabilities Act (ADA). To the extent that there has been additional discussion of possibly creating a Sunshine Law remedy to enforce the ADA requirements (e.g., voiding a Sunshine Law meeting or board

action if the electronically posted agenda was not ADA compliant) or charging OIP with determining whether the Sunshine Law notices are ADA compliant, OIP does not believe that it is the appropriate agency to resolve disability access issues or that a new state cause of action concerning federal disability rights should be created within the Sunshine Law. OIP has no enforcement powers of its own, and it should not be expected to enforce the rights of the disabled as part of a Sunshine Law notice requirement. Instead, the more appropriate agency to enforce disability rights would appear to be the Hawaii Civil Rights Commission, pursuant to HRS 368-3 and as provided in the House Judiciary Committee's amendments to a related bill, S.B. 2233, S.D. 2, H.D. 1. Nevertheless, if the Legislature ultimately decides to charge OIP with the enforcement of new rights, then OIP will need additional staffing and operating funds.

Depending on the outcome of the proposals under consideration by the Legislature in this bill, OIP may need additional staffing and funding to implement them and thus seeks an appropriation in this bill.

Section 3 amendment

Section 3, at page 5, lines 11-12, of this bill proposes to amend the Sunshine Law at HRS Section 92-7(a) by specifying that the Sunshine Law's notice provisions control over any law to the contrary. While OIP supports this amendment, we note that a similar amendment has already been made in OIP's proposal to amend the Sunshine Law, S.B. 2859, S.D. 1, H.D. 1, which is currently before the House Finance Committee. The only difference between these two bills is that the House Judiciary Committee eliminated the addition of "emergency" meetings in this section, which is a change that OIP concurs with. To avoid any potential conflict in laws in the event that both bills are passed by the Legislature, OIP requests that this portion of Section 3 at page 5, lines 13-21 be removed from H.B. 2404, H.D. 1, S.D. 1.

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Thank you for considering OIP's testimony, concerns, and requests for an appropriation and amendment.

Written Statement of
YUKA NAGASHIMA
Executive Director & CEO
High Technology Development Corporation
before the
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, March 29, 2012
9:00 AM
State Capitol, Conference Room 211
In consideration of
HB 2404 HD1 SD1 RELATING TO PUBLIC INFORMATION.

Chair Ige, Vice Chair Kidani, and Members of the Senate Committee on Ways and Means:

The High Technology Development Corporation (HTDC) **supports the intent of HB 2404 HD1 SD1** requiring electronic notices and posing of minutes online.

HTDC agrees that it is appropriate to move digital and make notices and meeting minutes more accessible to the public by posting online. We would like to point out for consideration that to accomplish this, **all agencies must have administrative control** over their websites and/or structure their websites so posting of minutes can be done quickly and **easily with minimal cost**. In addition, we feel that having multiple locations for posting (e.g., State's website, Board's website) makes the process cumbersome and prone to errors. We suggest that instead, the notices should be **posted on one site** and the other websites include a reference (i.e. hyperlink, etc.) to the location of the official notice. This would ensure that the information is both easily accessible and consistent.

Thank you for the opportunity to submit testimony on this bill.