CHAPTER 3
AGENCY INFORMAL DECISION-MAKING AND HAWAI’I’S OPEN MEETINGS LAW
by Craig S. Nagamine

INTRODUCTION
The Hawai’i open meetings law, popularly known as the "Sunshine Law," is intended to open up the State's governmental processes to public scrutiny and to promote public participation in both executive and legislative decision-making. Under the Sunshine Law, all State or city boards, commissions or committees are required to conduct their public policy deliberations, both formal and informal, as openly as possible.

The Sunshine Law has four primary requirements designed to foster openness in the political process: (1) all State boards' must give public notice of their regular, special or rescheduled meetings; (2) all meetings of State boards must be open to the public; (3) all persons must be permitted to attend these meetings; and (4) all interested parties must be allowed to submit written and oral testimony and information to the board.

THE PROCESS
Public Notice
Under the Sunshine Law, all State boards and agencies are required to give written notice of any of their regular, special or rescheduled meetings. The notice must be filed with either the Lieutenant Governor's office or the appropriate county clerk's office at least six days prior to the meeting and must also be posted in the board's office for public inspection and, if feasible, at the site of the meeting. The
notice should include the date, time and place of the meeting, along with an agenda listing all of the specific items to be addressed.

Once the notice is filed, the board or agency may not add items to the agenda without a two-thirds recorded vote of its members. Even with a two-thirds vote, however, the board or agency is prohibited from adding any items of "reasonably major importance."³

The board or agency must maintain a mailing list of all persons who request notification of the board's or agency's meetings. The board or agency must mail a copy of the notice/agenda of pending meetings to the last known address of persons on the list, no later than the time the agenda is filed with the lieutenant governor's or county clerk's office.

If you are interested in being placed on a particular board's or agency's mailing list, call the board's or agency's office and ask to be placed on the list. Be sure to keep the board or agency informed of your current address, as it is not required to seek you out if you move, even if your new address is listed in the phone book.

Meetings Requirements

1. All board/agency meetings must be open to the public.

   All State boards and agencies must conduct their business publicly. Thus a board/agency is prohibited from circumventing the requirements of the Sunshine Law by meeting informally or by discussing public policy issues behind closed doors.

   The Sunshine Law does allow boards/agencies to have closed meetings under certain circumstances. These are called "Executive" meetings and may only occur after a two-thirds majority vote of the board's/agency's members at an open meeting and then only regarding certain "excepted" issues.⁴ The Sunshine Law also does not apply to the Judiciary branch (courts), as it exempts the courts and certain legislative and executive boards which exercise adjudicatory functions from its requirements.⁵

2. All persons must be allowed to attend board/agency meetings.

   Any person who wishes can attend board and agency meetings, regardless of their intent to participate in the proceedings. However, the Sunshine Law specifically allows the board/agency to remove any person who willfully disrupts a meeting.

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3. **All interested parties must be allowed to present testimony.**

All boards/agencies must provide the public with a reasonable opportunity to present both oral and written testimony at their meetings. The law states that the requirements of the Sunshine Law should be construed in favor of openness; therefore, a board/agency may not make it difficult to submit testimony on particular issues or at particular meetings and must accept both oral and written testimony at any and all of its meetings.⁶

**Enforcement**

Any person may file suit in the circuit courts to allege a violation of either the notice or open meetings requirements of the Sunshine Law, regardless of his or her participation in any of the proceedings. The courts may force compliance with the requirements of the act or void any actions taken by the board/agency at a meeting that was not held in compliance of the act. If you can prove the agency willfully violated the Sunshine Law, the government must pay for your attorney’s fees and other legal costs associated with the suit.

**CONCLUSION**

The Sunshine Law is an effective tool for providing access to public information. Being on a board's/agency's mailing list will make it easier for you to follow their activities and give you better notice of meetings where you may want to voice your opinion on issues in the form of oral and written testimony. A list of boards/agencies that hear environmental issues can be found in Appendix "B."

Chapter Four discusses the art of drafting written testimony and presenting oral testimony. The presentation of testimony can be an essential component of effective participation in the activities and decision-making proceedings of the Legislature and Executive agencies and Boards.

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¹ Public Agency Meetings and Records (Hawai‘i Open Meetings Law) **HAW. REV. STAT. Ch. 92**(1995).

² “State Boards” include any agency, board, commission, authority or committee of the State or its political subdivisions (e.g. the city government,) which is created by constitution, statute, rule or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions. **H.R.S. §92-1** (1995).
“Reasonably Major Importance” is defined as any item which has the potential to affect a significant number of persons. H.R.S. § 92-7 (1995).

These exceptions usually arise in the context of legal advice to the board, sensitive matters of public safety or security, or personal privacy issues, where the board would be in danger of infringing on the privacy rights of a third party or board member by discussing the issue publicly. H.R.S. § 92-5 (1995).

A board exercises adjudicatory functions when it sits as a quasi-judicial body and passes judgment in a court-like proceeding. Examples of these types of boards include, but are not limited to the following: the Hawai‘i Labor Relations Appeals Board, the Labor and Industrial Relations Appeals Board, the Hawai‘i Paroling Authority, the Civil Service Commission, the Board of Trustees of the Employee’s Retirement System of the State of Hawai‘i, the State Ethics Commission and the Criminal Injuries Compensation Commission. A board that exercises adjudicatory functions, but which is not exempt from the requirements of the Sunshine Law, is the State Land Use Commission. H.R.S. § 92-6 (1995).

For example, a board may not delegate the responsibility for hearing and accepting testimony to a subcommittee of the board and later prohibit the acceptance of testimony at the board’s general meeting. The board must accept both written and oral testimony at subcommittee as well as general meetings. H.R.S. § 92-3 (1995).