

JAN 25 2006

S.B. NO. 2367

A BILL FOR AN ACT

RELATING TO PUBLIC MEETINGS.

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

1 SECTION 1. Section 92-2.5, Hawaii Revised Statutes, is
2 amended to read as follows:

3 "~~§~~**§92-2.5**~~§~~ **Permitted interactions of members.** (a) Two
4 members of a board may discuss between themselves matters
5 relating to official board business to enable them to perform
6 their duties faithfully, as long as no commitment to vote is
7 made or sought and the two members do not constitute a quorum of
8 their board.

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

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

14 (A) The scope of the investigation and the scope of
15 each member's authority are defined at a meeting
16 of the board;

17 (B) All resulting findings and recommendations are

1 presented to the board at a meeting of the board;

2 and

3 (C) Deliberation and decisionmaking on the matter

4 investigated, if any, occurs only at a duly

5 noticed meeting of the board held subsequent to

6 the meeting at which the findings and

7 recommendations of the investigation were

8 presented to the board; or

9 (2) Present, discuss, or negotiate any position which the

10 board has adopted at a meeting of the board; provided

11 that the assignment is made and the scope of each

12 member's authority is defined at a meeting of the

13 board prior to the presentation, discussion, or

14 negotiation.

15 (c) Discussions between two or more members of a board,

16 but less than the number of members which would constitute a

17 quorum for the board, concerning the selection of the board's

18 officers may be conducted in private without limitation or

19 subsequent reporting.

20 (d) Discussions between the governor and one or more

21 members of a board may be conducted in private without

22 limitation or subsequent reporting; provided that the discussion

1 does not relate to a matter over which a board is exercising
2 its adjudicatory function.

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

8 (f) Two or more members of a board, but less than the
9 number of members that would constitute a quorum for the board,
10 may discuss their individual positions relating to official
11 board business at a meeting of another board or a public hearing
12 of the legislature; provided that:

13 (1) The members announce their intent to attend and
14 participate in the meeting or hearing at a prior
15 meeting of their board, where that attendance and
16 participation is anticipated; and

17 (2) The members report their attendance and the matters
18 discussed at the meeting or hearing at the next duly
19 noticed meeting of their board.

20 (g) Two or more members of a board, but less than the
21 number of members that would constitute a quorum for the board,
22 may attend presentations, including seminars, conventions, and

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1 community meetings, that involve matters relating to official
 2 board business; provided that the presentation is not
 3 specifically and exclusively organized for, or directed towards,
 4 the members of the board. Board members may participate in
 5 discussions, including discussions among themselves, provided
 6 that the discussions occur during and as part of the
 7 presentation and no commitment to vote is made or sought. The
 8 board members shall, at the next duly noticed meeting of their
 9 board, report their attendance and the matters presented and
 10 discussed at the presentation that relate to their official
 11 board business.

12 [~~f~~] (h) Communications, interactions, discussions,
 13 investigations, and presentations described in this section are
 14 not meetings for purposes of this part."

15 SECTION 2. Statutory material to be repealed is bracketed
 16 and stricken. New statutory material is underscored.

17 SECTION 3. This Act shall take effect upon its approval.

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INTRODUCED BY:  _____

20

BY REQUEST

21

JUSTIFICATION SHEET

SB. NO. 2367

DEPARTMENT: OFFICE OF THE LIEUTENANT GOVERNOR,
OFFICE OF INFORMATION PRACTICES

TITLE: A BILL FOR AN ACT RELATING TO PUBLIC MEETINGS.

PURPOSE: (1) To allow two or more members of a board, but less than the number of members that would constitute a quorum, to discuss their individual positions relating to official board business at meetings of other boards or at public hearings of the Legislature, provided that: (a) the members announce at a noticed meeting of their board their intention to attend and participate in the meeting or hearing, when anticipated; and (b) the members report their attendance and discussions at the next noticed meeting of their board.

(2) To allow two or more members of a board, but less than a number that would constitute a quorum of the board, to attend and participate in discussions during and as part of presentations that involve matters relating to official board business, but that are not specifically and exclusively organized for or directed towards the members of the board. The amendment requires the board members to report their attendance and the matters discussed at the presentation or meeting that relate to their official board matters.

MEANS: Amend section 92-2.5, Hawaii Revised Statutes.

JUSTIFICATION: (1) The proposed subsection (f) seeks to eliminate a source of frustration for board members where more than two members of one board wish to attend and discuss their individual positions relating to official board business of their board at a public meeting of another board (e.g., three City Council Members whose districts overlap with one neighborhood board district who want to participate in that neighborhood board's meeting) or at a hearing of

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the Legislature. At present, OIP advises board members that the Sunshine Law prohibits more than two members from discussing official board business outside of a meeting of their board, which would thus also prohibit a discussion of more than two members' individual positions at another board's meeting. OIP believes that the amendment will also improve coordination between boards on issues that affect multiple boards and provide for better communication with, and responsiveness to, the Legislature.

(2) The proposed subsection (g) seeks to address an issue that continues to be a source of frustration for board members who wish to attend presentations, including seminars, conventions, and community meetings, at which official business of their board is or may be discussed. At present, OIP cautions board members that, where their board business is discussed at a presentation, the presence of more than two members of the board may be a violation of the Sunshine Law. These board members are advised that, at a minimum, they may not participate in the discussions related to an issue that constitutes their board business unless only two board members remain at the presentation.

OIP believes that the law as currently written deters board members from attending presentations and participating in discussions that are a part of those presentations -- attendance and participation that would improve the performance of the board members and their boards. OIP believes that safeguards included in the amendment, i.e., limiting the number of members who may participate to less than a quorum, allowing discussion only during and as part of the presentation, and requiring subsequent reporting at a duly noticed open meeting, effectively balances the needs of boards and the rights of the public. Board members will be able to acquire both general and specific knowledge about board issues that will enhance their performance on the board and likely lead to more informed board decisions.

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The public's right to know will generally be protected by the reporting requirements and the fact that the reporting will need to be sufficiently detailed to influence the quorum of the board.

Impact on the public: (1) The addition of the proposed subsection (f) may give the public greater access to information as board members will be able to discuss official board business at meetings of other boards and the Legislature. The amendment protects those members of the public who do not attend the other board's meeting or the legislative hearing by limiting participation to less than a quorum and requiring the board members to report on their discussions and testimony at their next board meeting.

(2) The addition of the proposed subsection (g) should have minimal impact on the public because of the limitations imposed by and the reporting requirements of the amendment. In some instances, the amendment may provide the public with greater access to information and to greater participation because board members will have greater freedom to attend and participate in a broader range of events in which the public may be able to express its views and hear the discussions of the board members.

Impact on the department and other agencies:

(1) The addition of the proposed subsection (f) will allow board members to participate in other boards' meetings where they believe it to be necessary to the performance of their roles or to be beneficial to their board. It should result in better and more effective communication and coordination between boards on issues that affect multiple boards, and better board communication with, and responsiveness to, the Legislature.

(2) The addition of the proposed subsection (g) will help to alleviate the frustration of board members who wish to attend and participate in

presentations to gain information for themselves and their boards in order to make better educated decisions. It will free boards from having to designate in advance which board members may attend presentations and will avoid the need of board members to refrain from participating in the discussions held as part of the presentations or to leave the presentations.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: All state and county government boards and commissions.

EFFECTIVE DATE: Upon approval.