

COUNCIL OF THE COUNTY OF MAUI
POLICY COMMITTEE

December 21, 2007

Committee
Report No.

07-158

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on December 4, 2007, makes reference to County Communication No. 07-8, from the Council Chair, relating to matters pertaining to the Maui County Legislative Package.

By correspondence dated November 16, 2007, your Committee's Chair requested that Council members submit proposals (a State bill and corresponding justification sheet) for inclusion in the 2008 Maui County Legislative Package by November 26, 2007.

By correspondence dated November 27, 2007, your Committee's Chair transmitted the following proposals for consideration in the 2008 Maui County Legislative Package:

1. A proposed State bill entitled "A BILL FOR AN ACT RELATING TO PUBLIC AGENCY MEETINGS" and a justification sheet for the bill. The purpose of the proposed bill is to give council members and other public officials more flexibility to conduct public business in an efficient manner without violating the Sunshine Law by permitting two or more members, but less than a quorum, to discuss board business.
2. A proposed State bill entitled "A BILL FOR AN ACT RELATING TO THE OFFICE OF INFORMATION PRACTICES" and a justification sheet for the bill. The purpose of the proposed bill is to require the Office of Information Practices to submit a written opinion within 60 days from the date of a request for such an opinion.

At its meeting, your Committee met with the Corporation Counsel.

There was no public testimony.

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Your Committee noted that although it has been difficult in past years to gain the Legislature's support for bills to amend Chapter 92, Hawaii Revised Statutes, it is important to continue to make the State aware of how these issues are affecting county government.

Your Committee voted to recommend approval of the proposed State bills, along with their corresponding justification sheets, for inclusion in the 2008 Maui County Legislative Package.

Your Policy Committee RECOMMENDS the following:

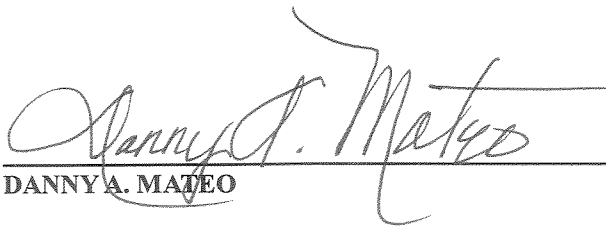
1. That the following proposals with their corresponding justification sheets, attached hereto, be APPROVED for inclusion in the 2008 Maui Legislative Package:
 - a. A proposed State bill entitled "A BILL FOR AN ACT RELATING TO PUBLIC AGENCY MEETINGS"; and
 - b. A proposed State bill entitled "A BILL FOR AN ACT RELATING TO THE OFFICE OF INFORMATION PRACTICES"; and
2. That a copy of this committee report be TRANSMITTED to the Office of the Mayor.

Adoption of this report is respectfully requested.

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Committee
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DANNY A. MATEO Chair

BILL KAUAKEA MEDEIROS Member

G. RIKI HOKAMA Vice-Chair

MICHAEL J. MOLINA Member

MICHELLE ANDERSON Member

JOSEPH PONTANILLA Member

GLADYS C. BAISA Member

MICHAEL P. VICTORINO Member

JO ANNE JOHNSON Member

____.B. NO.____

A BILL FOR AN ACT

RELATING TO PUBLIC AGENCY MEETINGS.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 92-2.5, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "§92-2.5 Permitted interactions of members. (a) Two or
4 more members of a board may discuss between themselves matters
5 relating to official board business to enable them to perform
6 their duties faithfully, as long as no commitment to vote is
7 made or sought and the two or more members do not constitute a
8 quorum of their board."

9 SECTION 2. New statutory material is underscored.

10 SECTION 3. This Act shall take effect upon its approval.

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12

INTRODUCED BY: _____

JUSTIFICATION SHEET

- PROPOSER:** County of Maui
- TITLE:** A BILL FOR AN ACT RELATING TO PUBLIC AGENCY MEETINGS
- PURPOSE:** To give council members and other public officials more flexibility to conduct public business in an efficient manner without violating the Sunshine Law.
- MEANS:** Amends Subsection (a) of Section 92-2.5, Hawaii Revised Statutes, to allow two or more members of a board to discuss board business as long as the two or more members do not constitute a quorum of the board.
- JUSTIFICATION:** Currently, Section 92-2.5, Hawaii Revised Statutes, allows only two members of a board, if the two members do not constitute a quorum, to discuss between themselves official board business. The only change the proposed amendment would make is to allow more than two members, still less than a quorum, to discuss official board business. The change will give council members more flexibility when trying to efficiently carry out council business through such activities as investigation, coordination, information gathering, and dissemination of council-related information. The proposed amendment does nothing to change the intent and spirit of the Sunshine Law.

____.B. NO. _____

A BILL FOR AN ACT

RELATING TO THE OFFICE OF INFORMATION PRACTICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 92-1.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "92-1.5. Administration of this part. The director of the
4 office of information practices shall administer this part. The
5 director shall establish procedures for filing and responding to
6 complaints filed by any person concerning the failure of any
7 board to comply with this part. The director of the office of
8 information practices shall submit an annual report of these
9 complaints along with final resolution of complaints, and other
10 statistical data to the legislature, no later than twenty days
11 prior to the convening of each regular session. When a board or
12 board member makes a written request for a written advisory
13 opinion regarding the interpretation or application of this
14 part's provisions, the director shall provide a written response
15 within sixty days from the date of the request."

16 SECTION 2. Section 92F-42, Hawaii Revised Statutes, is
17 amended to read as follows:

____.B. NO. _____

1 **"92F-42. Powers and duties of the office of information**
2 **practices.** The director of the office of information practices:

3 (1) Shall, upon request, review and rule on an agency
4 denial of access to information or records, or an
5 agency's granting of access; provided that any review
6 by the office of information practices shall not be a
7 contested case under chapter 91 and shall be optional
8 and without prejudice to rights of judicial
9 enforcement available under this chapter;

10 (2) Upon request by an agency, shall provide and make
11 public advisory guidelines, opinions, or other
12 information concerning that agency's functions and
13 responsibilities; provided, that the director shall
14 provide a written response within sixty days from the
15 date of any written request for an advisory opinion;

16 (3) Upon request by any person, may provide advisory
17 opinions or other information regarding that person's
18 rights and the functions and responsibilities of
19 agencies under this chapter;

20 (4) May conduct inquiries regarding compliance by an
21 agency and investigate possible violations by any
22 agency;

23 (5) May examine the records of any agency for the purpose
24 of paragraph (4) and seek to enforce that power in the
25 courts of this State;

26 (6) May recommend disciplinary action to appropriate
27 officers of an agency;

28 (7) Shall report annually to the governor and the state
29 legislature on the activities and findings of the
30 office of information practices, including
31 recommendations for legislative changes;

32 (8) Shall receive complaints from and actively solicit the
33 comments of the public regarding the implementation of
34 this chapter;

35 (9) Shall review the official acts, records, policies, and
36 procedures of each agency;

____.B. NO. _____

- 1 (10) Shall assist agencies in complying with the provisions
2 of this chapter;

- 3 (11) Shall inform the public of the following rights of an
4 individual and the procedures for exercising them:
 - 5 (A) The right of access to records pertaining to the
6 individual;
 - 7 (B) The right to obtain a copy of records pertaining
8 to the individual;
 - 9 (C) The right to know the purposes for which records
10 pertaining to the individual are kept;
 - 11 (D) The right to be informed of the uses and
12 disclosures of records pertaining to the
13 individual;
 - 14 (E) The right to correct or amend records pertaining
15 to the individual; and
 - 16 (F) The individual's right to place a statement in a
17 record pertaining to that individual;

- 18 (12) Shall adopt rules that set forth an administrative
19 appeals structure which provides for:
 - 20 (A) Agency procedures for processing records
21 requests;
 - 22 (B) A direct appeal from the division maintaining the
23 record; and
 - 24 (C) Time limits for action by agencies;

- 25 (13) Shall adopt rules that set forth the fees and other
26 charges that may be imposed for searching, reviewing,
27 or segregating disclosable records, as well as to
28 provide for a waiver of such fees when the public
29 interest would be served;

- 30 (14) Shall adopt rules which set forth uniform standards
31 for the records collection practices of agencies;

- 32 (15) Shall adopt rules that set forth uniform standards for
33 disclosure of records for research purposes;

____.B. NO. _____

- 1 (16) Shall have standing to appear in cases where the
- 2 provisions of this chapter are called into question;
- 3 (17) Shall adopt, amend, or repeal rules pursuant to
- 4 chapter 91 necessary for the purposes of this chapter;
- 5 and
- 6 (18) Shall take action to oversee compliance with part I of
- 7 chapter 92 by all state and county boards including:
- 8 (A) Receiving and resolving complaints;
- 9 (B) Advising all government boards and the public
- 10 about compliance with chapter 92; and
- 11 (C) Reporting each year to the legislature on all
- 12 complaints received pursuant to section 92-1.5."

13 SECTION 2. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

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16

INTRODUCED BY: _____

JUSTIFICATION SHEET

- PROPOSER:** County of Maui
- TITLE:** A BILL FOR AN ACT RELATING TO THE OFFICE OF INFORMATION PRACTICES
- PURPOSE:** To require the Office of Information Practices (OIP) to submit a written opinion to a requesting agency within sixty days from the date of the request.
- MEANS:** The proposal amends the Sunshine Law and the Uniform Information Practices Act - Part I of Chapter 92 and Chapter 92F, Hawaii Revised Statutes (HRS), respectively, so that the OIP shall submit a written response within sixty days from the date of a request for an advisory opinion by an entity or person subject to those laws.
- JUSTIFICATION:** HRS Section 92F-41 establishes the OIP. HRS Section 92F-42 requires the OIP to assist agencies in complying with the Uniform Information Practices Act (UIPA). HRS Chapter 92-1.5 gives the OIP director the authority to administer the Sunshine Law. Although the OIP's practice is to provide both verbal and written opinions at the request of the agency, current law does not provide a deadline for the OIP to submit written advisory opinions. Because there is no deadline, the OIP can take months or longer to provide a written advisory opinion. The delay of a written advisory opinion often ties the hands of government bodies and officials subject to the Sunshine Law and the UIPA, stalling the efficient functioning of government. When a government body is unsure of how to comply with either the Sunshine Law or the UIPA, the agency needs the OIP's guidance as quickly as possible so that it can efficiently perform its functions and duties for the benefit of the people the body serves.