
A BILL FOR AN ACT

RELATING TO CHAPTER 92, HAWAII REVISED STATUTES.

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

1 SECTION 1. The legislature finds that chapter 92, Hawaii
2 Revised States, the State's sunshine law, provides critical
3 assurances to the public that decisionmaking by formal
4 decisionmaking bodies in Hawaii is transparent and includes the
5 opportunity for public input. Meaningful engagement with a
6 board by the public assists with the formation and conduct of
7 public policy and helps with decisionmaking that is in the best
8 interest of the public. However, as with every law, there is an
9 opportunity to improve the understanding and compliance of the
10 law as it operates in practice. The legislature finds that
11 understanding and compliance can be strengthened through the
12 addition of clear definitions of "board business" and "informal
13 gatherings", as established by an office of information
14 practices opinion, with editorial amendments for consistency
15 throughout the law.

16 The legislature further finds that, in order for the public
17 to provide meaningful written and oral testimony at a board



1 meeting, the public must be allowed to review and inspect the
2 same material provided to the boards in a timely manner, and
3 prior to testimony deadlines. Therefore, the legislature finds
4 it necessary to define the time period required in advance of
5 public meetings at which board packets shall be provided to the
6 public.

7 Accordingly, the purpose of this Act is to strengthen
8 understanding of, and public participation in, the
9 administrative proceedings and process of boards.

10 SECTION 2. Section 92-2, Hawaii Revised Statutes, is
11 amended as follows:

12 1. By adding two new definitions to be appropriately
13 inserted and to read:

14 "Board business" means specific matters over which a board
15 has supervision, control, jurisdiction, or advisory power, that
16 are actually pending before the board, or that can be reasonably
17 anticipated to arise before the board in the foreseeable future.

18 "Informal gathering" means a social or informal assemblage
19 of two or more board members at which matters relating to board
20 business are not discussed."

21 2. By deleting the definition of "chance meeting".



1 ~~[""Chance meeting" means a social or informal assemblage of~~
2 ~~two or more members at which matters relating to official~~
3 ~~business are not discussed."]~~

4 SECTION 3. Section 92-2.5, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§92-2.5 Permitted interactions of members.** (a) Two
7 members of a board may discuss between themselves matters
8 relating to [~~official~~] board business to enable them to perform
9 their duties faithfully, as long as no commitment to vote is
10 made or sought and the two members do not constitute a quorum of
11 their board.

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

15 (1) Investigate a matter relating to [~~the official~~] board
16 business [~~of their board~~]; provided that:

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



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

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

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

16 (c) Discussions between two or more members of a board,
17 but less than the number of members which would constitute a
18 quorum for the board, concerning the selection of the board's
19 officers may be conducted in private without limitation or
20 subsequent reporting.



1 (d) Board members present at a meeting that must be
2 canceled for lack of quorum or terminated pursuant to section
3 92-3.5(c) may nonetheless receive testimony and presentations on
4 items on the agenda and question the testifiers or presenters;
5 provided that:

6 (1) Deliberation or decisionmaking on any item, for which
7 testimony or presentations are received, occurs only
8 at a duly noticed meeting of the board held subsequent
9 to the meeting at which the testimony and
10 presentations were received;

11 (2) The members present shall create a record of the oral
12 testimony or presentations in the same manner as would
13 be required by section 92-9 for testimony or
14 presentations heard during a meeting of the board; and

15 (3) Before its deliberation or decisionmaking at a
16 subsequent meeting, the board shall:

17 (A) Provide copies of the testimony and presentations
18 received at the canceled meeting to all members
19 of the board; and



1 (B) Receive a report by the members who were present
2 at the canceled or terminated meeting about the
3 testimony and presentations received.

4 (e) Two or more members of a board, but less than the
5 number of members which would constitute a quorum for the board,
6 may attend an informational meeting or presentation on matters
7 relating to [~~official~~] board business, including a meeting of
8 another entity, legislative hearing, convention, seminar, or
9 community meeting; provided that the meeting or presentation is
10 not specifically and exclusively organized for or directed
11 toward members of the board. The board members in attendance
12 may participate in discussions, including discussions among
13 themselves; provided that the discussions occur during and as
14 part of the informational meeting or presentation; and provided
15 further that no commitment relating to a vote on the matter is
16 made or sought.

17 At the next duly noticed meeting of the board, the board
18 members shall report their attendance and the matters presented
19 and discussed that related to [~~official~~] board business at the
20 informational meeting or presentation.



1 (f) Discussions between the governor and one or more
2 members of a board may be conducted in private without
3 limitation or subsequent reporting; provided that the discussion
4 does not relate to a matter over which a board is exercising its
5 adjudicatory function.

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

11 (h) Where notice of the deadline to submit testimony to
12 the legislature is less than the notice requirements in this
13 section, a board may circulate for approval a statement
14 regarding a position previously adopted by the board; provided
15 that the position previously adopted by the board, the statement
16 to be submitted as testimony, and communications among board
17 members about the statement, including drafts, shall be in
18 writing and accessible to the public, within two days of the
19 statement's circulation to the board, on the board's website,
20 or, if the board does not have a website, on an appropriate
21 state or county website.



1 ~~(h)~~ (i) Communications, interactions, discussions,
2 investigations, and presentations described in this section are
3 not meetings for purposes of this part."

4 SECTION 4. Section 92-3, Hawaii Revised Statutes, is
5 amended to read as follows:

6 "**§92-3 Open meetings.** Every meeting of all boards shall
7 be open to the public and all persons shall be permitted to
8 attend any meeting unless otherwise provided in the constitution
9 or as closed pursuant to sections 92-4 and 92-5; provided that
10 the removal of any person or persons who wilfully disrupts a
11 meeting to prevent and compromise the conduct of the meeting
12 shall not be prohibited. The boards shall afford all interested
13 persons an opportunity to submit data, views, or arguments, in
14 writing, on any agenda item~~(-)~~; provided that interested persons
15 shall be afforded at least twenty-four hours to review board
16 packets. The boards shall also afford all interested persons an
17 opportunity to present oral testimony on any agenda item~~(-)~~;
18 provided that interested persons shall be afforded at least
19 twenty-four hours to review board packets prior to their oral
20 testimony, and the oral testimonies of interested persons shall
21 not be limited to the beginning of a board's agenda or meeting.



1 The boards may provide for reasonable administration of oral
2 testimony by rule."

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

5 "(b) In no instance shall the board make a decision or
6 deliberate toward a decision in an executive meeting on matters
7 not directly related to the purposes specified in subsection
8 (a). No [~~chance meeting,~~] informal gathering, permitted
9 interaction, or electronic communication shall be used to
10 circumvent the spirit or requirements of this part to make a
11 decision or to deliberate toward a decision upon a matter over
12 which the board has supervision, control, jurisdiction, or
13 advisory power."

14 SECTION 6. Section 92-6, Hawaii Revised Statutes, is
15 amended by amending subsection (b) to read as follows:

16 "(b) Notwithstanding provisions in this section to the
17 contrary, this part shall apply to [~~require open deliberation of~~
18 ~~the adjudicatory functions of the land use commission.~~] the
19 adjudicatory functions concerning land use, including but not
20 limited to adjudicatory functions of the land use commission."



1 SECTION 7. Section 92-7.5, Hawaii Revised Statutes, is
2 amended to read as follows:
3 "[+]§92-7.5[+] **Board packet; filing; public inspection;**
4 **notice.** At the time the board packet is distributed to the
5 board members, the board shall also make the board packet
6 available for public inspection in the board's office. Board
7 packets shall be made available to interested persons at least
8 twenty-four hours prior to the deadline for written testimony to
9 be submitted on any agenda item. The board shall provide notice
10 to persons requesting notification of meetings pursuant to
11 section 92-7(e) that the board packet is available for
12 inspection in the board's office and shall provide reasonably
13 prompt access to the board packet to any person upon request.
14 The board is not required to mail board packets. As soon as
15 practicable, the board shall accommodate requests for electronic
16 access to the board packet.

17 For purposes of this section, "board packet" means
18 documents that are compiled by the board and distributed to
19 board members before a meeting for use at that meeting, to the
20 extent the documents are public under chapter 92F; provided that
21 this section shall not require disclosure of executive session



1 minutes, license applications, or other records for which the
2 board cannot reasonably complete its redaction of nonpublic
3 information in the time available before the public inspection
4 required by this section."

5 SECTION 8. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 9. This Act shall take effect upon its approval.

8

INTRODUCED BY:



JAN 24 2022



H.B. NO. 2026

Report Title:

Sunshine Law; Board Business; Informal Gatherings; Board
Packets; Land Use

Description:

Adds definitions for "board business" and "informal gatherings". Specifies that a board may prepare and circulate amongst members a statement on a position previously adopted for purposes of submission to the legislature when notice by the legislature is insufficient to interact in any other permitted manner. Outlines when board packets must be available to interested persons. Requires the application of the sunshine law to all adjudicatory functions concerning land use.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

