


**Special Committee on
County Governance**

The Sunshine Law



What is the Sunshine Law?

The Sunshine Law is Hawaii's open meetings law. It imposes requirements and restrictions on how county boards conduct their business.

Ch. 92, HRS.

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The Sunshine Law ...

- Opens up government process to public scrutiny and provides for public participation
- Requires boards to conduct business openly
- Preference is always for open meetings
- Unless excepted, board business cannot be discussed in private.

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Why does this matter?

- Board action can be voided.
 - Open meeting problem (HRS § 92-3)
 - Notice problem (HRS § 92-7)

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Examples of open meeting problems...

- Not let people testify,
- Closed meetings (e.g. executive session, temporary interaction group) not handled properly, and
- Talk board business outside sunshine meeting.

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What is “board business”?

Matters over which the board has supervision, control, jurisdiction or advisory power and that are before, or are reasonably expected to come before the board.

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Your board business =

- If county manager improves County gov't;
- Recommendations on Charter amendment including form of gov't (if any); and,
- Proposed Charter amendment.

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When not to discuss Board Business?

- **More than two** members of a board **cannot** gather to discuss board business. No serial communications.
- Board members **cannot** discuss board business by phone, fax, **email**, or social media such as Facebook.

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Temporary interaction group (TIG)

- Two or more, but less than quorum, may investigate.

But it requires 3 meetings of parent board –

1. Scope of investigation and authority defined
2. Findings and recommendations presented to the entire board; and
3. Deliberation and decision making.

- Also, can **present, discuss or negotiate** any position that the board has adopted.

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TIG, cont'd

- 2 or more members, but less than quorum, may discuss between themselves the selection of the board's officers.
- Meant for short term interactions.
- Not meant to be a standing committee.

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Permitted Interaction – No quorum but people there (Cancelled Meeting)

- If meeting is cancelled or terminated, board members may receive testimony and presentations, but only if 4 things are done
 - 1. Deliberate at next meeting;
 - 2. Record created as usual;
 - 3. Testimony and presentations to absent board members before next meeting's deliberation; and,
 - 4. Members present at cancelled meeting report on testifiers and presenters to other members.

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Permitted Interaction - Conferences

- Less than quorum may attend an informational meeting or presentation on matters relating to board business, including a meeting of another board or the County Council.
- Members may participate in discussions.
- No commitment relating to a vote on the matter may be made or sought.
- Attending members must report at the next meeting

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Meeting agendas ...the second problem area

- If notice is faulty the meeting must be cancelled.
- No additions once filed, unless 2/3 vote of all members to which the board is entitled, & it Cannot be of reasonably major importance, & action will affect a significant numbers of people.
- All items must be “sufficiently” detailed.
- 2014 change – description of rules being amended (reduces a problem area)

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Standard for “sufficiency”

- Minimums in statute (HRS § 92-7)
 - Date, time, place, & “agenda which lists all of the items to be considered;”
 - State purpose of an Executive Session; &
 - File with County Clerk, 6 days before.

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2015 legislative changes

- Significant privacy interest includes info where release means substantial and demonstrable risk of physical harm (HB 287, Act 140, SLH 2015).
- Move of OIP into State DAGS (HB 461, Act 92, SLH 2015).

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In summary,
a Sunshine Law Violation can mean ...

- Final action can be voided (HRS § 92-11; Kanahele case)
- Injunction (HRS § 92-12);
- Individual(s) guilty of misdemeanor (HRS § 92-13); and
- Removal from Board (HRS § 92-13).

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