

ACT 278

S.B. NO. 1413

A Bill for an Act Relating to Public Agency Meetings and Records.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. Section 92-3, Hawaii Revised Statutes, is amended to read as follows:

**“§92-3 Open meetings.** Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5;<sup>1</sup> provided [further] that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule.”

SECTION 2. Section 92-4, Hawaii Revised Statutes, is amended to read as follows:

**“§92-4 Executive meetings.** A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present[.]; provided the affirmative vote constitutes a

majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. [The vote of each member on the question of holding a meeting closed to the public and the] The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting."

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

**"§92-5 Exceptions.** (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- [(1)] (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against him, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- [(2)] (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- [(3)] (4) To consult with the board's attorney[.]; on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- [(4)] (5) To investigate proceedings regarding criminal misconduct; and
- [(5)] (6) To consider sensitive matters related to public safety or security.

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

SECTION 4. Section 92-7, Hawaii Revised Statutes, is amended by amending subsections (a) and (b) to read as follows:

**"(a)** The board shall give written public notice of any regular, special, or rescheduled meeting[.], or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting[.], and in the case of an executive meeting the purpose shall be stated.

(b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible. No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major

importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time."

SECTION 5. Section 92-12, Hawaii Revised Statutes, is amended to read as follows:

**"§92-12 Enforcement.** (a) The attorney general and the prosecuting attorney shall enforce this part.

(b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

(c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.

(d) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:

- (1) There is likelihood that the party bringing the action will prevail on the merits;
- (2) Irreparable damage will result if a stay is not ordered;
- (3) No irreparable damage to the public will result from the stay order; and
- (4) Public interest will be served by the stay order."

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

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

(Approved June 7, 1985.)

**Note**

1. Prior to amendment, "," appeared here.