

JAN 18 2013

S.B. NO. 845

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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.

16          (4) Requiring notice of state board meetings to be posted  
17          on the state central website and eliminating the



1 requirement that these notices be filed with the  
2 office of the lieutenant governor;

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

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

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

13 "**§92-1.5 Administration and enforcement of this part.** The  
14 director of the office of information practices shall administer  
15 and enforce this part. The director shall establish procedures  
16 for filing and responding to complaints filed by any person  
17 concerning the failure of any board to comply with this part.

18 An agency may not appeal a decision by the office of information  
19 practices made under this chapter, except as provided in section  
20 92F-43. The director of the office of information practices  
21 shall submit an annual report of these complaints along with  
22 final resolution of complaints[7] and other statistical data to



1 the legislature[7] no later than twenty days prior to the  
2 convening 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~~, ~~and~~]; provided that in the case of an  
7 executive meeting the purpose shall be stated. The means  
8 specified by this section shall be the only means required for  
9 giving notice under this part notwithstanding any law to the  
10 contrary.

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



1 calendar because of an interruption in service that prevents  
2 access to the state calendar, the board shall file the notice in  
3 the office of information practices. The office of information  
4 practices shall then post the notice on the state calendar as  
5 soon as service is restored.

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

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

19 "(e) The board shall maintain a list of names and  
20 electronic and postal mailing addresses of persons who request  
21 notification of meetings and shall [~~mail~~] transmit a copy of the  
22 notice to [~~such~~] the persons at their last recorded electronic



1 mail address no later than the time the agenda is filed under  
2 subsection (b). If no electronic mail address is listed, then  
3 the copy of the notice shall be mailed to the persons at their  
4 last recorded postal mailing address no later than the time the  
5 agenda is filed under subsection (b)."

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

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

12 (1) The board states in writing the reasons for its  
13 findings;

14 (2) Two-thirds of all members to which the board is  
15 entitled agree that the findings are correct and an  
16 emergency exists;

17 (3) An emergency agenda and the findings are filed [~~with~~  
18 ~~the office of the lieutenant governor or the~~  
19 ~~appropriate county clerk's office, and in the board's~~  
20 ~~office, and] at the locations specified for notices in  
21 section 92-7; and~~





1           (4) Persons requesting notification on a regular basis are  
2           contacted by ~~[mail or]~~ telephone or their requested  
3           method of notification as soon as practicable.

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

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

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

21          (3) ~~[The finding that an unanticipated event has occurred~~  
22          ~~and that an emergency meeting is necessary and the~~



1 ~~agenda for the emergency meeting under this subsection~~  
2 ~~are filed with the office of the lieutenant governor~~  
3 ~~or the appropriate county clerk's office, and in the~~  
4 ~~board's office,]~~ An emergency agenda and the findings  
5 are filed at the locations specified for notices in  
6 section 92-7;

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

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

14 (c) For purposes of this part, an "unanticipated event"

15 means:

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



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

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

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

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

19          (c) All or any part of a meeting of a board may be  
20          recorded by any person in attendance by means of ~~[a-tape]~~ an  
21          audio or video recorder ~~[or any other means of sonic~~  
22          ~~reproduction]~~, except when a meeting is closed pursuant to



1 section 92-4; provided the recording does not actively interfere  
2 with the conduct of the meeting."

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

5 **§92-21 Copies of records; other costs and fees.** (a)

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

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

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



1 cost, including electricity cost, equipment cost, [~~including~~]  
2 rental cost, cost for certification, and other related costs.

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

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

16 SECTION 9. Section 302A-1106.5, Hawaii Revised Statutes,  
17 is amended to read as follows:

18 "**§302A-1106.5 Board of education; community meetings.** The  
19 board shall hold not less than one community meeting annually in  
20 each county in addition to their regular meetings to discuss and  
21 receive input from the community on public education and public  
22 library issues. The board chairperson shall designate board



1 members to attend the community meetings. These community  
2 meetings shall not be held for the purpose of formulating  
3 educational policy. The community meetings shall be exempt from  
4 sections 92-2.5, 92-7, 92-9, and 92-41; provided that the board  
5 shall give written public notice of each community meeting. The  
6 meeting notice shall indicate the date, time, and place of the  
7 meeting, and shall be filed in [~~the office of the lieutenant~~  
8 ~~governor and in~~] the board's office for public inspection six  
9 calendar days before the meeting. The notice shall also be  
10 posted at the site of the meeting. At least six calendar days  
11 before the meeting, the board shall also file the notice by  
12 electronic posting on the state calendar maintained on the  
13 designated central State of Hawaii internet website. In the  
14 event that the board is unable to file the notice on the state  
15 calendar because of an interruption in service that prevents  
16 access to the state calendar, the board shall file the notice in  
17 the office of information practices. The office of information  
18 practices shall then post the notice on the state calendar as  
19 soon as service is restored."

20 SECTION 10. This Act does not affect rights and duties  
21 that matured, penalties that were incurred, and proceedings that  
22 were begun before its effective date.



1 SECTION 11. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 12. This Act shall take effect upon its approval.

4

INTRODUCED BY: *Richard J. ...*

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# S.B. NO. 845

**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; 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.*

