HOUSE OF REPRESENTATIVES **EIGHTEENTH LEGISLATURE, 1995** STATE OF HAWAII



## 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

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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 <u>"92-</u> 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	<u>(1)</u>	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		<u>(B)</u>	All resulting findings and recommendations are		
3			presented to the board at a meeting of the board;		
4			and		
5		<u>(C)</u>	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)	Pres	ent, discuss or negotiate any position which the		
12		boar	d has adopted at a meeting of the board; provided		
13		that	the assignment is made and the scope of each		
14		memb	er's authority is defined at a meeting of the board		
15		prio	r to the presentation, discussion or negotiation.		
16	<u>(c)</u>	Disc	ussions 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	<u>(d)</u>	Disc	ussions 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.

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

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, <u>permitted interaction</u> 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."

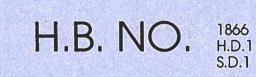
22 SECTION 4. Section 92-8, Hawaii Revised Statutes, is

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#### 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: (2) Two-thirds of all members to which the board is 8 9 entitled agree that the findings are correct and an 10 emergency exists; 11 An emergency agenda and the findings are filed with the (3) 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:

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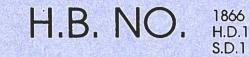


1	<u>(1)</u>	The board states in writing the reasons for its finding	
2		that an unanticipated event has occurred and that an	
3		emergency meeting is necessary and the attorney general	
4		concurs that the conditions necessary for an emergency	
5		meeting under this subsection exist;	
6	<u>(2)</u>	Two-thirds 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	<u>(3)</u>	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	<u>(5)</u>	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	<u>(c)</u>	For purposes of this part, an "unanticipated event"	
22 means an event or occurrence which is reasonably not expected or			

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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;			
<u>10 (2)</u>	A deadline established by a legislative body, a court,			
11	or a federal, state, or county agency beyond the			
12	control of a board;			
<u>13 (3)</u>	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 SEC	CTION 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.