

The Sunshine Law

Redistricting Commission 2021

Sunshine Law

- HRS 92
- Why?
 - Boards and agencies have broad discretion to make decisions and form public policy. To protect public interest, there's a desire to make that process as open to public scrutiny and participation as possible
 - “Protect people’s right to know” HRS 92-1

Basic precepts of Sunshine Law:

- Every meeting must be open to the public unless executive session or limited meeting is allowed
- No discussing board business outside of an open meeting (with a few exceptions)
- Boards must provide notice, accept testimony, and keep minutes
- Cannot consider matters not included on agenda (improper notice)

“Board Business”

- Matters over which the board has supervision, control, jurisdiction or advisory power that are before the board or reasonably anticipated to come before the board in the foreseeable future

“Board Business”

- Within the board’s authority
- On current or future agenda

Open Meeting Requirement

- HRS 92-3: Every meeting shall be open to the public and all persons shall be permitted to attend unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5.
- Rules and Regs: “All meetings of the Board shall be held in public places determined by the Board and the Board shall take official action in a meeting open to the public.”

Open Meeting Requirement

- HRS 92-3: the removal of any person who willfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited
- If someone is being disruptive, can remove them

Meeting by interactive conference technology



- Notice must identify locations where board members will be physically present, if not at regular location
- Public can attend at any of those locations
- Meeting ends if audio interaction not maintained with all locations

Notice & Agenda



- Must list all items that the board intends to consider
- Sufficiently detailed so as to provide the public with adequate notice of the matters to be considered
- File notice and agenda at least 6 days prior with county clerk's office and Board's office (electronic posting replaces filing in July)
 - “Emergency” exception permits less notice if imminent peril exists

Amending the Agenda

- Only with 2/3 vote of all members
Board is entitled to (6 needed)
- Cannot add item if:
 - of reasonably major importance, and
 - will affect a significant number of people



Testimony

- All interested persons may submit written and/or oral testimony on any agenda item.
- A board may adopt a rule setting a reasonable time limit for testimony.



What about social events?

- The Sunshine Law does not apply to social gatherings attended by board members at which board business is not discussed.



Discussions with non-board members

- The Sunshine Law does not apply to non-board members, so a board member freely may discuss board business with a non-board member outside of a meeting.
 - BUT – be careful of discussions in the presence of other board members
 - No discussion with non-board members regarding matters discussed in closed executive session

Permitted Interactions – Two Board Members

Two board members may discuss board business outside of a meeting to seek information so long as no commitment to vote is sought or made.

Beware of serial communications



Permitted Interactions – Informational Meeting/Presentation

- 2 or more members but less than a quorum
- Meeting not specifically and exclusively organized for or directed towards members of the board
- No commitment to vote sought or made
- Report back at next duly noticed – members who attended and matters discussed relating to board business

Permitted Interactions – Investigatory Group

- 2 or more members but less than a quorum may be assigned to investigate a matter relating to official business of board, provided that:
- Scope of investigation is identified;
- All findings and recommendations are presented at a regular meeting; and
- Deliberation and decisionmaking, if any, occurs at a subsequent meeting

Permitted Interactions – Other Exceptions

- 2 or more members but less than quorum can discuss selection of board's officers.
- 2 or more members but less than quorum can engage in discussions with head of department if discussion limited to certain administrative topics.
- If no quorum met, can still receive testimony and presentations.

Executive Meetings



- Closed to public
- Motion shall state reason for closed meeting
- Requires 2/3 vote of board members present if constitutes a majority of members to which Board is entitled (minimum of five)

Executive Meeting Purposes

- Personnel decisions
- Consult with board's attorney
- Investigate criminal misconduct
- Matters confidential by law or court order

HRS § 92-5



Executive Meetings

- Q: Can a board hold an executive session to consider information that is embarrassing or personal?
- A: Not unless the discussion falls within one of the 8 purposes listed in 92-5.

Executive Meetings

- Q: Must a board give notice that it intends to convene an executive meeting?
- A: Yes, if the executive session is anticipated in advance. However, the board is also allowed to convene an executive session if the need arises (e.g. to consult with attorney) even if it was not anticipated in advance.

Minutes



- Required by HRS 92-9
 - Date, time, and place of meeting
 - Members absent or present
 - Substance of all matters proposed, discussed, or decided and votes taken
 - Any other information
 - Executive meeting minutes may be withheld

Robert's Rules of Order

Govern the procedure for board meetings

- Generally there is a main motion, which must be seconded in order to discuss
- Members can debate the motion, members must obtain the floor, then close debate Typically done by voice vote “all those in favor”?
 - Need a majority vote to take an action

Thank You

- For committing to serve on the Redistricting Commission.

