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# A BILL FOR AN ACT

RELATING TO CHAPTER 92, HAWAII REVISED STATUTES.

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

1           SECTION 1. The legislature finds that part I of chapter  
2   92, Hawaii Revised States, the State's sunshine law, provides  
3   critical assurances to the public that decisionmaking by formal  
4   decisionmaking bodies in Hawaii is transparent and includes the  
5   opportunity for public input. Meaningful engagement with a  
6   board by the public assists with the formation and conduct of  
7   public policy and helps with decisionmaking that is in the best  
8   interest of the public. However, as with every law, there is an  
9   opportunity to improve the understanding and compliance of the  
10  law as it operates in practice. The legislature also finds that  
11  understanding and compliance can be strengthened through the  
12  addition of clear definitions of "board business" and "informal  
13  gatherings", as established by an office of information  
14  practices opinion, with editorial amendments for consistency  
15  throughout the law.

16           The legislature further finds that, in order for the public  
17  to provide meaningful written and oral testimony at a board



1 meeting, the public must be allowed to review and inspect the  
2 same material provided to the boards in a timely manner, and  
3 before testimony deadlines. Therefore, the legislature finds it  
4 necessary to define the time period required in advance of  
5 public meetings at which board packets must be provided to the  
6 public.

7 Accordingly, the purpose of this Act is to strengthen  
8 understanding of, and public participation in, the  
9 administrative proceedings and process of boards.

10 SECTION 2. Section 92-2, Hawaii Revised Statutes, is  
11 amended as follows:

12 1. By adding two new definitions to be appropriately  
13 inserted and to read:

14 "Board business" means specific matters over which a board  
15 has supervision, control, jurisdiction, or advisory power, that  
16 are actually pending before the board, or that can be reasonably  
17 anticipated to arise before the board in the foreseeable future.

18 "Informal gathering" means a social or informal assemblage  
19 of two or more board members at which matters relating to board  
20 business are not discussed."

21 2. By deleting the definition of "chance meeting".



1        [~~"Chance meeting" means a social or informal assemblage of~~  
2 ~~two or more members at which matters relating to official~~  
3 ~~business are not discussed."~~]

4        SECTION 3. Section 92-2.5, Hawaii Revised Statutes, is  
5 amended to read as follows:

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

12        (b) Two or more members of a board, but less than the  
13 number of members [~~which~~] that would constitute a quorum for the  
14 board, may be assigned to:

15        (1) Investigate a matter relating to [~~the official~~] board  
16        business [~~of their board~~]; provided that:

17        (A) The scope of the investigation and the scope of  
18        each member's authority are defined at a meeting  
19        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~~  
11 that the board has adopted at a meeting of the board;  
12 provided that the assignment is made and the scope of  
13 each member's authority is defined at a meeting of the  
14 board [~~prior to~~] before the presentation, discussion,  
15 or negotiation.

16 (c) Discussions between two or more members of a board,  
17 but less than the number of members [~~which~~] that would  
18 constitute a quorum for the board, concerning the selection of  
19 the board's officers may be conducted in private without  
20 limitation or subsequent reporting.



1 (d) Board members present at a meeting that must be  
2 canceled for lack of quorum or terminated pursuant to section  
3 92-3.5(c) may nonetheless receive testimony and presentations on  
4 items on the agenda and question the testifiers or presenters;  
5 provided that:

6 (1) Deliberation or decisionmaking on any item, for which  
7 testimony or presentations are received, occurs only  
8 at a duly noticed meeting of the board held subsequent  
9 to the meeting at which the testimony and  
10 presentations were received;

11 (2) The members present shall create a record of the oral  
12 testimony or presentations in the same manner as would  
13 be required by section 92-9 for testimony or  
14 presentations heard during a meeting of the board; and

15 (3) Before its deliberation or decisionmaking at a  
16 subsequent meeting, the board shall:

17 (A) Provide copies of the testimony and presentations  
18 received at the canceled meeting to all members  
19 of the board; and



1           (B) Receive a report by the members who were present  
2                           at the canceled or terminated meeting about the  
3                           testimony and presentations received.

4           (e) Two or more members of a board, but less than the  
5 number of members [~~which~~] that would constitute a quorum for the  
6 board, may attend an informational meeting or presentation on  
7 matters relating to [~~official~~] board business, including a  
8 meeting of another entity, legislative hearing, convention,  
9 seminar, or community meeting; provided that the meeting or  
10 presentation is not specifically and exclusively organized for  
11 or directed toward members of the board. The board members in  
12 attendance may participate in discussions, including discussions  
13 among themselves; provided that the discussions occur during and  
14 as part of the informational meeting or presentation; [~~and~~]  
15 provided further that no commitment relating to a vote on the  
16 matter is made or sought.

17           At the next duly noticed meeting of the board, the board  
18 members shall report their attendance and the matters presented  
19 and discussed that related to [~~official~~] board business at the  
20 informational meeting or presentation.



1 (f) Discussions between the governor and one or more  
2 members of a board may be conducted in private without  
3 limitation or subsequent reporting; provided that the discussion  
4 does not relate to a matter over which a board is exercising its  
5 adjudicatory function.

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

11 (h) Where notice of the deadline to submit testimony to  
12 the legislature is less than the notice requirements in this  
13 section, a board may circulate for approval a statement  
14 regarding a position previously adopted by the board; provided  
15 that the position previously adopted by the board, the statement  
16 to be submitted as testimony, and communications among board  
17 members about the statement, including drafts, shall be in  
18 writing and accessible to the public, within forty-eight hours  
19 of the statement's circulation to the board, on the board's  
20 website, or, if the board does not have a website, on an  
21 appropriate state or county website.



1        [~~h~~] (i) Communications, interactions, discussions,  
2 investigations, and presentations described in this section are  
3 not meetings for purposes of this part."

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

6        "**§92-3 Open meetings.** Every meeting of all boards shall  
7 be open to the public and all persons shall be permitted to  
8 attend any meeting unless otherwise provided in the state  
9 constitution or as closed pursuant to sections 92-4 and 92-5;  
10 provided that the removal of any person or persons who wilfully  
11 disrupts a meeting to prevent and compromise the conduct of the  
12 meeting shall not be prohibited. The boards shall afford all  
13 interested persons an opportunity to submit data, views, or  
14 arguments, in writing, on any agenda item. The boards shall  
15 also afford all interested persons an opportunity to present  
16 oral testimony on any agenda item[-]; provided that the oral  
17 testimonies of interested persons shall not be limited to the  
18 beginning of a board's agenda or meeting. The boards may  
19 provide for reasonable administration of oral testimony by  
20 rule."





1 SECTION 5. Section 92-5, Hawaii Revised Statutes, is  
2 amended by amending subsection (b) to read as follows:

3 "(b) In no instance shall the board make a decision or  
4 deliberate toward a decision in an executive meeting on matters  
5 not directly related to the purposes specified in subsection  
6 (a). No [~~chance meeting,~~] informal gathering, permitted  
7 interaction, or electronic communication shall be used to  
8 circumvent the spirit or requirements of this part to make a  
9 decision or to deliberate toward a decision upon a matter over  
10 which the board has supervision, control, jurisdiction, or  
11 advisory power."

12 SECTION 6. Section 92-7.5, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 "[~~§~~92-7.5[~~§~~] **Board packet; filing; public inspection;**  
15 **notice.** At the time the board packet is distributed to the  
16 board members, but no later than forty-eight hours before the  
17 meeting time, the board shall also make the board packet  
18 available for public inspection in the board's office[~~;~~];  
19 provided that nothing in this section shall require creation of  
20 a board packet. The board shall provide notice to persons  
21 requesting notification of meetings pursuant to section 92-7(e)



1 that the board packet is available for inspection in the board's  
2 office and shall provide reasonably prompt access to the board  
3 packet to any person upon request. The board is not required to  
4 mail board packets. As soon as practicable, the board shall  
5 accommodate requests for electronic access to the board packet.

6 For purposes of this section, "board packet" means  
7 documents that are compiled by the board and distributed to  
8 board members before a meeting for use at that meeting, to the  
9 extent the documents are public under chapter 92F; provided that  
10 this section shall not require disclosure of executive session  
11 minutes, license applications, or other records for which the  
12 board cannot reasonably complete its redaction of nonpublic  
13 information in the time available before the public inspection  
14 required by this section."

15 SECTION 7. Section 279D-9, Hawaii Revised Statutes, is  
16 amended by amending subsection (b) to read as follows:

17 "(b) Participation by members of any other board in a  
18 meeting of a policy board shall be a permitted interaction as  
19 provided in section [~~92-2.5(h)~~] 92-2.5(i)."

20 SECTION 8. Statutory material to be repealed is bracketed  
21 and stricken. New statutory material is underscored.



**1** SECTION 9. This Act shall take effect upon its approval.



**Report Title:**

Sunshine Law; Board Business; Informal Gatherings; Board Packets

**Description:**

Defines "board business" and "informal gatherings". Allows a board to prepare and circulate amongst members a statement on a position previously adopted for purposes of submission to the legislature, under certain circumstances. Outlines when board packets must be available to interested persons. (SD1)

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

