

JAN 26 2011

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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. The purpose of this Act is to enhance various  
2 provisions of Hawaii's laws relating to public agency meetings  
3 and records, and information practices by:

4           (1) Clarifying that the office of information practices  
5 has the authority to enforce the open meetings law,  
6 and allowing the office to waive any fee to access a  
7 record under specified conditions;

8           (2) Requiring executive meetings of boards to be properly  
9 noticed and subject matter and discussion in an  
10 executive meeting to be announced in public upon  
11 reconvening;

12           (3) Clarifying the scope of discussions that a government  
13 entity may have with its attorney during a closed  
14 executive session by limiting discussions to matters  
15 that may have the potential for litigation; and  
16 clarifying that government entities have no statutory  
17 right to request judicial review of decisions of the  
18 office of information practices;



1 (4) Requiring notice of state board meetings to be posted  
2 on the state central website and eliminating the  
3 requirement that these notices be filed with the  
4 office of the lieutenant governor;

5 (5) Allowing for the notification of meetings and the  
6 transmittal of meeting minutes by electronic mail and  
7 requiring concurrence from the office of information  
8 practices rather than the attorney general for boards  
9 to hold emergency meeting for unanticipated events;  
10 and

11 (6) Clarifies that audio or video recordings are permitted  
12 at public board meetings.

13 SECTION 2. Section 92-1.5, Hawaii Revised Statutes, is  
14 amended to read as follows:

15 "[+]§92-1.5[+] **Administration and enforcement of this**  
16 **part.** The director of the office of information practices shall  
17 administer and enforce this part. The director shall establish  
18 procedures for filing and responding to complaints filed by any  
19 person concerning the failure of any board to comply with this  
20 part. The director of the office of information practices shall  
21 submit an annual report of these complaints along with final  
22 resolution of complaints[-] and other statistical data to the



1 legislature[7] no later than twenty days prior to the convening  
2 of each regular session."

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

5 "§92-4 **Executive meetings.** (a) A board may hold an  
6 executive meeting, subject to subsection (b), closed to the  
7 public upon an affirmative vote[7] taken at an open meeting[7]  
8 of two-thirds of the members present; provided that the  
9 affirmative vote constitutes a majority of the members to which  
10 the board is entitled. A meeting closed to the public shall be  
11 limited to matters exempted by section 92-5. The reason for  
12 holding such a meeting shall be publicly announced and the vote  
13 of each member on the question of holding a meeting closed to  
14 the public shall be recorded[7] and entered into the minutes of  
15 the meeting.

16 (b) No executive meeting shall be held unless properly  
17 noticed on the agenda in advance of a duly noticed open meeting,  
18 that includes:

19 (1) A statement of justification for the executive  
20 meeting;

21 (2) The subjects to be discussed in the executive meeting;  
22 and



1       (3) The time and place of the resumption of the open  
2           meeting.

3       Upon resumption of the open meeting, the board shall disclose in  
4       that open meeting the subjects discussed and the actions taken  
5       in the executive meeting."

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

8       "(a) A board may hold a meeting closed to the public  
9       pursuant to section 92-4 for one or more of the following  
10       purposes:

11       (1) To consider and evaluate personal information relating  
12           to individuals applying for professional or vocational  
13           licenses cited in section 26-9 or both;

14       (2) To consider the hire, evaluation, dismissal, or  
15           discipline of an officer or employee or of charges  
16           brought against the officer or employee, where  
17           consideration of matters affecting privacy will be  
18           involved; provided that if the individual concerned  
19           requests an open meeting, an open meeting shall be  
20           held;

21       (3) To deliberate concerning the authority of persons  
22           designated by the board to conduct labor negotiations



- 1 or to negotiate the acquisition of public property, or  
2 during the conduct of [~~sueh~~] the negotiations;
- 3 (4) To consult with the board's attorney on questions and  
4 issues pertaining to the board's legal  
5 responsibilities and matters relating to potential or  
6 actual lawsuits involving the board or the board's  
7 powers, duties, privileges, immunities, and  
8 liabilities;
- 9 (5) To investigate proceedings regarding criminal  
10 misconduct;
- 11 (6) To consider sensitive matters related to public safety  
12 or security;
- 13 (7) To consider matters relating to the solicitation and  
14 acceptance of private donations; and
- 15 (8) To deliberate or make a decision upon a matter that  
16 requires the consideration of information that must be  
17 kept confidential pursuant to a state or federal law,  
18 or a court order."

19 SECTION 5. Section 92-7, Hawaii Revised Statutes, is  
20 amended as follows:

- 21 1. By amending subsections (a), (b), and (c) to read:



1           "(a) The board shall give written public notice of any  
2 regular, special, emergency, or rescheduled meeting, or any  
3 executive meeting when anticipated in advance. The notice shall  
4 include an agenda [~~which~~] that lists all of the items to be  
5 considered at the forthcoming meeting[~~7~~] and the date, time, and  
6 place of the meeting[~~7~~]; provided that in the case of an  
7 executive meeting the purpose shall be stated.

8           (b) [~~The~~] At least six calendar days before the meeting,  
9 the board shall file the notice in the [office of the lieutenant  
10 governor or the appropriate county clerk's office, and in the]  
11 board's office for public inspection[~~7~~, at least six calendar  
12 days before the meeting. The notice shall also be posted] and  
13 shall also post the notice at the site of the meeting whenever  
14 feasible. At least six calendar days before the meeting, a  
15 state board shall also file the notice by electronic posting on  
16 the state calendar maintained on the designated central State of  
17 Hawaii internet website, and a county board shall file the  
18 notice in the appropriate county clerk's office. In the event  
19 that a state board is unable to file the notice on the state  
20 calendar because of an interruption in service that prevents  
21 access to the state calendar, the board shall file the notice in  
22 the office of information practices. The office of information



1 practices shall then post the notice on the state calendar as  
2 soon as service is restored.

3 (c) If the [~~written public~~] notice is filed [~~in the office~~  
4 ~~of the lieutenant governor or~~] on the state calendar or in the  
5 appropriate county clerk's office less than six calendar days  
6 before the meeting, the [~~lieutenant governor~~] state boards'  
7 notice shall be rejected or the appropriate county clerk shall  
8 immediately notify the chairperson of the board, or the director  
9 of the department within which the board is established or  
10 placed, of the tardy filing of the meeting notice. The meeting  
11 shall be canceled as a matter of law, and the chairperson of the  
12 board or the department director shall ensure that a notice  
13 canceling the meeting is posted in the board's office and at the  
14 place of the meeting, and no meeting shall be held."

15 2. By amending subsection (e) to read:

16 "(e) The board shall maintain a list of names and  
17 electronic and postal mailing addresses of persons who request  
18 notification of meetings and shall [~~mail~~] transmit a copy of the  
19 notice to [~~such~~] the persons at their last recorded electronic  
20 mail address no later than the time the agenda is filed under  
21 subsection (b). If no electronic mail address is listed, then  
22 the copy of the notice shall be mailed to the persons at their



1 last recorded postal mailing address no later than the time the  
2 agenda is filed under subsection (b)."

3 SECTION 6. Section 92-8, Hawaii Revised Statutes, is  
4 amended to read as follows:

5 "§92-8 **Emergency meetings.** (a) If a board finds that an  
6 imminent peril to the public health, safety, or welfare requires  
7 a meeting in less time than is provided for in section 92-7, the  
8 board may hold an emergency meeting provided that:

- 9 (1) The board states in writing the reasons for its  
10 findings;
- 11 (2) Two-thirds of all members to which the board is  
12 entitled agree that the findings are correct and an  
13 emergency exists;
- 14 (3) An emergency agenda and the findings are filed [~~with~~  
15 ~~the office of the lieutenant governor or the~~  
16 ~~appropriate county clerk's office, and in the board's~~  
17 ~~office; and] at the locations specified for notices in  
18 section 92-7; and~~
- 19 (4) Persons requesting notification on a regular basis are  
20 contacted by [~~mail or~~] telephone or their requested  
21 method of notification as soon as practicable.





1 (b) If an unanticipated event requires a board to take  
2 action on a matter over which it has supervision, control,  
3 jurisdiction, or advisory power, within less time than is  
4 provided for in section 92-7 to notice and convene a meeting of  
5 the board, the board may hold an emergency meeting to deliberate  
6 and decide whether and how to act in response to the  
7 unanticipated event; provided that:

8 (1) The board states in writing the reasons for its  
9 finding that an unanticipated event has occurred and  
10 that an emergency meeting is necessary and the  
11 ~~[attorney-general]~~ director of the office of  
12 information practices concurs that the conditions  
13 necessary for an emergency meeting under this  
14 subsection exist;

15 (2) Two-thirds of all members to which the board is  
16 entitled agree that the conditions necessary for an  
17 emergency meeting under this subsection exist;

18 (3) ~~[The finding that an unanticipated event has occurred~~  
19 ~~and that an emergency meeting is necessary and the~~  
20 ~~agenda for the emergency meeting under this subsection~~  
21 ~~are filed with the office of the lieutenant governor~~  
22 ~~or the appropriate county clerk's office, and in the~~



1           ~~board's office;~~ An emergency agenda and the findings  
2           are filed at the locations specified for notices in  
3           section 92-7;

4           (4) Persons requesting notification on a regular basis are  
5           contacted by ~~[mail-or]~~ telephone or their requested  
6           method of notification as soon as practicable; and

7           (5) The board limits its action to only that action which  
8           must be taken on or before the date that a meeting  
9           would have been held, had the board noticed the  
10          meeting pursuant to section 92-7.

11          (c) For purposes of this part, an "unanticipated event"  
12 means:

13          (1) An event which members of the board did not have  
14          sufficient advance knowledge of or reasonably could  
15          not have known about from information published by the  
16          media or information generally available in the  
17          community;

18          (2) A deadline established by a legislative body~~[7]~~; a  
19          court~~[7]~~; or a federal, state, or county agency beyond  
20          the control of a board; or



1 (3) A consequence of an event for which reasonably  
2 informed and knowledgeable board members could not  
3 have taken all necessary action."

4 SECTION 7. Section 92-9, Hawaii Revised Statutes, is  
5 amended by amending subsections (b) and (c) to read as follows:

6 "(b) The minutes shall be public records and shall be  
7 available within thirty days after the meeting except where  
8 [~~such~~] the disclosure would be inconsistent with section 92-5;  
9 provided that minutes of executive meetings may be withheld so  
10 long as their publication would defeat the lawful purpose of the  
11 executive meeting, but no longer. Upon request, minutes that  
12 have become public record may be electronically mailed to the  
13 requester, or if the requester does not have an electronic mail  
14 address, then the minutes may be mailed to the requestor at the  
15 requestor's last recorded postal mailing address.

16 (c) All or any part of a meeting of a board may be  
17 recorded by any person in attendance by means of [~~a tape~~] an  
18 audio or video recorder [~~or any other means of sonic~~  
19 ~~reproduction~~], except when a meeting is closed pursuant to  
20 section 92-4; provided the recording does not actively interfere  
21 with the conduct of the meeting."



1 SECTION 8. Section 92-21, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "**§92-21 Copies of records; other costs and fees.** (a)

4 Except as otherwise provided by law, a copy of any government  
5 record, including any map, plan, diagram, photograph, photostat,  
6 or geographic information system digital data file, which is  
7 open to the inspection of the public, shall be furnished to any  
8 person applying for the same by the public officer having charge  
9 or control thereof upon the payment of the reasonable cost of  
10 reproducing [~~sueh~~] the copy.

11 (b) Except as provided in section 91-2.5, the cost of  
12 reproducing any government record, except geographic information  
13 system digital data, shall not be less than 5 cents per page,  
14 sheet, or fraction thereof.

15 (c) The cost of reproducing geographic information system  
16 digital data shall be in accordance with rules adopted by the  
17 agency having charge or control of that data. [~~Sueh~~] The  
18 reproduction cost shall include but shall not be limited to  
19 labor cost for search and actual time for reproducing, material  
20 cost, including electricity cost, equipment cost, [~~including~~]  
21 rental cost, cost for certification, and other related costs.



1        (d) All fees shall be paid [~~it~~] by the public officer  
2 receiving or collecting the same to the state director of  
3 finance, the county director of finance, or to the agency or  
4 department by which the officer is employed, as government  
5 realizations; provided that fees collected by the public  
6 utilities commission pursuant to this section shall be deposited  
7 in the public utilities commission special fund established  
8 under section 269-33.

9        (e) Notwithstanding any law to the contrary, the office of  
10 information practices may waive any fee to access a record if it  
11 determines that the public's interest is served by the waiver;  
12 provided that any cost borne by an agency for the waiver shall  
13 not unduly disrupt operations of that agency."

14        SECTION 9. Section 92F-15.5, Hawaii Revised Statutes, is  
15 amended by amending subsection (b) to read as follows:

16        "(b) [~~If the~~] Notwithstanding any other law to the  
17 contrary, if the office of information practices' decision is to  
18 disclose, the decision shall not be subject to appeal or any  
19 other judicial action to the circuit court by the agency. The  
20 office of information practices shall notify the person and the  
21 agency, and the agency shall make the record available. If the  
22 denial of access is upheld, in whole or in part, the office of



1 information practices shall, in writing, notify the person of  
2 the decision, the reasons for the decision, and the right to  
3 bring a judicial action under section 92F-15(a)."

4 SECTION 10. Section 302A-1106, Hawaii Revised Statutes, is  
5 amended to read as follows:

6 "§302A-1106 **Organization; quorum; meetings.** ~~[(a)]~~ The  
7 board shall elect from its own membership a chairperson and a  
8 vice-chairperson. A majority of all members to which the board  
9 is entitled shall constitute a quorum to do business and the  
10 concurrence of a majority of all members to which the board is  
11 entitled shall be necessary to make any action of the board  
12 valid; provided that due notice shall have been given to all  
13 members of the board or a bona fide attempt shall have been made  
14 to give due notice to all members of the board to whom it was  
15 reasonably practicable to give due notice. Meetings shall be  
16 called and held, at the call of the chairperson or by a quorum,  
17 as often as may be necessary for the transaction of the  
18 department's business.

19 ~~[(b) Chapter 92 notwithstanding, from the convening of the~~  
20 ~~legislature in regular session to adjournment sine die of each~~  
21 ~~regular session, and during each special session of the~~  
22 ~~legislature, the board may file any notice that specifies only~~



1 ~~legislation or legislation related agenda items, no fewer than~~  
2 ~~two calendar days before the meeting.] "~~

3 SECTION 11. This Act does not affect rights and duties  
4 that matured, penalties that were incurred, and proceedings that  
5 were begun before its effective date.

6 SECTION 12. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 13. This Act shall take effect upon its approval.  
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INTRODUCED BY:

*Madhan J*  


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*Madhan*  


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*Will Eyo*  


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*[Signature]*  
*Clarence W. Fishburne*  


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*[Signature]*  
*Chad Johnson*  
*Michelle Sedari*  
*Rosalyn de Belle*



**Report Title:**

Public Agency Meetings

**Description:**

Authorizes the office of information practices to enforce chapter 92, public agency meetings and records, and to waive fees to access government records; requires executive meetings of boards to be properly noticed, and subject matter and discussion in an executive meeting to be announced in public upon reconvening of an open meeting; clarifies the reasons a board may hold a meeting closed to the public with the board's attorney, and that an agency shall not appeal an office of information practices' decision to disclose to circuit court; requires notice of state board meetings to be posted on the central state internet website and eliminates the requirement that notice of state board meetings be filed in the office of the lieutenant governor; authorizes notification of meetings and transmittal of meeting minutes by electronic mail; requires concurrence from the office of information practices rather than the attorney general for a board to hold emergency meetings for unanticipated events; allows audio or video recordings of board meetings.

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

