

The purpose of this bill is to afford the public more participation in open meetings of government agencies.

The intent of the sunshine law when it was enacted in 1975, was to provide that discussions, deliberations, decisions, and actions of governmental agencies should be conducted as openly as possible and not in secret.

Your Committee heard testimony in support from numerous public interest groups and individuals. There was also testimony that agreed with the general intent of the bill but expressed concern with some of the amendments.

After hearing testimony, your Committee has made several amendments to the bill.

(1) The bill provides that the boards afford all interested persons an opportunity to submit data, views, or arguments in writing or orally on any agenda item. Your Committee recommended that this amendment be amended to require boards to accept, in writing, data, views, or arguments on any agenda item, and to allow the board discretion whether to accept oral testimony. Your Committee wanted to ensure that interested persons be allowed to present their views but it felt that there had to be some balance between access to the boards and the boards ability to conduct business.

(2) Your Committee amended the last sentence of Section 92-4, Hawaii Revised Statutes to clarify that the reason for holding an executive meeting be publicly announced. Apparently, there was some confusion that each board member had to publicly announce his or her reason for holding an executive session. The intent behind the amendment was to require that an announcement be made at the meeting. Testifiers reported that some boards had stated they were holding an executive meeting without announcing the reason.

(3) Concern was expressed that the amendment pertaining to the board consulting with their attorney attempts to abrogate or severely limit the commonly recognized attorney-client privilege. There may be instances when a board may need to consult with their attorney on matters other than pending or future litigation. Your Committee felt boards should be able to consult with their attorney in private, just as private parties do. If a board consulted with its attorney in an open meeting the privilege, or confidentiality of their communications would be lost. Without the confidentiality, a board may not adequately inform their attorneys of facts and as a result may receive misguided advice. Your Committee was not willing to accept the premise that the client is the public and therefore the public should be able to attend meetings when the board consulted with its attorney. Your Committee amended the bill to allow a board to meet in executive meeting with their attorney to consult on their legal responsibilities, on legal issues or on actual or proposed lawsuits.

(4) Your Committee also expressed concern with the amendment that would limit the ability of a board to make a decision or deliberate toward a decision in executive meetings. A "meeting" is defined in Section 92-2, Hawaii Revised Statutes, as "...the convening of a board...in order to make a decision or to deliberate toward a decision..." If a board cannot deliberate toward or make a decision in an executive meeting, the board will not be able to have any meeting closed to the public. Your Committee amended the bill to clarify that the matters that can be acted on in an executive meeting must be reasonably related to the exceptions for holding an executive meeting.

(5) The bill provides that an item of "reasonably major importance" cannot be considered at a meeting continued to a later date. Parties testified that there have been problems where important issues have been continued and advance notice of subsequent meetings has not been sufficient. Your Committee is concerned because the phrase "reasonably major importance" is unclear. Your Committee further believes that it is unreasonable to require that items of "reasonably major importance" must be acted upon at a meeting. There are situations that arise which require a meeting to be continued such as when additional information is required, many people wish to testify on an agenda item, a board lacks a majority vote on a decision and it would be better to recess and consider the matter at a later date, or an unresolved item could delay ending with a meeting. Your Committee amended the bill by deleting the proposed amendment.

(6) Your Committee believes in order to enforce the law, it is necessary to investigate a complaint, therefore, the proposed amendment to Section 92-12(a), Hawaii Revised Statutes, is unnecessary.

Your Committee on Judiciary is in accord with the intent and purpose of S.B. No. 1413, S.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 1413, S.D. 1, H.D. 1.

Signed by all members of the Committee except Representative Bunda.