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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 13, 2014, at 2:00 p.m.
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 2139
Relating to Public Agency Meetings.

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) opposes this bill in its current form, which would allow any number of county council members to attend a community meeting, convention, conference, or other type of meeting or presentation, so long as the meeting or presentation was open to the public.

The Sunshine Law, part I of chapter 92, HRS, was amended in 2012 to allow less than a quorum of members of any board to attend such meetings, but with protections for the public that this bill lacks. First of all, the permitted interaction added in 2012 was limited to less than a quorum of members, to preclude the possibility that the board’s discussion in the course of an outside event would crystallize the board’s decision on an issue to the point where its eventual vote at a noticed board meeting would be a mere formality. Second, the existing permitted interaction allows discussion of board business only “during and as part of” the event, whereas this bill would allow such discussion “without limitation” – in other words, allowing not just the back-and-forth questioning on the topic during a presentation or conference session as permitted by current law, but also discussion

of any council business they chose by all the board members while eating lunch or otherwise gathering together during a convention. Third, the existing permitted interaction required board members attending such an event to report their attendance and what was discussed at the next board meeting. As OIP observed in 2012, because only a minority of members could have attended an outside event, their report to the full board would need to be sufficiently detailed if they wished to influence any decision on the issues discussed at the event. Under this proposal, by contrast, the council members would have no obligation at all to publicly disclose that they had even attended an event together. And finally, the existing permitted interaction does not allow board members attending an event together to make or seek a commitment to vote on the matter being discussed, whereas this proposal includes no such limitation.

While this proposal does require that the event be open to the public, the inclusion of conventions, seminars, and conferences suggests that an event requiring a registration fee would still be counted as “open to the public” for the purpose of the proposed permitted interaction. In other words, under this proposal, the full membership of a county council could all attend a multi-day conference open to anyone willing to pay a \$600 registration fee, discuss any council business they chose during meals or social sessions, make an agreement as to how they would all vote, and then vote as agreed upon at their next public meeting without discussing the matter further or even mentioning that they had attended the conference.

The permitted interaction proposed by this bill in its current form would essentially take a permitted interaction signed into law less than two years ago and make a new county council version stripping out all the public protections found in the original.

OIP’s recommendation to the Senate Committee on Public Safety, Intergovernmental Relations, and Military (“PSM”), which heard this bill last week,

was to hold the bill. However, PSM was sympathetic to the Maui Council members' situation as elected at-large members with a need to hear and respond to community concerns from throughout Maui County, and asked OIP to draft language that would allow the council members to attend community meetings without restricting their numbers to less than a quorum, but also without having to take public testimony and limit discussion to items on a filed agenda, as would be required if a community group's event were noticed as a regular Council meeting.

In response to PSM's request, OIP provided the attached language, which creates a "guest meeting" as a type of limited meeting, and PSM voted on February 11 to pass S.B. 2962, S.D. 1, based on that language. While OIP drafted the language at PSM's request and **OIP itself is not advocating for the Sunshine Law to be amended** in the proposed manner, OIP believes that it is ultimately a policy decision for the Legislature to decide whether county council members should be permitted to attend community meetings in unlimited numbers without noticing those meetings as regular council meetings. The attached language would provide greater protections for the public than the bill as originally filed, including requirements to notice and keep minutes of "guest meetings" and videotape them unless the requirement is waived, a prohibition on making a decision at a "guest meeting," a prohibition on holding such a meeting outside Hawaii, a restriction on how often a council can be the guest of the same group, and a general prohibition against using such meetings to circumvent the spirit of the Sunshine Law. It would also sunset after four years, allowing an opportunity to assess how the "guest meeting" was used in practice. Thus, if this Committee is inclined to move this bill, OIP would recommend that it use the attached language as a starting point, rather than the original bill language.

Thank you for the opportunity to testify.