

**SB2249**

# OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: January 28, 2014  
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 2249  
Relating to Public Agency Meetings.

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Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) supports S.B. 2249, which would clarify how proposed adoption, amendment, or repeal of administrative rules may be described to satisfy the Sunshine Law’s public notice requirement, section 92-7, HRS.

Chapter 91, HRS, sets requirements for an agency to give public notice of proposed administrative rules, or proposed amendments to administrative rules, specifically in sections 91-3 and 91-2.6. However, when the agency in question is a board subject to the Sunshine Law and wants to discuss the proposed rules, it is also subject to the Sunshine Law’s general notice standard for public meeting agendas, which assumes that agenda itself must provide all the necessary public notice because those reading it will not necessarily have access to additional information in extrinsic documents. In the case of rules, that means that a Sunshine Law agenda must list each rule being created or amended and, briefly, what the effect will be. Section 91-3, by contrast, assumes that the public will get detailed information about proposed rules by reading the rules themselves, so the required notice focuses on providing information on how the public can get a copy of

the proposed rules, with only a general description of the topic the proposed rules will address.

Because of this difference, boards proposing administrative rules have found themselves obligated to go to extra effort to meet two fundamentally different notice requirements, even though the chapter 91 requirements are considered adequate when an agency that is not a Sunshine Law board goes through rulemaking. Further, when a Sunshine Law board needs to review proposed rules from another agency, it cannot rely on the description already written up by the rulemaking agency to meet the requirements of chapter 91, but instead must become familiar enough with rules it did not create to write a description that notes each section being affected, and how.

The existence of this dual standard has also created an inconsistency in the public's ability to challenge the rulemaking process, as people opposed to an ongoing rulemaking can challenge the adequacy of a Sunshine Law board's meeting notice to OIP or to court as a backdoor way to challenge the underlying rulemaking, but cannot do the same with other agencies' rules.

OIP does not believe that this inconsistency in the notice requirements for Sunshine Law boards' rulemaking and other agencies' rulemaking serves a sound policy purpose. Sections 91-2.6 and 91-3, HRS, ensure that members of the public can readily go to the source, *i.e.*, the rules themselves, for detailed information on what topics the proposed rules address and how any amendments would change existing rules. If the more detailed summary of proposed rules currently required for a Sunshine Law agenda is also needed to ensure adequate public notice, then it should be a chapter 91 requirement for all agencies doing rulemaking, and not just those that happen to be Sunshine Law boards. Likewise, if a process for members of the public to challenge an agency's rulemaking is

needed, then it should be in chapter 91 and applicable to all agencies, not just those that happen to be Sunshine Law boards.

For these reasons, OIP supports this bill, which would conform the notice requirements for a Sunshine Law board's consideration of administrative rules to the existing notice requirements for administrative rules in section 91-2.6 and -3, HRS.