

# H.B. NO. 1146

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## A BILL FOR AN ACT

RELATING TO PUBLIC AGENCY 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;

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.

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1        (d) Board members present at a meeting that must be  
2 canceled for lack of quorum may nonetheless receive testimony  
3 and presentations on items on the agenda; provided that:

4        (1) Deliberation and decisionmaking on any items for which  
5 testimony or presentations are received under this  
6 subsection shall occur only at a duly noticed meeting  
7 of the board held subsequent to the receipt of the  
8 testimony and presentations; and

9        (2) Before its deliberation and decisionmaking at a  
10 subsequent meeting:

11        (i) Copies of the testimony and presentations  
12 received at the canceled meeting are distributed  
13 to all members of the board; and

14        (ii) The members that were present at the canceled  
15 meeting report on the testimony and presentations  
16 received.

17        [~~d~~] (e) Discussions between the governor and one or more  
18 members of a board may be conducted in private without  
19 limitation or subsequent reporting; provided that the discussion  
20 does not relate to a matter over which a board is exercising its  
21 adjudicatory function.

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

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

9        SECTION 2. Statutory material to be repealed is bracketed  
10 and stricken. New statutory material is underscored.

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

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INTRODUCED BY: Calvin K. Amy  
BY REQUEST

JAN 26 2009

HB1146

**Report Title:**

Sunshine Law; Testimony; Quorum; Meetings; Permitted Interaction

**Description:**

Allows members of a board or commission to hear public testimony and presentations on items listed on an agenda at the time and place stated in the notice where the meeting, as noticed, is canceled as a matter of law due to a lack of quorum.

HB1146

JUSTIFICATION SHEET

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

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

PURPOSE: The purpose of this bill is to add a  
permitted interaction to allow members of  
boards and commissions to receive testimony  
and presentations on items on a filed agenda  
when a meeting must be canceled for lack of  
quorum.

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

JUSTIFICATION: Many boards have difficulty in making quorum  
to hold their meetings due to vacant  
positions or other factors. When a board  
fails to make quorum at the time of a  
meeting, members of the public that came to  
testify or individuals scheduled to make a  
presentation to the board often want the  
option to give the testimony or presentation  
to the members present at that time instead  
of coming back again for the next scheduled  
meeting. OIP has advised boards that the  
Sunshine Law does not allow board members to  
hear testimony or presentations on items on  
the agenda of a canceled meeting because the  
board members would be doing so outside a  
meeting, even though a notice and agenda had  
been filed and members of the public may be  
in attendance as a result. This bill is  
intended to permit those board members who  
are present when a noticed meeting is  
canceled for lack of quorum to receive  
testimony and presentations even though the  
board's meeting has been canceled.

Impact on the general public: Members of  
the public or presenters may be able to give  
their testimony and presentations at the  
time and place of a noticed meeting that is

canceled, and avoid spending more time and incur more travel costs in order to give their testimony or presentations at a subsequent meeting. Because this bill is limited to situations where the public has been given notice of a meeting and has the right to attend, this bill will not impede public access to board members' discussions and requires that the board's deliberation and decision making occur at a subsequent meeting.

Impact on the department and other agencies: Boards will be able to accommodate those members of the public who have come to a scheduled meeting to testify or give a presentation by having those board members present hear the testimony or presentation and report back to the board. This reporting requirement will generally ensure that the full board has access to the information given in testimony and presentations. This bill also specifies that deliberations and decision making on a matter for which testimony or a presentation is received without a quorum must take place only at a subsequent duly noticed board meeting.

GENERAL FUND:	None.
OTHER FUNDS:	None.
PPBS PROGRAM DESIGNATION:	LTG-105.
OTHER AFFECTED AGENCIES:	All state and county boards and commissions.
EFFECTIVE DATE:	Upon approval.