

ACT 264

H.B. NO. 2026

A Bill for an Act Relating to Chapter 92, Hawaii Revised Statutes.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that part I of chapter 92, Hawaii Revised States, the State's sunshine law, provides critical assurances to the public that decisionmaking by formal decisionmaking bodies in Hawaii is transparent and includes the opportunity for public input. Meaningful engagement with a board by the public assists with the formation and conduct of public policy

and helps with decisionmaking that is in the best interest of the public. However, as with every law, there is an opportunity to improve the understanding and compliance of the law as it operates in practice. The legislature also finds that understanding and compliance can be strengthened through the addition of clear definitions of “board business” and “informal gatherings”, as established by an office of information practices opinion, with editorial amendments for consistency throughout the law.

The legislature further finds that, in order for the public to provide meaningful written and oral testimony at a board meeting, the public must be allowed to review and inspect the same material provided to the boards in a timely manner, and before testimony deadlines. Therefore, the legislature finds it necessary to define the time period required in advance of public meetings at which board packets must be provided to the public.

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

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

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

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

“Informal gathering” means a social or informal assemblage of two or more board members at which matters relating to board business are not discussed.”

2. By deleting the definition of “chance meeting”.

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

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

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

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

- (1) Investigate a matter relating to [~~the official~~] board business [~~of their board~~]; provided that:
 - (A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;
 - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
 - (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board;
- or

- (2) Present, discuss, or negotiate any position [~~which~~] that the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board [~~prior to~~] before the presentation, discussion, or negotiation.
- (c) Discussions between two or more members of a board, but less than the number of members [~~which~~] that would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.
- (d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

- (1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;
- (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
- (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:
 - (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
 - (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

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

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

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

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

(h) Where notice of the deadline to submit testimony to the legislature is less than the notice requirements in this section, a board may circulate for approval a statement regarding a position previously adopted by the board; provided that the position previously adopted by the board, the statement to be submitted as testimony, and communications among board members about

the statement, including drafts, shall be in writing and accessible to the public, within forty-eight hours of the statement's circulation to the board, on the board's website, or, if the board does not have a website, on an appropriate state or county website.

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

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

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

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

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

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

“[§92-7.5] Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, but no later than forty-eight hours before the meeting time, the board shall also make the board packet available for public inspection in the board's office[-]; provided that nothing in this section shall require creation of a board packet. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

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

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

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

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

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

(Approved July 8, 2022.)