

A Bill for an Act Relating to Public Agency Meetings and Records.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Chapter 92, Part I, Hawaii Revised Statutes, is repealed and a new part I is enacted to read as follows:

"PART I. MEETINGS

Sec. 92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and action of governmental agencies—shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

Sec. 92-2 Definitions. As used in this part:

- (1) "Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions, either legislative or executive, permanent or temporary.
- (2) "Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.
- (3) "Meeting" means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

Sec. 92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5, provided further that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited.

Sec. 92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present. A meeting closed to the public shall be limited to matters exempted by section 92-5. The vote of each member on the question of holding a meeting closed to the public and the reason for holding such a meeting shall be recorded and entered into the minutes of the meeting.

Sec. 92-5 Exceptions. (a) A board may hold a meeting closed to the pub-

lic pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against him, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (2) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- (3) To consult with the board's attorney;
- (4) To investigate proceedings regarding criminal misconduct; and
- (5) To consider sensitive matters related to public safety or security.

(b) This part shall not apply to any chance meeting at which matters relating to official business are not discussed. No chance meeting or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

Sec. 92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability. (a) This part shall not apply:

- (1) To the judicial branch.
- (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes.

In the application of this section, boards exercising adjudicatory functions include, but are not limited to, the following:

- (i) Hawaii Employment Relations Board, chapter 377;
- (ii) Hawaii Public Employment Relations Board, chapter 89;
- (iii) Labor and Industrial Relations Appeals Board, chapter 371;
- (iv) Board of Pardons and Paroles, chapter 353;
- (v) Civil Service Commission, chapter 26;
- (vi) Board of Trustees, Employees' Retirement System of the State of Hawaii, chapter 88;
- (vii) Criminal Injuries Compensation Commission, chapter 351; and
- (viii) State Ethics Commission, chapter 84.

(b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the Land Use Commission.

Sec. 92-7 Notice. (a) The board shall give written public notice of any regular, special or rescheduled meeting. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time and place of the meeting.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least seventy-two hours before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. No board shall change the agenda, once filed, by adding items therefrom without a two-thirds re-

corded vote of all members to which the board is entitled.

(c) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under subsection (b).

Sec. 92-8 Emergency meetings. If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided: (a) the board states in writing the reasons for its findings; (b) two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists; (c) an emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office, and (d) persons requesting notification are contacted by mail or telephone as soon as practicable.

Sec. 92-9 Minutes. (a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes.

(b) The minutes shall be public records and shall be available within thirty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.

(c) All or any part of a meeting of a board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting.

Sec. 92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the State Legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the Senate and the House of Representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the Senate and the House of Representatives.

Sec. 92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 shall be voidable upon proof of wilful violation. A suit to void

any final action shall be commenced within ninety days of the action.

Sec. 92-12 Enforcement. (a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

Sec. 92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law."

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding a new part to read as follows:

"PART IV. PUBLIC RECORDS

Sec. 92-50 Definition. As used in this part, "public record" means any written or printed report, book or paper, map or plan of the State or of a county and their respective subdivisions and boards, which is the property thereof, and in or on which an entry has been made or is required to be made by law, or which any public officer or employee has received or is required to receive for filing, but shall not include records which invade the right of privacy of an individual.

Sec. 92-51 Public records; available for inspection; cost of copies. All public records shall be available for inspection by any person during established office hours unless public inspection of such records is in violation of any other state or federal law, provided that except where such records are open under any rule of court, the attorney general and the responsible attorneys of the various counties may determine which records in their offices may be withheld from public inspection when such records pertain to the preparation of the prosecution or defense of any action or proceeding, prior to its commencement, to which the State or county is or may be a party, or when such records do not relate to a matter in violation of law and are deemed necessary for the protection of a character or reputation of any person.

Certified copies of extracts from public records shall be given by the officer having the same in custody to any person demanding the same and paying or tendering twenty cents per folio of one hundred words for such copies or extracts.

Sec. 92-52 Denial of inspection; application to circuit courts. Any person aggrieved by the denial by the officer having the custody of any public record of the right to inspect the record or to obtain copies of extracts thereof may apply to the circuit court of the circuit wherein the public record is found for an order directing the officer to permit the inspection of or to furnish copies of extracts of the public records. The court shall grant the order after hearing upon a finding that the denial was not for just and proper cause."

SECTION 3. If any provision of this Act, or the application of this Act to any particular meeting or type of meeting is held invalid or unconstitutional, such decision shall not affect the validity of the remaining provisions or the other applications of this Act.

SECTION 4. All acts passed during the regular session of 1975, whether enacted before or after the passage of this Act, shall be amended to conform to this Act, unless such act or acts specifically provides that this Act is being amended. This section does not apply to any amendments of the definition of the term "public records."

SECTION 5. This Act shall take effect thirty days after its approval.
(Approved June 2, 1975.)

ACT 167

H.B. NO. 372

A Bill for an Act Relating to Expenditure of Public Money and Public Contracts.

Be It Enacted by the Legislature of the State of Hawaii:

PART I.

SECTION 1. Section 103-28, Hawaii Revised Statutes, is amended to read:

"Sec. 103-28 Deposits of legal tender, etc., to accompany bid. All bids shall be accompanied by a deposit of legal tender or by a certificate of deposit, cashier's check or certified check on a bank that is insured by the Federal Deposit Insurance Corporation, for or in a sum equal to five per cent of the amount bid, payable at sight to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the legal tender, certificate of deposit, cashier's check or certified check shall be for \$2,500 plus two per cent of the amount in excess of \$50,000. A certificate of deposit, cashier's check or certified check may be utilized only to a maximum of \$40,000.

A bid deposit for a bid requiring a deposit in excess of \$40,000 shall only be in the form of legal tender or a surety bond conforming to the requirements of section 103-31."

SECTION 2. Section 102-6, Hawaii Revised Statutes, is amended to read:

"Sec. 102-6 Deposits of legal tender, etc., to accompany bid. All bids shall be accompanied by a deposit of legal tender, or a certificate of deposit, cashier's check or certified check on a bank that is insured by the Federal Deposit Insurance Corporation, for or in a sum equal to five per cent of the amount bid, payable at sight to the officer advertising for tenders; provided that when the amount bid exceeds \$50,000, the legal tender, certificate of deposit, cashier's check or certified check shall be \$2,500 plus two per cent of the amount in excess of \$50,000. A certificate of deposit, cashier's check, or certified check may be utilized only to a maximum of \$40,000.

A bid deposit for a bid requiring a deposit in excess of \$40,000 shall only be in the form of legal tender or a surety bond conforming to the requirements of section 103-31."