

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1995
STATE OF HAWAII

H.B. NO. 1866
H.D. 1
S.D. 1

A BILL FOR AN ACT

RELATING TO PUBLIC AGENCY MEETINGS.

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

1 SECTION 1. The purpose of this Act is to improve the
2 ability of boards to conduct the public's business without
3 compromising the basic principle of the Sunshine Law that
4 discussions, deliberations, decisions, and actions of
5 governmental agencies should be conducted openly as established
6 in part I, chapter 92, Hawaii Revised Statutes.

7 The legislature finds that members of boards are inclined to
8 ask questions of one another, especially when one member may
9 possess expertise or know the history of a matter or the
10 processes of the board better than another member. The
11 legislature is aware that members of boards have been advised
12 that the Sunshine Law precludes a member of a board from seeking
13 any information or orientation on the practices and history of
14 their boards from other board members unless it takes place in in
15 a duly noticed public meeting. The legislature recognizes that
16 there are instances when it is appropriate for interactions to
17 occur between members of a board or between members of a board

1 and certain other parties outside the realm of a public meeting.
2 The legislature also recognizes that there may be occasions when
3 an unanticipated event may require a board to take immediate
4 action. Accordingly, the purpose of this Act is to specify those
5 instances and occasions in which members of a board may discuss
6 certain board matters or conduct an emergency public meeting in a
7 manner that does not undermine the essence of open government.

8 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
9 by adding to part I a new section to be appropriately designated
10 and to read as follows:

11 "92- Permitted interactions of members. (a) Two members
12 of a board may communicate or interact privately between
13 themselves to gather information from each other about official
14 board matters to enable them to perform their duties faithfully,
15 as long as no commitment to vote is made or sought.

16 (b) Two or more members of a board but less than the number
17 of members which would constitute a quorum for the board may be
18 assigned to:

19 (1) Investigate a matter relating to the official business
20 of their board; provided that:

21 (A) The scope of the investigation and the scope of
22 each member's authority are defined at a meeting

1 of the board;

2 (B) All resulting findings and recommendations are
3 presented to the board at a meeting of the board;
4 and

5 (C) Deliberation and decisionmaking on the matter
6 investigated, if any, occurs only at a duly
7 noticed meeting of the board held subsequent to
8 the meeting at which the findings and
9 recommendations of the investigation were
10 presented to the board; or

11 (2) Present, discuss or negotiate any position which the
12 board has adopted at a meeting of the board; provided
13 that the assignment is made and the scope of each
14 member's authority is defined at a meeting of the board
15 prior to the presentation, discussion or negotiation.

16 (c) Discussions between two members of a board concerning
17 the selection of the board's officers may be conducted in private
18 without limitation or subsequent reporting.

19 (d) Discussions between the governor and two or more
20 members of a board may be conducted in private without limitation
21 or subsequent reporting; provided that the discussion does not
22 relate to a matter over which a board is exercising its

1 adjudicatory function.

2 (e) Discussions between two or more members of a board and
3 the head of a department to which the board is administratively
4 assigned may be conducted in private without limitation; provided
5 that the discussion is limited to matters specified in section
6 26-35.

7 (f) Communications, interactions, discussions,
8 investigations, and presentations described in this section are
9 not meetings for purposes of this part."

10 SECTION 3. Section 92-5, Hawaii Revised Statutes, is
11 amended by amending subsection (b) to read as follows:

12 "(b) In no instance shall the board make a decision or
13 deliberate toward a decisions in an executive meeting on matters
14 not directly related to the purposes specified in subsection (a).
15 [This part shall not apply to any chance meeting at which matters
16 relating to official business are not discussed.] No chance
17 meeting, permitted interaction or electronic communication shall
18 be used to circumvent the spirit or requirements of this part to
19 make a decision or to deliberate toward a decision upon a matter
20 over which the board has supervision, control, jurisdiction, or
21 advisory power."

22 SECTION 4. Section 92-8, Hawaii Revised Statutes, is

1 amended to read as follows:

2 "**§92-8 Emergency meetings.** (a) If a board finds that an
3 imminent peril to the public health, safety, or welfare requires
4 a meeting in less time than is provided for in section 92-7, the
5 board may hold an emergency meeting provided[:] that:

6 (1) The board states in writing the reasons for its
7 findings;

8 (2) Two-thirds of all members to which the board is
9 entitled agree that the findings are correct and an
10 emergency exists;

11 (3) An emergency agenda and the findings are filed with the
12 office of the lieutenant governor or the appropriate
13 county clerk's office, and in the board's office; and

14 (4) Persons requesting notification are contacted by mail
15 or telephone as soon as practicable.

16 (b) If an unanticipated event requires or appears to require a
17 board to take action on a matter over which it has supervision,
18 control, jurisdiction, or advisory power, within less time than
19 is provided for in section 92-7 to notice and convene a meeting
20 of the board, the board may hold an emergency meeting to
21 deliberate and decide whether and how to act in response to the
22 unanticipated event, provided that:

- 1 (1) The board states in writing the reasons for its finding
2 that an unanticipated event has occurred and that an
3 emergency meeting is necessary and the attorney general
4 concurs that the conditions necessary for an emergency
5 meeting under this subsection exist;
- 6 (2) Two-thirds of all members to which the board is
7 entitled agree that the conditions necessary for an
8 emergency meeting under this subsection exist;
- 9 (3) The finding that an unanticipated event has occurred
10 and that an emergency meeting is necessary and the
11 agenda for the emergency meeting under this subsection
12 are filed with the office of the lieutenant governor or
13 the appropriate county clerk's office, and in the
14 board's office;
- 15 (4) Persons requesting notification are contacted by mail
16 or telephone as soon as practicable; and
- 17 (5) The board limits its action to only that action which
18 must be taken on or before the date that a meeting
19 would have been held, had the board noticed the meeting
20 pursuant to section 92-7.
- 21 (c) For purposes of this part, an "unanticipated event"
22 means an event or occurrence which is reasonably not expected or

1 reasonably not foreseeable. It may include but is not limited
2 to:

- 3 (1) An event which members of the board did not have
4 sufficient advance knowledge of or reasonably could not
5 have known about from information published by the
6 media or information generally available in the
7 community, including a filing in bankruptcy or for
8 immediate intervention by a court, or downturns in
9 financial markets;
- 10 (2) A deadline established by a legislative body, a court,
11 or a federal, state, or county agency beyond the
12 control of a board;
- 13 (3) A consequence of an event for which reasonably informed
14 and knowledgeable board members could not have taken
15 all necessary action, including the regular lapsing of
16 licenses as a consequence of an inability to conduct
17 official business because of a natural disaster, an
18 environmental emergency or losses in an investment
19 portfolio as a consequence of market downturns."

20 SECTION 5. The attorney general shall submit a report to
21 the legislature twenty days prior to the convening of the 1997
22 and 1998 Regular Session regarding the instances, purposes and

1 outcomes of emergency meetings held pursuant to section 4 of this
2 Act.

3 SECTION 6. Statutory material to be repealed is bracketed.
4 New statutory material is underscored.

5 SECTION 7. This Act shall take effect upon its approval;
6 provided that section 4 of this Act shall be repealed June 30,
7 1999 and section 92-8, Hawaii Revised Statutes, is reenacted in
8 the form in which it read on the day before the approval of this
9 Act.