

# 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.



#### 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)



# 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.



### 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 -

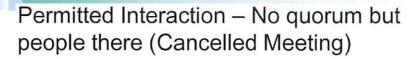
- 1. Scope of investigation and authority defined
- 2. Findings and recommendations presented to the entire board; and
- 3. Deliberation and decision making.
- Also, can present, discuss or negotiate any position that the board has adopted.

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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.



- 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



# 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.



## 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).