

HOUSE OF REPRESENTATIVES
EIGHTEENTH LEGISLATURE, 1995
STATE OF HAWAII

H.B. NO. 1866
H.D. 1
S.D. 1
C.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 a
15 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
18 and certain other parties outside the realm of a public meeting.
19 The legislature also recognizes that there may be occasions when

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1 an unanticipated event may require a board to take immediate
2 action. Accordingly, the purpose of this Act is to specify those
3 instances and occasions in which members of a board may discuss
4 certain board matters or conduct an emergency public meeting in a
5 manner that does not undermine the essence of open government.

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

9 "§92- Permitted interactions of members. (a) Two
10 members of a board may communicate or interact privately between
11 themselves to gather information from each other about official
12 board matters to enable them to perform their duties faithfully,
13 as long as no commitment to vote is made or sought.

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

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

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

22 (B) All resulting findings and recommendations are
23 presented to the board at a meeting of the board;
24 and

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- 1 (C) Deliberation and decisionmaking on the matter
2 investigated, if any, occurs only at a duly
3 noticed meeting of the board held subsequent to
4 the meeting at which the findings and
5 recommendations of the investigation were
6 presented to the board;
7 or
8 (2) Present, discuss, or negotiate any position which the
9 board has adopted at a meeting of the board; provided
10 that the assignment is made and the scope of each
11 member's authority is defined at a meeting of the board
12 prior to the presentation, discussion or negotiation.
13 (c) Discussions between two or more members of a board, but
14 less than the number of members which would constitute a quorum
15 for the board, concerning the selection of the board's officers
16 may be conducted in private without limitation or subsequent
17 reporting.
18 (d) Discussions between the governor and one or more
19 members of a board may be conducted in private without limitation
20 or subsequent reporting; provided that the discussion does not
21 relate to a matter over which a board is exercising its
22 adjudicatory function.

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

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

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

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

21 SECTION 4. Section 92-8, Hawaii Revised Statutes, is
22 amended to read as follows:

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1 **"§92-8 Emergency meetings. (a)** If a board finds that an
2 imminent peril to the public health, safety, or welfare requires
3 a meeting in less time than is provided for in section 92-7, the
4 board may hold an emergency meeting provided[:] that:

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

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

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

13 (4) Persons requesting notification on a regular basis are
14 contacted by mail or telephone as soon as practicable.

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

22 (1) The board states in writing the reasons for its finding
23 that an unanticipated event has occurred and that an

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

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1 have known about from information published by the
2 media or information generally available in the
3 community;
4 (2) A deadline established by a legislative body, a court,
5 or a federal, state, or county agency beyond the
6 control of a board; or
7 (3) A consequence of an event for which reasonably informed
8 and knowledgeable board members could not have taken
9 all necessary action."

10 SECTION 5. The attorney general shall submit a report to
11 the legislature twenty days prior to the convening of the 1997
12 Regular Session regarding the instances, purposes, and outcomes
13 of emergency meetings held pursuant to section 4 of this Act.

14 SECTION 6. Statutory material to be repealed is bracketed.
15 New statutory material is underscored.

16 SECTION 7. This Act shall take effect upon its approval.