SB 2928

Requires the HCDA to assign at least 3 members, but less than the number of members that would constitute a quorum, to attend every scheduled public input session.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: Senate Committee on Economic Development, Government Operations and Housing

From: Cheryl Kakazu Park, Director

Date: February 10 at 2:45 p.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 2928
Relating to the Hawaii Community Development Authority

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices ("OIP") takes no position on the substance of the bill, which would require the Hawaii Community Development Authority to assign at least three members to attend every scheduled community engagement session. OIP is testifying to seek clarification of how this requirement would interact with the Sunshine Law, part I of chapter 92, HRS.

A board subject to the Sunshine Law, such as HCDA, can discuss board business outside a board meeting only as specifically permitted by the Sunshine Law. The bill requires compliance "with the reporting and other meeting requirements of section 92-2.5," which sets out the eight permitted interactions whereby board members can discuss board business outside a meeting. Because each permitted interaction has different requirements and no interaction is clearly applicable to the members' attendance at a public input session, it is not clear what requirements the HCDA members are expected to follow. The one most closely fitting HCDA members' attendance at a community engagement session would be

HRS section 92-2.5(e), which allows less than a quorum of board members to attend an informational meeting or presentation and discuss board business in the course of doing so, but that permitted interaction does not apply to a meeting or presentation "specifically and exclusively organized for or directed toward members of the board." Since the community engagement session would apparently be scheduled by HCDA for the specific purpose of having HCDA members hear from community members, it arguably would not fall under the permitted interaction, so HCDA members relying on that permitted interaction as a basis for attending the community engagement sessions would risk drawing Sunshine Law complaints.

It is also not clear what the effect would be of the bill's provision that a "violation of this paragraph shall not constitute a violation of chapter 92." If the intent is to say that HCDA members' failure to show up at a community engagement session is not a Sunshine Law violation, OIP would not object, but there would be no need for a statutory provision to specifically state that the members' failure to do something (showing up at an event) that is not required by the Sunshine Law is not a Sunshine Law violation. If, however, the intent is to say that HCDA members' failure to comply with the requirements of the Sunshine Law when discussing HCDA business outside an HCDA meeting is not a Sunshine Law violation, OIP would strongly object.

OIP recommends that to clarify both these issues, the language bill page 1, lines 14-18 should be amended to read:

". . . community engagement session;

(B) Members' attendance at a community engagement session as required in subsection (A) shall be considered a permitted interaction as described in section 92-2.5(e)."

This language would clarify that their attendance did not constitute a Sunshine Law violation in itself, so long as the board members attending complied with the requirements of section 92-2.5(e), including reporting their attendance and what was discussed at the next HCDA meeting. Because the Sunshine Law does not **require** HCDA members to attend community engagement sessions – that requirement is found elsewhere in the HRS – the members' failure to attend such a session in sufficient numbers would not be a **Sunshine** Law violation, so it is unnecessary to include language specifically saying so.

Thank you for the opportunity to testify.