

COUNCIL OF THE COUNTY OF MAUI
COMMITTEE OF THE WHOLE

November 18, 2005

**Committee
Report No.**

05-153

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

Chair and Members:

Your Committee of the Whole, having met on November 1, 2005, makes reference to County Communication No. 05-21, from the Council Chair, relating to matters involving the Hawaii State Association of Counties (HSAC).

By correspondence dated October 24, 2005, Councilmember Dain P. Kane transmitted correspondence dated October 18, 2005, from the HSAC President, requesting consideration of the following proposals for possible inclusion in the 2006 HSAC Legislative Package:

1. A proposal to amend the Sunshine Law (Hawaii Revised Statutes Section 92-10), to include the county councils in the exemption currently provided for the State Legislature; and
2. A proposal to repeal the sunset dates for three statutes, relating to public beach signage, improved public lands signage, and county lifeguard services, respectively, that provide the state and county governments with liability protection for public use of certain state or county recreational areas.

Your Committee notes that at its meeting of October 14, 2005, the HSAC Executive Committee voted to refer both proposals to its member counties for consideration. Your Committee further notes that a consensus of the four member counties is required for a proposal to be included in the 2006 HSAC Legislative Package.

At its meeting, your Committee met with the Senior Executive Assistant to the Mayor, an Executive Assistant to the Mayor, and the First Deputy Corporation Counsel.

Your Committee received public testimony from three people who objected to the proposed amendment to the applicability of the Sunshine Law.

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Your Committee received a copy of an article from the October 26, 2005 issue of *The Honolulu Advertiser* entitled "Council seeks looser closed-meeting rules".

Your Committee also received a copy of Resolution No. 05-342, Committee Draft 1, from the City Council, City and County of Honolulu, entitled "APPROVING THE INCLUSION IN THE 2006 HSAC LEGISLATIVE PACKAGE OF A PROPOSAL TO MAKE THE SUNSHINE LAW INAPPLICABLE TO EACH COUNTY COUNCIL AND REQUIRE EACH COUNTY COUNCIL TO ESTABLISH OPEN MEETING PROVISIONS BY ITS OWN RULES AND PROCEDURES". The purpose of the draft resolution is to approve a proposal for inclusion in the 2006 HSAC Legislative Package to make the Sunshine Law inapplicable to each county council and require each county council to establish open meeting provisions by their own rules and procedures.

Your Committee noted that despite newspaper articles to the contrary, the Maui County Council has not taken any action on the proposed amendment to the Sunshine Law. The Honolulu City Council is in the process of considering a draft resolution to approve the inclusion of the proposed amendment to the Sunshine Law in the 2006 HSAC Legislative Package.

Your Committee noted that the purpose of the proposed amendment to the Sunshine Law is not to circumvent open meetings. Your Committee noted that the Maui County Council has appropriated and expended funds to televise all committee and Council meetings, and has done the same to expedite the completion of minutes from these meetings. Your Committee discussed the Maui County Council's efforts to exhaust all questions that can be posed and answered in open meetings, prior to voting to convene executive meetings. Your Committee discussed the Office of Information Practice's (OIP) interpretation of the Sunshine Law, which creates an inflexible and unworkable environment for the councils.

Your Committee discussed the need to further recognize the council as a legislative body since it is neither a board nor a commission.

Your Committee discussed the need for the Sunshine Law to be interpreted in a "reasonable and practical manner". The introducer of the proposal noted that he had not intended to limit or cut off public notification, but that the recent interpretations by the OIP have been troublesome and inconsistent.

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Your Committee expressed strong support for the open government process and public participation, taking note of the purpose and intent of the Sunshine Law. Your Committee debated whether the proposed exemption of the county councils from the Sunshine Law strikes an appropriate balance, or goes too far in its attempt to increase the effectiveness of legislators at the cost of vigilant and open public participation. A number of Committee members spoke out against amending the Sunshine Law, noting the purpose of the council as a deliberative body, rather than one that focuses on efficiency.

An Executive Assistant to the Mayor indicated that the Mayor does not support the proposed amendment to the Sunshine Law.

Your Committee discussed the importance of the Sunshine Law amendment as an opportunity for discussion and consideration, not only by the Maui County Council, but by the other counties as well.

Your Committee expressed concern that the topic had been editorialized in a manner casting a negative light on the Maui County Council prior to the Council taking a position on, or considering the Sunshine Law amendment. Your Committee also expressed concern that certain media outlets had wrongly reported that the Council had proposed the amendment to the Sunshine Law.

With regard to the beach liability proposal, your Committee discussed the legislative intent of the sunset provision for signage laws limiting public land liability. Your Committee speculated that the sunset provisions may have been designed as trial provisions to determine whether the signs would withstand legal challenges, or to appease plaintiffs' attorneys.

Your Committee discussed the need to continue to limit County liability through the elimination of the sunset provisions for signage laws. Your Committee noted that counties should receive equal protection from liability similar to the protection afforded to private property owners and the State.

Your Committee deferred action on the Sunshine Law amendment proposal, and recommended approval of the beach liability protection proposal.

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Your Committee of the Whole RECOMMENDS the following:

1. That the proposal to repeal the sunset dates for statutes relating to public beach signage, improved public lands signage, and county lifeguard services, be APPROVED for inclusion in the 2006 HSAC Legislative Package; and

2. That a copy of this committee report be TRANSMITTED to the Hawaii State Association of Counties Executive Committee.

Adoption of this report is respectfully requested.

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MICHAEL J. MOLINA **Chair**

JO ANNE JOHNSON **Member**

DAIN P. KANE **Vice-Chair**

DANNY A. MATEO **Member**

MICHELLE ANDERSON **Member**

JOSEPH PONTANILLA **Member**

ROBERT CARROLL **Member**

CHARMAINE TAVARES **Member**

G. RIKI HOKAMA **Member**