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APPENDIX “E”

1996 Hawaii Session Laws, Act 267

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ACT 267

H.B. NO. 1866

A Bill for an Act Relating to Public Agency Meetings.

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

SECTION 1. The purpose of this Act is to improve the ability of boards to conduct the public's business without compromising the basic principle of the Sunshine Law that discussions, deliberations, decisions, and actions of governmental agencies should be conducted openly as established in part I, chapter 92, Hawaii Revised Statutes.

The legislature finds that members of boards are inclined to ask questions of one another, especially when one member may possess expertise or know the history of a matter or the processes of the board better than another member. The legislature is aware that members of boards have been advised that the Sunshine Law precludes a member of a board from seeking any information or orientation on the practices and history of their boards from other board members unless it takes place in a duly noticed public meeting. The legislature recognizes that there are instances when it is appropriate for interactions to occur between members of a board or between members of a board and certain other parties outside the realm of a public meeting. The legislature also recognizes that there may be occasions when an unanticipated event may require a board to take immediate action. Accordingly, the purpose of this Act is to specify those instances and occasions in which members of a board may discuss certain board matters or conduct an emergency public meeting in a manner that does not undermine the essence of open government.

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding to part I a new section to be appropriately designated and to read as follows:

“§92- Permitted interactions of members. (a) Two members of a board may communicate or interact privately between themselves to gather information from each other about official board matters to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought.

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

- (1) Investigate a matter relating to the official 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 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 the presentation, discussion or negotiation.

(c) Discussions between two or more members of a board, but less than the number of members which 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) 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.

(e) 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.

(f) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part."

SECTION 3. 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). [This part shall not apply to any chance meeting at which matters relating to official business are not discussed.] No chance meeting,¹ 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 4. Section 92-8, Hawaii Revised Statutes, is amended to read as follows:

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

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office; and
- (4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable.

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

- (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
 - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
 - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are filed with the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office;
 - (4) Persons requesting notification on a regular basis are contacted by mail or telephone as soon as practicable; and
 - (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- (c) For purposes of this part, an "unanticipated event" means:¹
- (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
 - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
 - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action."

SECTION 5. The attorney general shall submit a report to the legislature twenty days prior to the convening of the 1997 Regular Session regarding the instances, purposes, and outcomes of emergency meetings held pursuant to section 4 of this Act.

SECTION 6. Statutory material to be repealed is bracketed. New statutory material is underscored.²

SECTION 7. This Act shall take effect upon its approval.

(Approved June 18, 1996.)

Notes

1. Should be underscored.

2. Edited pursuant to HRS §23G-16.5.