

**HAWAII PUBLIC HOUSING AUTHORITY
NOTICE OF MEETING
BOARD OF DIRECTORS TRAINING
July 16, 2010
9:00 a.m.
Pacific Club
1451 Queen Emma Street
Honolulu, HI 96813**

AGENDA

I. CALL TO ORDER / ROLL CALL

II. PUBLIC TESTIMONY

Public testimony on any agenda item shall be taken at this time. Pursuant to section 92-3, Hawaii Revised Statutes, and section 17-2000-18, Hawaii Administrative Rules, the Board may limit public testimony to three minutes.

III. TRAINING

- A. Board Training related to the Board's role and responsibilities, ethics, and open meeting requirements

Meals will be served to the board members and support staff as an integral part of the board meeting.

If any person required special needs (i.e., large print, taped materials, sign language interpreter, etc.) please call Ms. Taryn Chikamori, Secretary to the Board at (808) 832-4680 by close of business two days prior to the meeting date.

Hawaii Public Housing Authority

Board Training

July 16, 2010

9:00 a.m. to 2:45 p.m.

Pacific Club, Honolulu, Hawaii

The Hawaii Public Housing Authority helps provide Hawai`i residents with affordable housing and shelter without discrimination. HPHA efforts focus on developing affordable rental and supportive housing, public housing and the efficient and fair delivery of housing services to the people of Hawai`i.

Session Objectives:

1. Clarify the roles and responsibilities of Hawaii Public Housing Authority board and board members
2. Clarify the requirements under State law to run efficient and transparent meetings
3. Assure all ethical rules and responsibilities are being adhered to by all board members

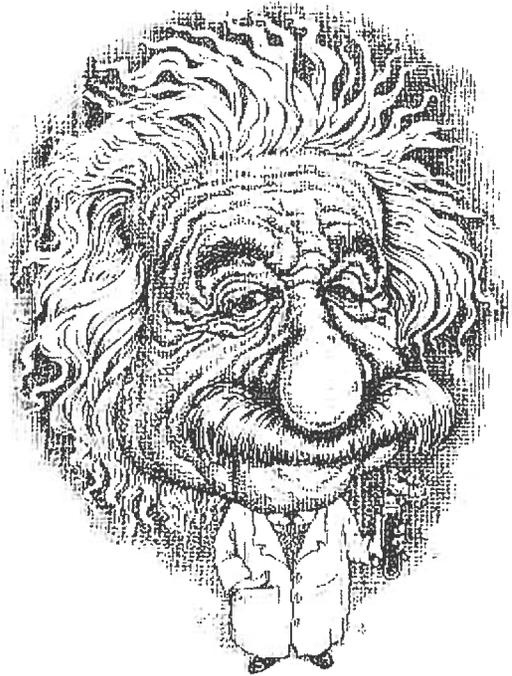
Time	Topic	Facilitator
9:00 – 2:45	July 16, 2010	
9:00 – 9:10	Welcome and Overview	Travis Thompson
9:10 – 10:15	Roles and responsibilities of board members/ Exercises on board responsibilities	Bob Agres, HACBED
10:30 – 11:30	What is Public Housing?	Denise Wise
11:30 – 12:30	Lunch and mingling	
12:30 – 1:30	The ethics of being a board member	Nancy Neuffer Hawaii State Ethics Commission
1:30 – 2:30	The Sunshine Law	Linden Joesting Office of Information Services
2:30 – 2:45	Closing and Evaluation	Travis Thompson

ACC	Annual Contributions Contract. Annual Contracts with Public Housing Authorities for payments towards rents, financing debt service, and financing for modernization.
ADA	Americans with Disabilities Act of 1990
CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as "the regulations")
CHAS	Comprehensive Housing Affordability Strategy
Con Plan	Consolidated Plan, a locally developed plan for housing assistance and urban development under the Community Development Block Grant and other CPD programs
EIS	Environmental Impact Statement. Analysis of environmental impacts of a proposed project.
FMR	Fair market rent
FSS	Family Self Sufficiency program
HAP	Housing Assistance Payments
HCV	Housing choice voucher
HQS	Housing quality standards
LIHTC	Low Income Housing Tax Credit
LOCCS	Line of Credit Control System
NAHRO	National Association of Housing and Redevelopment Officials
PASS	Plan for Achieving Self Sufficiency
PHA	Public Housing Authority
PHAS	Public Housing Assessment System (under REAC)
QHWRA	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)
REAC	(HUD) Real Estate Assessment Center
ROSS	Resident Opportunity and Supportive Services
Section 3	Obligates PHAs to afford resident access to jobs and contracting opportunities created by federal funding

Section 8	Housing Assistance Payment Program (Housing and Community Development Act of 1974)
SEMAP	Section 8 Management Assessment Program
SuperNOFA	Super Notice of Funding Availability
VAWA	Violence Against Women Reauthorization Act of 2005

DEFINE THE PROBLEM –

“If I had an hour to save the world I would spend 59 minutes defining the problem and one minute finding solutions”



SEE THE WORLD ANEW –

“No problem can be solved from the same consciousness that created it. We must learn to see the world anew.”

What Is Capacity Building?

In a 1998 report to the Ford Foundation (*Capacity Building with Social Justice Organizations: Views from the Field*), Ann Philbin defines capacity building as:

“a process of developing and strengthening **skills, instincts, abilities, processes, and resources** that organizations and communities need to survive, adapt, and thrive in a fast changing world.”

Organizational Capacity Building

Technical Capacity

“Doing” the work of the organization, delivering the programs and services.

Leadership Capacity

Visioning, inspiring, directing, innovating, prioritizing, modeling, decision making

Generative Capacity

.The ability of organizations to “shape” the environment in which they operate – affecting systemic change for social justice

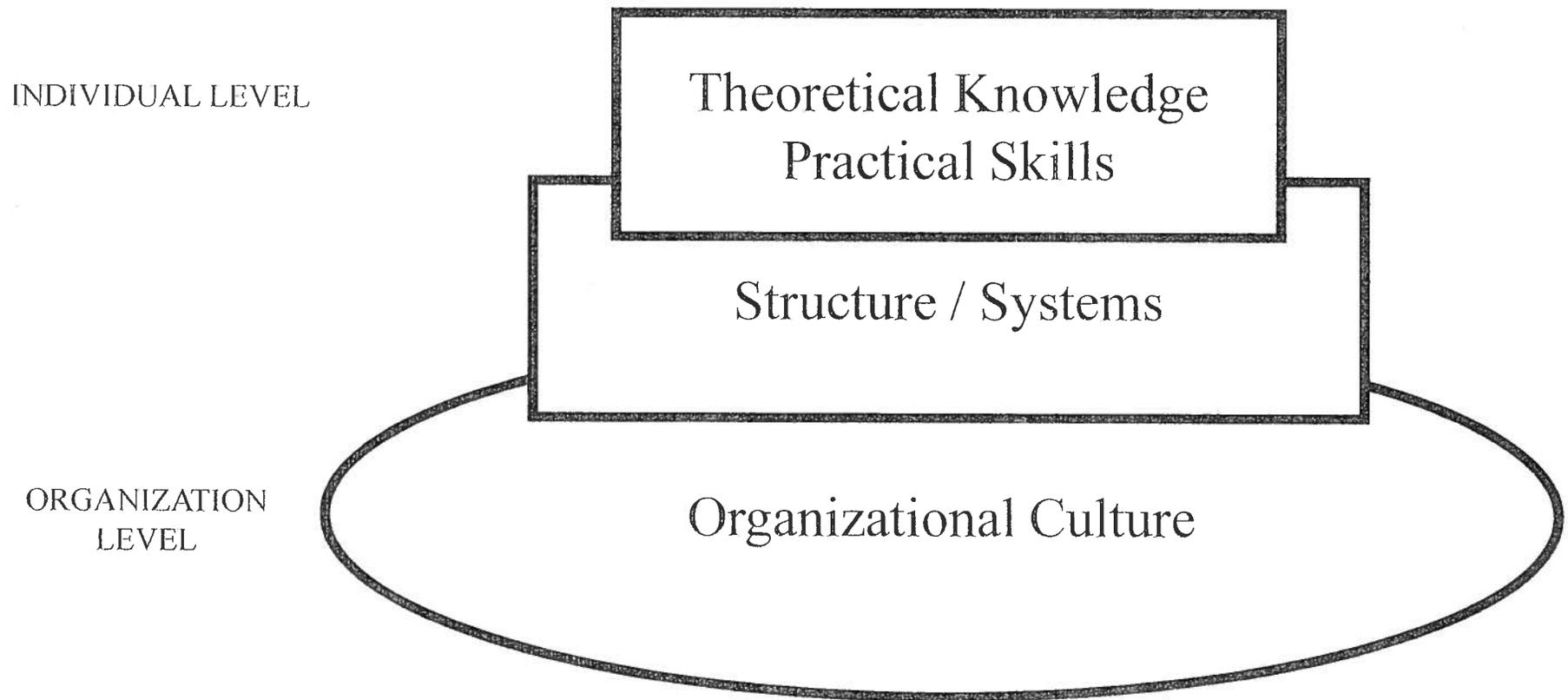
Management Capacity

Ensuring effective and efficient use of organizational resources.

Adaptive Capacity

Monitoring, assessing, and responding to internal and external changes – planning, assessing organizational effectiveness, evaluating programs and services

Diagnosis Model: Levels of Intervention



Board/Staff Roles & Responsibilities . . .

The Hawai'i Public Housing Authority helps provide Hawai'i residents with affordable housing and shelter without discrimination. HPHA efforts focus on developing affordable rental and supportive housing, public housing and the efficient and fair delivery of housing services to the people of Hawai'i.

from Operations & Management – Annual Plan, Fiscal Year 2011 . . .

BOARD	EXECUTIVE DIRECTOR
<ul style="list-style-type: none"> ▶ Establishes policies and executive direction for HPHA. ▶ Approves programs and actions taken by HPHA. ▶ Approves for adoption and/or revision of administrative rules and procedure for the various HPHA programs. 	<ul style="list-style-type: none"> ▶ Serves as the focal point for the execution of the statutory provisions relating to housing management services, and the delivery of housing and housing services to the State of Hawai'i. ▶ Provides for the overall administration and management of all functions and activities related to the day-to-day operation of HPHA. ▶ Implements programs to meet agency-wide goals and objectives in consonance with applicable plans and guidelines. ▶ Establishes policies and procedures to guide program operations. ▶ Serves as the focal point for program and personnel evaluation and personnel development.

from McKinsey Capacity Assessment Grid . . .

Governance & Leadership – the organization's board of directors is engaged and representative, with defined governance practices. The board effectively oversees the policies, programs, and organizational operations including reviewing achievement of strategic goals, financial status, and executive director performance. The organization is accomplished at recruiting, developing, and retaining capable staff and technical resources. The organization's leadership is alert to changing community needs and realities.

Board Governance – legal board, advisory board and managers work well together from clear roles; board fully understands and fulfills fiduciary duties; board actively defines performance targets and holds CEO/ED fully accountable; board empowered and prepared to hire or fire CEO/ED if necessary; board periodically evaluated.

Decision Making Framework – clear, formal lines/systems for decision making that involve as broad participation as practical and appropriate along with dissemination/interpretation of decision.

Board & Staff Responsibilities . . .

modified from materials developed by Dr. Carter McNamara

PLANNING	Board	Staff	Joint
▶ Direct the process of planning		✓	
▶ Provide input to long range goals			✓
▶ Approve long range goals	✓		
▶ Formulate annual objectives		✓	
▶ Approve annual objectives	✓		
▶ Prepare performance reports on achievement of goals and objectives		✓	
▶ Monitor achievement of goals and objectives			✓

PROGRAMMING	Board	Staff	Joint
▶ Assess stakeholder (customers, community) needs			✓
▶ Oversee evaluation of products, services, and programs	✓		
▶ Maintain program records; prepare program reports		✓	
▶ Prepare preliminary budget		✓	
▶ Finalize and approve budget	✓		
▶ See that expenditures are within budget during the year			✓
▶ Approve expenditures outside authorized budget	✓		
▶ Insure annual audit of organization accounts			✓

PERSONNEL	Board	Staff	Joint
▶ Employ Chief Executive	✓		
▶ Direct work of the staff		✓	
▶ Hire and discharge staff member		✓	
▶ Decision to add staff		✓	
▶ Settle discord among staff		✓	

COMMUNITY RELATIONS	Board	Staff	Joint
▶ Interpret organization to community			✓
▶ Write news stories		✓	
▶ Provide organization linkage with other organizations		✓	

BOARD COMMITTEES	Board	Staff	Joint
▶ Appoint committee members	✓		
▶ Call Committee Chair to urge him/her into action	✓		
▶ Promote attendance at Board/Committee meetings	✓		
▶ Plan agenda for Board meetings			✓
▶ Take minutes at Board meetings		✓	
▶ Plan and propose committee organization	✓		
▶ Prepare exhibits, material and proposals for Board and Committees		✓	
▶ Sign legal documents			✓
▶ Follow-up to insure implementation of Board and Committee decisions			✓
▶ Settle clash between Committees	✓		

Board/Staff Roles & Responsibilities . . .

modified from Jude Kaye, Boardroom Dancing: How To Lead & When To Follow, 2001

duties of care, loyalty, and obedience --

Governance – <i>the board acts to govern the organization . . .</i>	Support – <i>the board acts to support the organization . . .</i>
<p><i>Process For Action –</i></p> <ul style="list-style-type: none"> ▶ The board acts as a body (with the assistance of committees). 	<p><i>Process For Action –</i></p> <ul style="list-style-type: none"> ▶ Board members act as individuals or through committees.
<p><i>Mandated Or Optional Function –</i></p> <ul style="list-style-type: none"> ▶ Governance fulfills a legal responsibility to the community and, as such, is a mandated function. 	<p><i>Mandated Or Optional Function –</i></p> <ul style="list-style-type: none"> ▶ The level of support expected from individuals or committees is optional and will vary from organization to organization.
<p><i>Responsibilities –</i></p> <ul style="list-style-type: none"> ▶ <i>Mission</i> – affirm mission and purpose. ▶ <i>Legal</i> – ensure compliance with federal, state, and local regulations and fulfillment of contractual obligations, including filing of required reports. ▶ <i>Financial</i> – safeguard assets from misuse, waste, and embezzlement. ▶ <i>CEO</i> – select the executive director and monitor and evaluate performance; delegate the day-to-day management to the CEO. If necessary, fire the CEO. ▶ <i>Planning</i> – participate with staff in determining program and administrative strategies and overall long-term and short-term priorities. ▶ <i>Programs</i> – approve an annual operating plan, monitor implementation, and make sure there are program evaluations to measure impact. ▶ <i>Efficiency & Impact</i> – ensure a realistic budget that maximizes use of resources. ▶ <i>Financial Viability</i> – make sure the organization has an overall resource development strategy to support the effective delivery of services, and monitor implementation of the strategy/funding model. ▶ <i>Policies</i> – approve personnel and other policies. Review periodically to ensure policies are up to date and relevant. ▶ <i>Evaluation</i> – assess whether the organization is achieving its purpose (<i>effectiveness</i>), at what cost (<i>efficiency</i>), and is meeting the needs of the community. ▶ <i>Board Effectiveness</i> – ensure effective governance through evaluation of the board itself, committees, and board leadership. 	<p><i>Responsibilities –</i></p> <p><i>Personal Commitment –</i></p> <ul style="list-style-type: none"> ▶ <i>Public Relations</i> – act as ambassadors to the community on behalf of the organization and its clients. <p><i>Professional Expertise –</i></p> <ul style="list-style-type: none"> ▶ Advise staff in areas of expertise. Act as a sounding board for executive director and other executive staff. <p><i>Credibility –</i></p> <ul style="list-style-type: none"> ▶ Lend names and personal reputation to the organization to use in brochures, grant proposals, and other marketing materials.

Organizational Culture . . .

adapted from Brody, Weiser, Burns

form follows function –

	Position 1 – Board Led	Position 2 – Unclear What Trust Exists	Position 3 – Executive Led	Position 4 – Board/Executive Led
Responsibility	▶ Board	▶ Not Clear Who	▶ Board	▶ Allocated By Both
Communication	▶ Directive	▶ Poor	▶ Informative	▶ Open, Direct
Roles	▶ Board Micromanages	▶ Executive/Board Do Bits Of Every Job	▶ Board Is Figurehead	▶ Defined & Clearly Allocated
Possible Consequences	<ul style="list-style-type: none"> ▶ Board is fully in charge. ▶ Executive “serves” the Board. ▶ Board knows what is going on and why success or failure can occur. ▶ <i>Potential Risk</i> – possible high turnover of Executives (<i>no authority but all the responsibility</i>) and Board members (<i>too much responsibility</i>) 	<ul style="list-style-type: none"> ▶ High risk of frustration. ▶ High risk that many operational and governance functions will not be accomplished. 	<ul style="list-style-type: none"> ▶ With high level of Executive ownership, tasks are attended to and possibly done well. ▶ <i>Potential Risk</i> – lack of strong Board role results in the absence of shared ownership and common knowledge, making it difficult for board members to fulfill fiduciary responsibilities. 	<ul style="list-style-type: none"> ▶ Organizational needs met through shared responsibility. ▶ Clearly defined roles and responsibilities with accountability.

(Trust – the belief that what is promised will be delivered as promised)

from McKinsey Capacity Assessment Grid . . .

Shared Beliefs & Values – common set of basic beliefs and values (i.e., social, religious) exists and is widely shared within the organization; provides members sense of identity and clear direction for behavior; beliefs embodied by leader but nevertheless timeless and stable across leadership changes; beliefs clearly support overall purpose of the organization and are consistently harnessed to produce impact.

Shared Reference & Practices – common set of references and practices exist within the organization which may include: traditions, rituals, unwritten rules, stories, heroes or role models, symbols, language, dress; are truly shared and adopted by all members of the organization; actively designed and used to clearly support overall purpose of the organization and to drive performance.

Improving Board Effectiveness . . .

modified from Jude Kaye, Boardroom Dancing: How To Lead & When To Follow, 2001

Roles & Responsibilities –

- ▶ *Governance* – the most important job of the board is governance.
- ▶ *Accountability & Expectations* – raise the bar (*of accountability*) and lower (*the number of*) expectations. Hold individuals accountable for high standards of performance but be realistic and about what we can and should expect from board members.
- ▶ *Funding* – Money does matter. Boards must help raise it and protect it.
- ▶ *Strategic Focus* – look at the horizon rather than your feet. Focus on where you need to go in addition to where you are or where you have been.

Board/Staff Partnership –

- ▶ *Leadership* – board leadership is essential for an effective board.
- ▶ *Governance & Management* – there is a fine line between effective governance (*oversight*) and micromanagement – but there is a line: [a] the role of the board is to hold the Executive Director accountable, not to run the organization; [b] since “fine line” is in a gray area, don’t assume mal-intent – keep lines of communication open; and [c] clarify decision-making and how you will hold each other accountable.

Effective Processes –

- ▶ *Meaningful Work* – make the work of the board meaningful: [a] for each member, understand his or her motivational needs and assign work accordingly – understand and value the strengths that each member brings; and [b] for the board as a whole, make meetings more than a series of boring reports.
- ▶ *Board Development* – good boards are not born, they are trained and nurtured – but training will not always solve the problem. Board development, including evaluation of the Board, is essential for sustaining an effective Board.
- ▶ *Form Follows Function* – boards do not have one “predictable and normal” developmental “life cycle” – there are different ways that a board can govern and support an organization. Regularly assess and be more pro-active and intentional about “how” the board operates.

HAWAII REVISED STATUTES
CHAPTER 84
STANDARDS OF CONDUCT

Preamble

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84-2 Applicability
84-3 Definitions

Part II. Code of Ethics

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84-11.5 Reporting of gifts
84-12 Confidential information
84-13 Fair treatment
84-13.5 Washington Place; campaign activities
84-14 Conflicts of interests
84-15 Contracts
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84-17 Requirements of disclosure
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84-32 Procedure
84-33 Disciplinary action for violation
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84-37 Concurrent jurisdiction
84-38 Judicial branch
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84-43 Ethics training course

CHAPTER 84 STANDARDS OF CONDUCT

Preamble

The purpose of this chapter is to (1) prescribe a code of ethics for elected officers and public employees of the State as mandated by the people of the State of Hawaii in the Hawaii Constitution, Article XIV; (2) educate the citizenry with respect to ethics in government; and (3) establish an ethics commission which will administer the codes of ethics adopted by the constitutional convention and by the legislature and render advisory opinions and enforce the provisions of this law so that public confidence in public servants will be preserved.

Part I. General Provisions

§84-1 Construction. This chapter shall be liberally construed to promote high standards of ethical conduct in state government.

§84-2 Applicability. This chapter shall apply to every nominated, appointed, or elected officer, employee, and candidate to elected office of the State and for election to the constitutional convention, but excluding justices and judges; provided that in the case of elected delegates and employees of the constitutional convention, this chapter shall apply only to the enforcement and administration of the code of ethics adopted by the constitutional convention.

§84-3 Definitions.

"Business" includes a corporation, a partnership, a sole proprietorship, a trust or foundation, or any other individual or organization carrying on a business, whether or not operated for profit.

"Compensation" means any money, thing of value, or economic benefit conferred on or received by any person in return for services rendered or to be rendered by oneself or another.

"Controlling interest" means an interest in a business or other undertaking which is sufficient in fact to control, whether the interest be greater or less than fifty per cent.

"Employee" means any nominated, appointed, or elected officer or employee of the State, including members of boards, commissions, and committees, and employees under contract to the State or of the constitutional convention, but excluding legislators, delegates to the constitutional convention, justices and judges.

"Employment" means any rendering of services for compensation.

"Financial interest" means an interest held by an individual, the individual's spouse, or dependent children which is:

- (1) An ownership interest in a business.
- (2) A creditor interest in an insolvent business.
- (3) An employment, or prospective employment for which negotiations have begun.
- (4) An ownership interest in real or personal property.
- (5) A loan or other debtor interest.
- (6) A directorship or officership in a business.

"Official act" or "official action" means a decision, recommendation, approval, disapproval, or other action, including inaction, which involves the use of discretionary authority.

"Official authority" includes administrative or legislative powers of decision, recommendation, approval, disapproval, or other discretionary action.

"State agency" includes the State, the legislature and its committees, all executive departments, boards, commissions, committees, bureaus, offices, the University of Hawaii, and all independent commissions and other establishments of the state government but excluding the courts.

Part II. Code of Ethics

§84-11 Gifts. No legislator or employee shall solicit, accept, or receive, directly or indirectly, any gift, whether in the form of money, service, loan, travel, entertainment, hospitality, thing, or promise, or in any other form, under circumstances in which it can reasonably be inferred that the gift is intended to influence the legislator or employee in the performance of the legislator's or employee's official duties or is intended as a reward for any official action on the legislator's or employee's part.

§84-11.5 Reporting of gifts. (a) Every legislator and employee shall file a gifts disclosure statement with the state ethics commission on June 30 of each year if all the following conditions are met:

- (1) The legislator or employee, or spouse or dependent child of a legislator or employee, received directly or indirectly from one source any gift or gifts valued singly or in the aggregate in excess of \$200, whether the gift is in the form of money, service, goods, or in any other form;
- (2) The source of the gift or gifts have interests that may be affected by official action or lack of action by the legislator or employee; and
- (3) The gift is not exempted by subsection (d) from reporting requirements under this subsection.

(b) The report shall cover the period from June 1 of the preceding calendar year through June 1 of the year of the report.

(c) The gifts disclosure statement shall contain the following information:

- (1) A description of the gift;
- (2) A good faith estimate of the value of the gift;
- (3) The date the gift was received; and
- (4) The name of the person, business entity, or organization from whom, or on behalf of whom, the gift was received.

(d) Excluded from the reporting requirements of this section are the following:

- (1) Gifts received by will or intestate succession;
- (2) Gifts received by way of distribution of any inter vivos or testamentary trust established by a spouse or ancestor;
- (3) Gifts from a spouse, fiancé, fiancée, any relative within four degrees of consanguinity or the spouse, fiancé, or fiancée of such a relative. A gift from any such person is a reportable gift if the person is acting as an agent or intermediary for any person not covered by this paragraph;
- (4) Political campaign contributions that comply with state law;
- (5) Anything available to or distributed to the public generally without regard to the official status of the recipient;
- (6) Gifts that, within thirty days after receipt, are returned to the giver or delivered to a public body or to a bona fide educational or charitable organization without the donation being claimed as a charitable contribution for tax purposes; and
- (7) Exchanges of approximately equal value on holidays, birthday, or special occasions.

(e) Failure of a legislator or employee to file a gifts disclosure statement as required by this section shall be a violation of this chapter.

(f) This section shall not affect the applicability of section 84-11.

§84-12 Confidential information. No legislator or employee shall disclose information which by law or practice is not available to the public and which the legislator or employee acquires in the course of the legislator's or employee's official duties, or use the information for the legislator's or employee's personal gain or for the benefit of anyone.

§84-13 Fair treatment. No legislator or employee shall use or attempt to use the legislator's or employee's official position to secure or grant unwarranted privileges, exemptions, advantages, contracts, or treatment, for oneself or others; including but not limited to the following:

- (1) Seeking other employment or contract for services for oneself by the use or attempted use of the legislator's or employee's office or position.
- (2) Accepting, receiving, or soliciting compensation or other consideration for the performance of the legislator's or employee's official duties or responsibilities except as provided by law.
- (3) Using state time, equipment or other facilities for private business purposes.
- (4) Soliciting, selling, or otherwise engaging in a substantial financial transaction with a subordinate or a person or business whom the legislator or employee inspects or supervises in the legislator's or employee's official capacity.

Nothing herein shall be construed to prohibit a legislator from introducing bills and resolutions, serving on committees or from making statements or taking action in the exercise of the legislator's legislative functions. Every legislator shall file a full and complete public disclosure of the nature and extent of the interest or transaction which the legislator believes may be affected by legislative action.

§84-13.5 Washington Place; campaign activities. The governor shall not allow Washington Place to be used for any events intended to solicit funds, support, or votes for any candidate for elective public office.

§84-14 Conflicts of interests. (a) No employee shall take any official action directly affecting:

- (1) A business or other undertaking in which he has a substantial financial interest; or
- (2) A private undertaking in which he is engaged as legal counsel, advisor, consultant, representative, or other agency capacity.

A department head who is unable to disqualify himself on any matter described in items (1) and (2) above will not be in violation of this subsection if he has complied with the disclosure requirements of section 84-17; and

A person whose position on a board, commission, or committee is mandated by statute, resolution, or executive order to have particular qualifications shall only be prohibited from taking official action that directly and specifically affects a business or undertaking in which he has a substantial financial interest; provided that the substantial financial interest is related to the member's particular qualifications.

(b) No employee shall acquire financial interests in any business or other undertaking which he has reason to believe may be directly involved in official action to be taken by him.

(c) No legislator or employee shall assist any person or business or act in a representative capacity before any state or county agency for a contingent compensation in any transaction involving the State.

(d) No legislator or employee shall assist any person or business or act in a representative capacity for a fee or other compensation to secure passage of a bill or to obtain a contract, claim, or other transaction or proposal in which he has participated or will participate as a legislator or employee, nor shall he assist any person or business or act in a representative capacity for a fee or other compensation on such bill, contract, claim, or other transaction or proposal before the legislature or agency of which he is an employee or legislator.

(e) No employee shall assist any person or business or act in a representative capacity before a state or county agency for a fee or other consideration on any bill, contract, claim, or other transaction or proposal involving official action by the agency if he has official authority over that state or county agency unless he has complied with the disclosure requirements of section 84-17.

§84-15 Contracts. (a) A state agency shall not enter into any contract to procure or dispose of goods or services, or for construction, with a legislator, an employee, or a business in which a legislator or an employee has a controlling interest, involving services or property of a value in excess of \$10,000 unless:

- (1) The contract is awarded by competitive sealed bidding pursuant to section 103D-302;
- (2) The contract is awarded by competitive sealed proposal pursuant to section 103D-303; or
- (3) The agency posts a notice of its intent to award the contract and files a copy of the notice with the state ethics commission at least ten days before the contract is awarded.

(b) A state agency shall not enter into a contract with any person or business which is represented or assisted personally in the matter by a person who has been an employee of the agency within the preceding two years and who participated while in state office or employment in the matter with which the contract is directly concerned.

§84-16 Contracts voidable. In addition to any other penalty provided by law, any contract entered into by the State in violation of this chapter is voidable on behalf of the State; provided that in any action to avoid a contract pursuant to this section the interests of third parties who may be damaged thereby shall be taken into account, and the action to void the transaction is initiated within sixty days after the determination of a violation under this chapter. The attorney general shall have the authority to enforce this provision.

§84-17 Requirements of disclosure. (a) For the purposes of this section, the terms:

"Disclosure period" refers to the period from January 1 of the preceding calendar year to the time of the filing of the employee's or legislator's disclosure of financial interests.

"Substantially the same" refers to no more than ten amendments or changes to the information reported for the preceding disclosure period.

- (b) The disclosure of financial interest required by this section shall be filed:
- (1) Between January 1 and May 31 of each year;
 - (2) Within thirty days of one's election or appointment to a state position enumerated in subsection (c); or
 - (3) Within thirty days of separation from a state position if a prior financial disclosure statement for the position was not filed within the one hundred eighty days preceding the date of separation;

provided that candidates for state elective offices or the constitutional convention shall file the required statements no later than twenty days prior to the date of the primary election for state offices or the election of delegates to the constitutional convention.

(c) The following persons shall file annually with the state ethics commission a disclosure of financial interests:

- (1) The governor, the lieutenant governor, the members of the legislature, and delegates to the constitutional convention; provided that delegates to the constitutional convention shall only be required to file initial disclosures;
- (2) The directors and their deputies, the division chiefs, the executive directors and the executive secretaries and their deputies, the purchasing agents and the fiscal officers, regardless of the titles by which the foregoing persons are designated, of every state agency and department;
- (3) The permanent employees of the legislature and its service agencies, other than persons employed in clerical, secretarial, or similar positions;
- (4) The administrative director of the State, and the assistants in the office of the governor and the lieutenant governor, other than persons employed in clerical, secretarial, or similar positions;
- (5) The hearings officers of every state agency and department;
- (6) The president, the vice presidents, assistant vice presidents, the chancellors, and the provosts of the University of Hawaii and its community colleges;
- (7) The superintendent, the deputy superintendent, the assistant superintendents, the complex area superintendents, the state librarian, and the deputy state librarian of the department of education;
- (8) The administrative director and the deputy director of the courts;
- (9) The members of every state board or commission whose original terms of office are for periods exceeding one year and whose functions are not solely advisory;
- (10) Candidates for state elective offices, including candidates for election to the constitutional convention, provided that candidates shall only be required to file initial disclosures; and
- (11) The administrator and assistant administrator of the office of Hawaiian affairs.

(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication:

- (1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, the members of the board of education, the trustees of the office of Hawaiian affairs, and candidates for state elective offices;
- (2) The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;
- (3) The administrative director of the State;
- (4) The president, the vice presidents, the assistant vice presidents, the chancellors, and the provosts of the University of Hawaii;
- (5) The superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;
- (6) The administrative director and the deputy director of the courts; and
- (7) The administrator and the assistant administrator of the office of Hawaiian affairs.

(e) The information on the financial disclosure statements shall be confidential, except as provided in subsection (d). The commission shall not release the contents of the disclosures except as may be permitted pursuant to this chapter. Any person who releases any confidential information shall be subject to section 84-31(c).

[Note: This reference to section 84-31(c) pertains to previous statutory language which was deleted by Act 221, SLH 1995.]

(f) Candidates for state elective offices, including candidates for election to the constitutional convention, shall only be required to disclose their own financial interests. The disclosures of financial interests of all other persons designated in subsection (c) shall state, in addition to the financial interests of the person disclosing, the financial interests of the person's spouse and dependent children. All disclosures shall include:

- (1) The source and amount of all income of \$1,000 or more received, for services rendered, by the person in the person's own name or by any other person for the person's use or benefit during the preceding calendar year and the nature of the services rendered; provided that information that may be privileged by law or individual items of compensation that constitute a portion of the gross income of the business or profession from which the person derives income need not be disclosed;
- (2) The amount and identity of every ownership or beneficial interest held during the disclosure period in any business having a value of \$5,000 or more or equal to ten per cent of the ownership of the business and, if the interest was transferred during the disclosure period, the date of the transfer; provided that an interest in the form of an account in a federal or state regulated financial institution, an interest in the form of a policy in a mutual insurance company, or individual items in a mutual fund or a blind trust, if the mutual fund or blind trust has been disclosed pursuant to this paragraph, need not be disclosed;
- (3) Every officership, directorship, trusteeship, or other fiduciary relationship held in a business during the disclosure period, the term of office and the annual compensation;
- (4) The name of each creditor to whom the value of \$3,000 or more was owed during the disclosure period and the original amount and amount outstanding; provided that debts arising out of retail installment transactions for the purchase of consumer goods need not be disclosed;
- (5) The street address and, if available, the tax map key number, and the value of any real property in which the person holds an interest whose value is \$10,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration; provided that disclosure shall not be required of the street address and tax map key number of the person's residence;
- (6) The names of clients personally represented before state agencies, except in ministerial matters, for a fee or compensation during the disclosure period and the names of the state agencies involved; and
- (7) The amount and identity of every creditor interest in an insolvent business held during the disclosure period having a value of \$5,000 or more.

(g) Where an amount is required to be reported, the person disclosing may indicate whether the amount is at least \$1,000 but less than \$10,000; at least \$10,000 but less than \$25,000; at least \$25,000 but less than \$50,000; at least \$50,000 but less than \$100,000; at least \$100,000 but less than \$150,000; at least \$150,000 but less than \$250,000; at least \$250,000 but less than \$500,000; at least \$500,000 but less than \$750,000; at least \$750,000 but less than \$1,000,000; or \$1,000,000 or more. An amount of stock may be reported by number of shares.

(h) The state ethics commission shall provide a long form of disclosure on all even-numbered years and a short form of disclosure for subsequent annual filings on all odd-numbered years in those instances where the financial interests of the person disclosing are substantially the same as those reported for the preceding disclosure period.

(i) Failure of a legislator, a delegate to the constitutional convention, or employee to file a disclosure of financial interests as required by this section shall be a violation of this chapter. Any

legislator, delegate to a constitutional convention, or employee who fails to file a disclosure of financial interests when due shall be assessed an administrative fine of \$50. The state ethics commission shall notify a person, by registered mail, return receipt requested, of the failure to file, and the disclosure of financial interests shall be submitted to the commission not later than 4:30 p.m. on the tenth day after notification of the failure to file has been mailed to the person. If a disclosure of financial interests has not been filed within ten days of the due date, an additional administrative fine of \$10 for each day a disclosure remains unfiled shall be added to the administrative fine. All administrative fines collected under this section shall be deposited in the State's general fund. Any administrative fine for late filing shall be in addition to any other action the commission may take under this chapter for violations of the state ethics code. The commission may waive any administrative fines assessed under this subsection for good cause shown.

(j) The chief election officer, upon receipt of the nomination paper of any person seeking a state elective office, including the office of delegate to the constitutional convention, shall notify the ethics commission of the name of the candidate for state office and the date on which the person filed the nomination paper. The ethics commission, upon the expiration of the time allowed for filing, shall release to the public a list of all candidates who have failed to file financial disclosure statements and shall immediately assess a late filing penalty fee against those candidates of \$25 which shall be collected by the state ethics commission and deposited into the general fund. The ethics commission may investigate, initiate, or receive charges as to whether a candidate's financial disclosure statement discloses the financial interests required to be disclosed. After proceeding in conformance with section 84-31, the ethics commission may issue a decision as to whether a candidate has complied with section 84-17(f) and this decision shall be a matter of public record.

§84-17.5 Disclosure files; disposition. (a) All financial disclosure statements filed by a legislator, employee, or delegate to a constitutional convention shall be maintained by the state ethics commission during the term of office of the legislator, employee, or delegate and for a period of six years thereafter. Upon the expiration of the six-year period, the financial disclosure statement and all copies thereof shall be destroyed.

(b) Upon the expiration of six years after an election for which a candidate for state elective office or a constitutional convention has filed a financial disclosure statement, the state ethics commission shall destroy the candidate's financial disclosure statement and all copies thereof.

(c) Financial disclosure statements provided for in section 84-17(d) shall cease to be public records once the six-year period in subsection (a) or (b) has run.

(d) Nothing herein shall bar the state ethics commission from retaining a financial disclosure statement or copy of a financial disclosure statement that has become part of a charge case or advisory opinion request, or is part of an ongoing investigation.

§84-18 Restrictions on post employment. (a) No former legislator or employee shall disclose any information which by law or practice is not available to the public and which the former legislator or employee acquired in the course of the former legislator's or employee's official duties or use the information for the former legislator's or employee's personal gain or the benefit of anyone.

(b) No former legislator, within twelve months after termination of the former legislator's employment, shall represent any person or business for a fee or other consideration, on matters in which the former legislator participated as a legislator or on matters involving official action by the legislature.

(c) No former employee, within twelve months after termination of the former employee's employment, shall represent any person or business for a fee or other consideration, on matters in which

the former employee participated as an employee or on matters involving official action by the particular state agency or subdivision thereof with which the former employee had actually served.

(d) This section shall not prohibit any agency from contracting with a former legislator or employee to act on a matter on behalf of the State within the period of limitations stated herein, and shall not prevent such legislator or employee from appearing before any agency in relation to such employment.

(e) This section shall not apply to any person who is employed by the State for a period of less than one hundred and eighty-one days.

(f) For the purposes of this section, "represent" means to engage in direct communication on behalf of any person or business with a legislator, a legislative employee, a particular state agency or subdivision thereof, or their employees.

§84-19 Violation. (a) Any favorable state action obtained in violation of the code of ethics for legislators or employees and former employees is voidable in the same manner as voidable contracts as provided for under section 84-16; and the State by the attorney general may pursue all legal and equitable remedies available to it.

(b) The State by the attorney general may recover any fee, compensation, gift, or profit received by any person as a result of a violation of the code of ethics by a legislator or employee or former legislator or employee. Action to recover under this subsection shall be brought within one year of a determination of such violation.

(c) Any violation of this chapter by an employee, candidate for election to and elected delegate to the constitutional convention shall be punishable only in accordance with the code of ethics adopted by the constitutional convention.

Part III. State Ethics Commission

§84-21 State ethics commission established; composition. (a) There is established within the office of the auditor for administrative purposes only a commission to be known as the state ethics commission. The commission shall consist of five members appointed by the governor from a panel of ten persons nominated by the judicial council. Each member of the commission shall be a citizen of the United States and a resident of the State. Members of the commission shall hold no other public office.

(b) The chairperson of the commission shall be elected by the majority of the members of the commission. The term of each member of the commission shall be for four years. No person shall be appointed consecutively to more than two terms as a member of the commission. A vacancy on the commission shall be filled for the remainder of the unexpired term in the same manner as the original appointment, except that the judicial council shall nominate for gubernatorial appointment two persons for a vacancy.

(c) No member of the commission shall hold office for more than one hundred and twenty days after the expiration of the member's term. If the governor fails to appoint a person to a vacant office within sixty days after receipt of the list of nominees from the judicial council, council shall select a person from its list of nominees to fill the vacant office, notwithstanding subsection (b) and section 26-34 to the contrary.

(d) The governor may remove or suspend any member of the commission upon the filing of a written finding with the commission, and upon service of a copy of the written finding on the member to be removed or suspended.

Part IV. Administration and Enforcement

§84-31 Duties of commission; complaint, hearing, determination. (a) The ethics commission shall have the following powers and duties:

- (1) It shall prescribe forms for the disclosures required by Article XIV of the Hawaii Constitution and section 84-17 and the gifts disclosure statements required by section 84-11.5 and shall establish orderly procedures for implementing the requirements of those provisions;
- (2) It shall render advisory opinions upon the request of any legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment as to whether the facts and circumstances of a particular case constitute or will constitute a violation of the code of ethics. If no advisory opinion is rendered within thirty days after the request is filed with the commission, it shall be deemed that an advisory opinion was rendered and that the facts and circumstances of that particular case do not constitute a violation of the code of ethics. The opinion rendered or deemed rendered, until amended or revoked, shall be binding on the commission in any subsequent charges concerning the legislator, employee, or delegate to the constitutional convention, or person formerly holding such office or employment, who sought the opinion and acted in reliance on it in good faith, unless material facts were omitted or misstated by such persons in the request for an advisory opinion;
- (3) It shall initiate, receive, and consider charges concerning alleged violation of this chapter, initiate or make investigation, and hold hearings;
- (4) It may subpoena witnesses, administer oaths, and take testimony relating to matters before the commission and require the production for examination of any books or papers relative to any matter under investigation or in question before the commission. Before the commission shall exercise any of the powers authorized in this section with respect to any investigation or hearings it shall by formal resolution, supported by a vote of three or more members of the commission, define the nature and scope of its inquiry;
- (5) It may, from time to time adopt, amend, and repeal any rules, not inconsistent with this chapter, that in the judgment of the commission seem appropriate for the carrying out of this chapter and for the efficient administration thereof, including every matter or thing required to be done or which may be done with the approval or consent or by order or under the direction or supervision of or as prescribed by the commission. The rules, when adopted as provided in chapter 91, shall have the force and effect of law;
- (6) It shall have jurisdiction for purposes of investigation and taking appropriate action on alleged violations of this chapter in all proceedings commenced within six years of an alleged violation of this chapter by a legislator or employee or former legislator or employee. A proceeding shall be deemed commenced by the filing of a charge with the commission or by the signing of a charge by three or more members of the commission. Nothing herein shall bar proceedings against a person who by fraud or other device, prevents discovery of a violation of this chapter;
- (7) It shall distribute its publications without cost to the public and shall initiate and maintain programs with the purpose of educating the citizenry and all legislators, delegates to the constitutional convention, and employees on matters of ethics in government employment; and
- (8) It shall administer any code of ethics adopted by a state constitutional convention, subject to the procedural requirements of this part and any rules adopted thereunder.

(b) Charges concerning the violation of this chapter shall be in writing, signed by the person making the charge under oath, except that any charge initiated by the commission shall be signed by three or more members of the commission. The commission shall notify in writing every person against whom a charge is received and afford the person an opportunity to explain the conduct alleged to be in violation of the chapter. The commission may investigate, after compliance with this section, such charges and render an informal advisory opinion to the alleged violator. The commission shall investigate all charges on a confidential basis, having available all the powers herein provided, and proceedings at this stage shall not be public. If the informal advisory opinion indicates a probable violation, the person charged shall request a formal opinion or within a reasonable time comply with the informal advisory opinion. If the person charged fails to comply with such informal advisory opinion or if a majority of the members of the commission determine that there is probable cause for belief that a violation of this chapter might have occurred, a copy of the charge and a further statement of the alleged violation shall be personally served upon the alleged violator. Service shall be made by personal service upon the alleged violator wherever found or by registered or certified mail with request for a return receipt and marked deliver to addressee only. If after due diligence service cannot be effected successfully in accordance with the above, service may be made by publication if so ordered by the circuit court of the circuit wherein the alleged violator last resided. The state ethics commission shall submit to the circuit court for its consideration in issuing its order to allow service by publication an affidavit setting forth facts based upon the personal knowledge of the affiant concerning the methods, means, and attempts made to locate and effect service by personal service or by registered or certified mail in accordance with the above. Service by publication when ordered by the court shall be made by publication once a week for four successive weeks of a notice in a newspaper of general circulation in the circuit of the alleged violator's last known state address. The alleged violator shall have twenty days after service thereof to respond in writing to the charge and statement.

(c) If after twenty days following service of the charge and further statement of alleged violation in accordance with this section, a majority of the members of the commission conclude that there is probable cause to believe that a violation of this chapter or of the code of ethics adopted by the constitutional convention has been committed, then the commission shall set a time and place for a hearing, giving notice to the complainant and the alleged violator. Upon the commission's issuance of a notice of hearing, the charge and further statement of alleged violation and the alleged violator's written response thereto shall become public records. The hearing shall be held within ninety days of the commission's issuance of a notice of hearing. If the hearing is not held within that ninety-day period, the charge and further statement of alleged violation shall be dismissed; provided that any delay that is at the request of, or caused by, the alleged violator shall not be counted against the ninety-day period. All parties shall have an opportunity (1) to be heard, (2) to subpoena witnesses and require the production of any books or papers relative to the proceedings, (3) to be represented by counsel and (4) to have the right of cross-examination. All hearings shall be in accordance with chapter 91. All witnesses shall testify under oath and the hearings shall be open to the public. The commission shall not be bound by the strict rules of evidence but the commission's findings must be based upon competent and substantial evidence. All testimony and other evidence taken at the hearing shall be recorded. Copies of transcripts of such record shall be available only to the complainant and the alleged violator at their own expense, and the fees therefor shall be deposited in the State's general fund.

(d) A decision of the commission pertaining to the conduct of any legislator, delegate to the constitutional convention, or employee or person formerly holding such office or employment shall be in writing and signed by three or more of the members of the commission. A decision of the commission rendered after a hearing together with findings and the record of the proceeding shall be a public record.

(e) A person who files a frivolous charge with the commission against any person covered by this chapter shall be civilly liable to the person charged for all costs incurred in defending the charge, including but not limited to costs and attorneys' fees. In any case where the commission decides not to

issue a complaint in response to a charge, the commission shall upon the written request of the person charged make a finding as to whether or not the charge was frivolous. The person charged may initiate an action in the circuit court for recovery of fees and costs incurred in commission proceedings within one year after the commission renders a decision. The commission's decision shall be binding upon the court for purposes of a finding pursuant to section 607-14.5.

(f) The commission shall cause to be published yearly summaries of decisions, advisory opinions, and informal advisory opinions. The commission shall make sufficient deletions in the summaries to prevent disclosing the identity of persons involved in the decisions or opinions where the identity of such persons is not otherwise a matter of public record under this chapter.

§84-31.3 Filing of false charges. (a) Any person who knowingly and intentionally files a false charge with the commission, or any member of the commission who initiates action against any state official, state employee, or any other person covered by this chapter, knowing such charge to be false, shall be guilty of the crime of perjury and subject to the penalty set forth in section 710-1060.

(b) Whoever is convicted in a court of competent jurisdiction of the crime of perjury under this section, in addition to any other punishment prescribed by law thereof, shall be required by court order to reimburse the person against whom the false charge was filed for all of the person's legal expenses and any other expenses incurred in relation to the person's defense against the false complaint.

(c) If such charge is filed within six months prior to an election in which the accused's name appears on the ballot, the person filing the false complaint shall pay to the accused the amount set out above plus an equal amount to the general fund of the State.

(d) This section shall not supersede or preclude any other right or remedy at law available to the person falsely accused.

§84-32 Procedure. (a) With respect to legislators and employees removable only by impeachment: when the ethics commission after due hearings pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a legislator or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the appropriate body of the legislature. The complaint shall contain a statement of the facts alleged to constitute the violation. The complaint shall be a matter of public record. The legislature shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the legislature is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the legislature, or the fact that no disciplinary action is taken, shall be a matter of public record.

(b) With respect to employees other than legislators and employees removable only by impeachment: when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against an employee other than a legislator, or an employee removable only by impeachment, it shall issue a complaint and refer the matter to the governor who shall take appropriate disciplinary action unless the governor determines that disciplinary action is not warranted. The governor shall notify the commission of the disciplinary action taken or the fact that no disciplinary action was taken, within sixty days of the referral of the complaint. The complaint and any disciplinary action taken, or the fact that no disciplinary action is taken, shall be a matter of public record.

(c) With respect to former employees and former legislators, when the commission determines after due hearing pursuant to section 84-31(c) that there is sufficient cause to file a complaint against a former employee or former legislator, it shall issue a complaint and refer the matter to the

attorney general who may exercise whatever legal or equitable remedies which may be available to the State. The complaint shall be a matter of public record.

(d) With respect to delegates to the constitutional convention removable only by impeachment: when the ethics commission after due hearing pursuant to section 84-31(c) determines that there is sufficient cause to file a complaint against a delegate to the constitutional convention, it shall issue a complaint and refer the matter to the appropriate body of the constitutional convention. The complaint shall be a matter of public record. The appropriate body of the constitutional convention shall take appropriate disciplinary action unless it determines that disciplinary action is not warranted and, within thirty days of the referral of the complaint, shall notify the commission of the action taken. Days during which the constitutional convention is not in session shall not be included in determining the thirty-day period. Any disciplinary action taken by the constitutional convention, or the fact that no disciplinary action is taken, shall be a matter of public record.

§84-33 Disciplinary action for violation. In addition to any other powers the civil service commission or other authority may have to discipline employees, the civil service commission or authority may reprimand, put on probation, demote, suspend, or discharge an employee found to have violated the code of ethics.

§84-34 No compensation. The members of the ethics commission shall serve without compensation but shall be allowed their actual and necessary expenses incurred in the performance of their duties.

§84-35 Staff. The ethics commission may employ and at pleasure remove such persons, including an executive director, as it may deem necessary for the performance of its functions. Effective July 1, 2005, the salary of the executive director shall be the same as the salary of the director of health. The commission shall fix the compensations of its employees within the amounts made available by appropriation therefor. The employees of the commission shall be exempt from chapter 76.

§84-35.5 Prohibition from political activity. The members of the ethics commission and its staff shall not take an active part in political management or in political campaigns during the term of office or employment.

§84-36 Cooperation. The ethics commission may request and shall receive from every department, division, board, bureau, commission, or other agency of the state cooperation and assistance in the performance of its duties.

§84-37 Concurrent jurisdiction. Notwithstanding any provision contained herein, pursuant to Article III, section 12 of the Constitution of the State of Hawaii each house of the legislature may prescribe further rules of conduct covering its members and may investigate and discipline a member for any violation of its rules or the code of ethics.

§84-38 Judicial branch. The powers and duties assigned in this part IV to the governor shall, with respect to employees in the judicial branch, be assigned to the chief justice of the supreme court.

§84-39 Administrative fines. (a) Where an administrative fine has not been established for a violation of a provision of this chapter, any person, including a legislator or employee, who violates a provision of this chapter shall be subject to an administrative fine imposed by the ethics commission that shall not exceed \$500 for each violation. All fines collected under this section shall be deposited in the general fund.

- (b) No fine shall be assessed under this section unless:
 - (1) The commission convenes a hearing in accordance with section 84-31(c) and chapter 91; and
 - (2) A decision has been rendered by the commission.

Part V. Mandatory Ethics Training

§84-41 Applicability of part. This part applies to legislators, elected members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State.

§84-42 Mandatory ethics training course. All state officers and employees enumerated in section 84-41 shall complete an ethics training course administered by the state ethics commission as provided in this part. For the purposes of this part, "ethics training" includes education and training in:

- (1) The ethics laws set forth in this chapter; and
- (2) The lobbying laws set forth in chapter 97.

§84-43 Ethics training course. (a) The state ethics commission shall establish, design, supervise, and conduct ethics training designed specifically for the officers and employees to whom this part applies.

- (b) The ethics training course shall include:
 - (1) Explanations and discussions of the ethics laws, administrative rules, and relevant internal policies;
 - (2) Specific technical and legal requirements;
 - (3) The underlying purposes and principles of ethics laws;
 - (4) Examples of practical application of the laws and principles; and
 - (5) A question-and-answer participatory segment regarding common problems and situations.

The state ethics commission shall develop the methods and prepare any materials necessary to implement the course.

- (c) The state ethics commission shall:
 - (1) Administer the ethics training course;
 - (2) Designate those of its legal staff who are to conduct the ethics training course; and
 - (3) Notify each officer or employee enumerated in section 84-41 that their attendance in this course is mandatory.

(d) The ethics training course shall be held in January of each year for those who have not attended the course previously. The course shall last at least two hours in length.

(e) The state ethics commission may repeat the course as necessary to accommodate all persons who are required to attend.

(f) Each state agency shall provide to the state ethics commission the names of those required to take the course in a timely manner and assist the commission by providing adequate meeting facilities for the ethics training course.

[This revision of the code of ethics is unofficial and for convenience only. Consult Hawaii Revised Statutes for the official codification of this law.]

January 2009

Hawaii Public Housing Authority



**STATE & FEDERAL LOW INCOME
PUBLIC HOUSING PROGRAM**

JULY 2010

HPHA Is Required By Federal Regulations To Submit 5-Year And Annual PHA Plans To HUD.



- **A HUD- approved PHA plan is required in order to receive capital and operating funds for federal public housing and section 8.**
- **The PHA plan is the basic planning document for most of HPHA's activities for the following state fiscal year, July 1 through June 30.**
- **It describes the agency's objectives, strategies and initiatives, along with its operating policies and uses of hud funds.**
- **The PHA plan does not include state housing programs or state funds.**

In 2009 We Prepared A 5-year Plan Covering State Fiscal Years 2010 Through 2014.



- **The Annual Plans update progress and amend the existing 5-Year plan.**
- **An existing PHA Plan can be amended mid-year if necessary to add projects to the capital fund plan or amend policies**
 - **Requires Board authorization**
 - **Must provide notice and public hearings**
 - **New HUD approval is required**

The PHA Plan Must Be Drafted In Consultation With The Resident Advisory Board (RAB).



- **RAB's only legally recognized role under CFR and state law is to provide input for PHA Plan and recommend nominees for the resident member of the HPHA Board**
- **Hawaii Admin Rule 15-181, HRS 356D-5 & 356D-6, and 24CFR903.13 provide legal authority governing the RAB role and operations**
- **The PHA Plan drafting process starts in July or August each year with a RAB organization meeting.**
- **Monthly meetings between HPHA staff and the RAB continue until the PHA Plan is submitted to HUD.**

Timeline For Board Actions And Public Hearings On The PHA Plan



- **The draft Plan and authorization to hold public hearings must be approved by Board in December or January each year. Notice of public hearings must be published in newspapers in each county at least 45 days prior to the hearing**
- **Testimony and comments received at the public hearings, along with any changes proposed by the agency based on those comments, are reported to the Board after the public hearing**
- **At its March meeting the HPHA Board approves the final version for submission to HUD**
- **The Board-approved Plan must be submitted electronically to HUD no less than 75 days prior to the beginning of the state fiscal year, which is April 15 or 16 each year. HUD approval is needed prior to July 1 in order to keep funds flowing and available**

HPHA Legislative Process



- **Each department (and some sub-agencies, including HPHA) has a designated legislative coordinator.**
- **Starting in September, legislative coordinators meet and work with the Governor's Policy Office and attorney general on proposed legislation for the upcoming session.**
- **For HPHA, the coordinator is the Chief Planner**
- **Legislative proposals are due to the Policy Office around November 1, and are refined in the course of meetings and AG review. The Administration legislative package is finalized by January 1**

The Legislative Session



- **Legislature convenes the 3rd Wednesday of January**
- **The HPHA Legislative Coordinator:**
 - **tracks all bills of interest to HPHA and updates stakeholders**
 - **drafts testimony for the Executive Director**
 - **attends hearings**
 - **updates and seeks guidance from the HPHA Board on critical issues**
 - **lobbies in support of Administration bills**
 - **conducts research and provides information to Legislators on other bills affecting housing**

Post-Session Activities



- **After the session adjourns around May 1, HPHA is asked to provide comments and recommendations to the Policy Office regarding bills that passed the Legislature.**
- **If a bill would have severe adverse affects on HPHA or its residents, or the state in general, staff brings the matter to the Board for discussion of a possible veto recommendation**

**ETHICS
FOR HAWAII PUBLIC HOUSING
AUTHORITY**



1



**HAWAII STATE
ETHICS COMMISSION**

Telephone: (808) 587-0460
Fax: (808) 587-0470
Web: www.hawaii.gov/ethics
Email: ethics@hawaiiethics.org

2

STATE ETHICS CODE

Chapter 84
Hawaii Revised Statutes

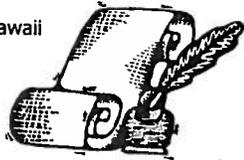


3

"The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government.

To keep faith with this belief, the legislature . . . shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State . . . including members of the boards, commissions and other bodies."

Constitution of the State of Hawaii
Article XIV



4

STATE ETHICS CODE

Applies to:

- State Employees
- State Legislators
- State Board & Commission Members



5

Hawaii State Ethics Commission

- Gives Ethics advice
- Provides education on Ethics in government
- Investigates violations of the State Ethics Code

6

5 member panel

Advisory is published but redacted

Penalties for Violations of State Ethics Code

- Disciplinary action
- Recovery of gifts, fees, or profits
- State contracts or other favorable State action voidable
- Fines of up to \$500 for each violation



7

Subject Areas

- Conflicts of Interest
- Gifts;
Reporting of Gifts
- Fair Treatment
- Confidential Information
- Contracts
- Post-Employment Restrictions



8

1. Mel is a member of the State Board of Development Permits. The board issues permits to developers. The board is currently reviewing and application for a permit by Paradise Developers.

In the following situations, can Mel participate in the board's review of this application?



- A. Mel is employed as a manager for Paradise Developers.
- B. Mel's wife, Malia, is employed as a manager for Paradise Developers.
- C. Mel's brother, Phil, is employed as a manager for Paradise Developers.

9

1. Mel is a member of the State Board of Development Permits. The board issues permits to developers. The board is currently reviewing and application for a permit by Paradise Developers.

In the following situations, can Mel participate in the board's review of this application?



- A. Mel is employed as a manager for Paradise Developers.
- B. Mel's wife, Malla, is employed as a manager for Paradise Developers.
- C. Mel's brother, Phil, is employed as a manager for Paradise Developers.

10

CONFLICTS OF INTEREST

- HRS §84-14(a)
- Board member cannot take official action directly affecting a business in which board member has a financial interest.
- "Disqualification" Rule



11

FINANCIAL INTEREST

Board Member, Spouse,
Dependent Children

- Ownership interest in business
- Employment or prospective employment
- Directorship or officership in business
- Ownership of real property or personal property
- Loan or other debtor interest
- Creditor interest in insolvent business



12

OFFICIAL ACTION

- Decision
- Recommendation
- Approval or Disapproval
- Other Action which involves Discretionary Authority



13

No discussion or recommendations should be made.

1. Mel is a member of the State Board of Development Permits. The board issues permits to developers. The board is currently reviewing and application for a permit by Paradise Developers.

In the following situations, can Mel participate in the board's review of this application?



- A. Mel is employed as a manager for Paradise Developers.
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- C. Mel's brother, Phil, is employed as a manager for Paradise Developers.

14

1. Mel is a member of the State Board of Development Permits. The board issues permits to developers. The board is currently reviewing and application for a permit by Paradise Developers.

In the following situations, can Mel participate in the board's review of this application?



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- B. Mel's wife, Malia, is employed as a manager for Paradise Developers.
- C. Mel's brother, Phil, is employed as a manager for Paradise Developers.

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16

(C) should disclose but not required to recuse themselves

2. Sandy is a member of the State Board of Public Schools. Sandy also works as the sales director for Island Soda. Sandy would like to appear on behalf of Island Soda at the next meeting of the Board of Public Schools so that Sandy can present a proposal to the board to install Island Soda vending machines at all public high schools.



Can Sandy appear on behalf of Island Soda before the State Board of Public Schools?

- A. No, because Sandy is prohibited from representing Island Soda before her state board.
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17

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18

CONFLICTS OF INTEREST

- HRS §84-14(d)
- Board member cannot assist or represent another person or business for pay before the member's board.
- "Representation" Rule

19

Post Employment

- HRS §84-18
- Generally, restrictions apply for 12 months after separation from State service.

20

3. Larry is a member of the State Board of Public Projects. The board recently awarded a contract to Paniolo Builders for the construction of a new state hospital. Larry and his wife, Lucy, are invited to attend a Christmas dinner party as guests of Paniolo Builders. The dinner is being held at the Grand Kohala Resort and Spa and the invitation includes an overnight stay at the resort and complimentary spa treatment.



Can Larry accept this invitation from Paniolo Builders?

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- C. No, because this gift would be prohibited by the State Ethics Code.

21

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- C. No, because this gift would be prohibited by the State Ethics Code.

22

GIFTS

- HRS §84-11
- Board member cannot accept or solicit any gift if it is reasonable to infer that the gift is intended to influence or reward official action by the board member.



23

GIFTS

- Food
- Entertainment
- Travel
- Gift certificates
- Discount cards or passes
- Loans
- Money
- Services
- **Anything of value**



24

GIFTS

Factors to consider:

- Value of gift
- Whether board member takes official action affecting donor of gift
- Whether gift is purely personal or instead benefits the State
- Circumstances under which gift is given

25

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26

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What should Nani do?

- A. Decline the offer from Ono Fish Farms to pay for her trip because gifts that exceed \$200 are prohibited by the State Ethics Code.
- B. Contact the State Ethics Commission for advice.

27

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Factors to consider:

- Value of gift
- Whether board member takes official action affecting donor of gift
- Whether gift is purely personal or instead benefits the State
- Circumstances under which gift is given

29

GIFTS

1. Is acceptance of gift allowed under State Ethics Code?
2. Must gift be reported to State Ethics Commission?

30



5. Hal is a member of the State Board of Professional Licenses. The board is in the process of hiring a public information officer and the board's executive director recently advertised a job opening for the position. Hal's good friend, Pal, was very interested in the job, but Pal missed the application

deadline and his application was rejected by the board's executive director.

Should Hal call the executive director to instruct him to accept Pal's application even though it was late?

- A. Yes, because there is nothing wrong with trying to help a friend in this situation.
- B. No, because Hal would be misusing his official position.

34

FAIR TREATMENT



- HRS §84-13
- Board member cannot use official position to unfairly benefit anyone.

35

6. Jade works for the State Department of Finance. In her spare time, Jade makes jewelry that she sells at craft fairs. Jade's co-workers are interested in purchasing her jewelry, so Jade brings price lists and samples to the office and leaves them in the conference room. She sends an e-mail to her co-workers to inform them that she will take sales orders, but only during her lunch hour.



Is Jade doing anything wrong?

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FAIR TREATMENT

HRS §84-13(3)

No employee shall use state time, equipment, & facilities for private business purposes.

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STATE TIME



Time during which State employee is supposed to be performing State duties.



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STATE EQUIPMENT



• State office equipment: copiers, telephones, computers, State email, fax machines.



• Other equipment: State machinery, vehicles, etc.



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STATE FACILITIES



State offices and workplaces,
including State conference
rooms and lunch rooms.



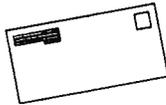
40

STATE RESOURCES



Includes:

- State personnel
- Office supplies, etc.



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Is Jade doing anything wrong?

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REVIEW

- State Ethics Code is State law
- Applies to all State officials, employees, and board members
- Purpose:
 - Preserve integrity in government
 - Preserve public confidence in government
- Minimum standard of conduct.



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HAWAII STATE ETHICS COMMISSION

Telephone: (808) 587-0460
Fax: (808) 587-0470
Web: www.hawaii.gov/ethics
Email: ethics@hawaiiethics.org



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HAWAII STATE ETHICS COMMISSION

CAMPAIGN RESTRICTIONS FOR STATE OFFICIALS AND STATE EMPLOYEES (Chapter 84, Hawaii Revised Statutes)

INTRODUCTION: The following restrictions on campaign activities are based on section 84-13, Hawaii Revised Statutes (HRS), entitled the "Fair Treatment" section of the State Ethics Code. In general, section 84-13 prohibits the preferential use of state resources or incidents of state office. Examples of campaign activities, described below, that violate or may violate the ethics code are for illustration only and are not meant to be all-inclusive.

STATE OFFICIALS AND EMPLOYEES WHO MUST COMPLY WITH THE RESTRICTIONS: All state officials, state employees, state legislators, and state board and commission members. State justices and judges are not subject to the jurisdiction of the State Ethics Commission, but are subject to the Commission on Judicial Conduct.

CAMPAIGN RESTRICTIONS

THE FOLLOWING ACTIVITIES BY STATE OFFICIALS AND STATE EMPLOYEES VIOLATE THE STATE ETHICS CODE:

1. **Using state time, equipment, supplies, or state premises for campaign activities or campaign purposes.**

State time means the actual time during which a state official or employee, etc., is supposed to be performing his or her state duties. State time thus excludes lunch time, break time, vacation time, and so forth.

State equipment includes, for example, copy machines, fax machines, telephones, typewriters, computers, and vehicles such as trucks and cars.

State supplies include stationery, paper, stamps, and other office supplies.

State premises include state offices, conference rooms, working areas, and so forth. State premises or facilities that are available to the public for use (e.g., for holding meetings or conducting business) may also be used for campaign activities on the same basis as the facilities are available to the public.

Campaign activities or campaign purposes include: (a) selling, purchasing, or distributing campaign fundraiser tickets, including complimentary tickets; (b) conducting campaign meetings; (c) distributing campaign literature or materials; (d) soliciting campaign assistance or support; or (e) producing campaign literature or materials or storing such materials.

2. **Using state personnel during state time for the purpose of performing campaign tasks or activities.**
3. **Using the state mail or messenger service for campaign purposes.**
4. **Using state computers or e-mail accounts for campaign purposes.**
5. **Soliciting campaign contributions or campaign assistance by sending letters addressed to state officials or employees at their state offices.**
6. **Using one's state position to give unwarranted advantages or preferential treatment to campaigns.** The State Ethics Code prohibits state officials, employees, legislators, and board and commission members from using their official positions to coerce campaign contributions or campaign assistance from anyone. State officials, employees, legislators, and board and commission members should also avoid combining official business with campaign solicitations.
7. **Selling fundraiser tickets to, or soliciting the purchase of fundraiser tickets from, subordinates or businesses or persons supervised or inspected.**
8. **Candidates walking through state agencies to meet with state employees for campaign purposes.** The State Ethics Commission believes that the State Ethics Code prohibits candidates from being allowed to walk through state agencies to meet with state employees for campaign purposes.

STATE SEAL: The state seal may not be used by a state official or employee in conjunction with campaigning if such use gives the state official or employee or another any unwarranted advantage or preferential treatment in violation of section 84-13, HRS. State officials and employees are advised to contact the State Ethics Commission for advice before using the state seal on campaign materials. Anyone using the state seal in conjunction with a campaign may also wish to contact the Office of the Attorney General regarding the application of section 5-6, HRS.

MISDEMEANOR FOR FUNDRAISING IN GOVERNMENT FACILITIES: In addition to the State Ethics Code, HRS section 11-203.5 makes it a misdemeanor for any person to solicit a campaign contribution in a government facility used for official duties by a state or county employee. This law does not apply to certain government facilities that are permitted to be used for political activities. HRS section 11-203.5 is part of the campaign spending law. Questions concerning this law should be directed to the State Campaign Spending Commission.

PENALTIES FOR VIOLATION OF THE STATE ETHICS CODE: An administrative fine of up to \$500 for each violation. Disciplinary action such as reprimand, probation, demotion, suspension, or discharge. Any favorable state action is voidable, and the Attorney General may pursue all legal and equitable remedies.

FURTHER INFORMATION/COMPLAINTS: Anyone in need of further information or who wishes to report an apparent violation of the State Ethics Code may call the State Ethics Commission at (808) 587-0460.

1001 Bishop St., American Savings Bank Tower 970 • P. O. Box 616 • Honolulu, HI 96809
Visit our website at <http://www.hawaii.gov/ethics>



HAWAII STATE ETHICS COMMISSION

ETHICS CHECKLIST

This flyer lists restrictions contained in the State Ethics Code, Chapter 84, Hawaii Revised Statutes ("HRS"), for state officials, employees, and board and commission members. (Justices and judges are excluded, as they are subject to their own ethics board.) Those subject to the State Ethics Code should review this list, and contact the State Ethics Commission ("Commission") for advice when needed. Though the list is intended to be comprehensive, those subject to the State Ethics Code should not hesitate to contact the Commission whenever ethics issues arise. Further, our office should be contacted if there are any questions regarding the scope of the following restrictions. Contact us at: telephone number (808) 587-0460, fax number (808) 587-0470, or e-mail address ethics@hawaiiethics.org. Our website address is www.hawaii.gov/ethics. Mailing address: P.O. Box 616, Honolulu, Hawaii 96809.

- Gifts:** Do not accept or solicit gifts unless you are sure of the application of the gifts section of the State Ethics Code, HRS § 84-11.
- Gifts Disclosure:** If you receive more than \$200 of legally acceptable gifts from a single source between June 1 of one year and June 1 of the following year, check with our office as to whether you need to file a gifts disclosure form.
- Confidential Information:** Do not disclose, or use confidential information for your, or anyone's, personal benefit.
- Favoritism; Fair Treatment:** Do not use, or attempt to use, your official position to give yourself or anyone any preferential treatment or any unwarranted advantage.
- Supplemental Compensation:** Do not accept extra pay or anything of value in conjunction with the performance of your official duties, unless provided for by law.
- State Resources:** Do not use state time, equipment (computers, e-mail, etc.), facilities, personnel, the state seal, office supplies or other state resources for private business purposes or political campaigning. The term "business" includes non-profit organizations.

- Financial Transactions With Subordinates:** Do not engage in substantial financial transactions with subordinates, or persons or businesses you inspect or supervise. Check with our office as to the meaning of "substantial," as the application of the term may be different depending on the circumstances.
- Conflicts of Interests:** Do not take official action if the action affects your financial interests, or a business or undertaking in which you have a financial interest, unless you are sure of the application of the State Ethics Code. The financial interests of a spouse or dependent child are treated the same as your financial interests. Also, do not take action affecting an undertaking in which you, in your private capacity, represent a person or business. (Note: This section does not apply to legislators.)
- Acquiring New Employment or Financial Interests:** Do not accept new employment, or new financial interests without checking with our office, if the business or undertaking you will work for, or have a financial interest in, may be subject to official action by you. (Note: This section does not apply to legislators.)
- Contingent Compensation:** Do not assist or represent a person or business before a state or county agency for contingent compensation. (Note: Courts are not considered state agencies.)
- Representing or Assisting Persons or Businesses:** Do not assist or represent (1) a person or business for compensation before your own department or agency, or (2) on matters you have been officially involved in, or (3) on matters you will be officially involved in.
- State Contracts:** (1) If you contract with the State, or have a significant interest in a company that contracts with the State, make sure the contract is awarded in accordance with HRS § 84-15(a). (2) Check with our office before privately assisting or representing a person or business trying to obtain a state contract, if you have been involved officially with the contract or its subject matter.
- Financial Interests Disclosure Statement:** File this statement at the appropriate times if required by the position you hold in state government.
- Post Employment:** After leaving your state agency or department, (1) do not disclose confidential information or use such information for your, or anyone's, personal benefit; (2) for one year do not personally represent any person or business for compensation on matters before your former agency or department unless you are sure of the application of the State Ethics Code; and (3) for one year, do not personally represent a person or business for compensation regarding matters you have participated in officially. Note: Parts (2) and (3) apply to those who served the State for more than 180 days. Call our office regarding the definition of the term "personal representation."



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

HYPOTHETICAL ETHICS CASES*

- 1. Mel is a member of the State Board of Development Permits. The board issues permits to developers. The board is currently reviewing and application for a permit by Paradise Developers.**

In the following situations, can Mel participate in the board's review of this application?



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- C. Mel's brother, Phil, is employed as a manager for Paradise Developers.**

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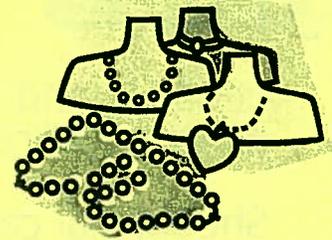


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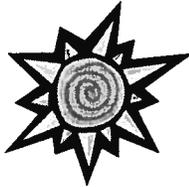
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Is Jade doing anything wrong?

The Sunshine Law



July 2010
Chapter 92, HRS
Office of Information Practices 586-1400
www.state.hi.us/oip

The purpose?



- Open government processes to public scrutiny and participation to protect public interest
- Transparency
- People's right to know

2

Only for Boards and Commissions

The Sunshine Law can be split into three areas

- What is required
- What is prohibited
- What is allowed

3



“Board Business”

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

HRS § 92-2

4

1. What is required

- Discussions, deliberations, and decisions must be conducted at a meeting
- Every meeting must be open unless executive session is allowed
- Boards must provide notice of meeting
- Boards must accept testimony
- Boards must keep minutes

5



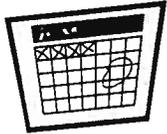
Notice Requirements

- Written notice
- Includes date, time and place
- Provides agenda
- If there will be an executive meeting, must state its purpose and cite statutory basis



6

Filed w/ LG & State Calendar



- Filed with the County Clerk's office and at the board's office (posted at meeting site when feasible)
- 6 calendar days prior to meeting
- Copy mailed to anyone so requesting

HRS § 92-7

OIP approval to hold emergency meeting?

Meeting Agenda

- All items the board intends to consider
- To inform the public of the matters the board intends to consider so that the public can decide whether to participate in the meeting



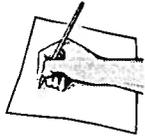
Testimony

- All interested persons may submit written testimony on *any agenda item*.
- All interested persons may present oral testimony on *any agenda item*.

HRS § 92-3



Minutes



- Written minutes required
- "True reflection" of matters discussed and views of participants
- Date, time, and place of meeting
- Members present or absent
- Substance of all matters proposed, discussed or decided
- Record, by member, of any vote taken
- Other information that a board member requests be included or reflected at the time of the meeting



10

Minutes, continued...

- Shall be available within 30 calendar days



- Executive meeting minutes may be withheld for only so long as "publication would defeat the lawful purpose of the executive meeting"

11

2. What is Prohibited

Board Members may not . . .

- Caucus with one another,
- Poll one another,
- Talk by telephone,
- Send e-mails, nor
- Send memos on board business, unless it is a . . .



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3.a. What is allowed ...

2 Members *only* may,

- Communicate privately
- Cannot commit to vote
- Cannot use serially



3.b. "Permitted" Interactions

- 2 members, but less than a quorum:
 - a) Investigate; or present, discuss or negotiate
 - b) Selection of officers
- Meet with Gov., not on board business
- Meet with Department head



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Permitted Interaction Group (PIG) can investigate if ...

- Two to less than a quorum
- Scope of investigation & member's authority defined at 1st meeting
- Findings and recommendations presented at 2nd meeting
- Deliberate and decide at 3rd meeting

HRS § 92-2.5(b)

15

Examples of "PIG" activities

- Confidential interviews
- Site inspections and product demonstrations
- Receipt and consideration of confidential information



Executive Meetings



- Requires 2/3 vote of board members present to enter into closed meeting
- Must announce reason(s) for meeting
- Vote recorded & into minutes
- Minutes required of Exec meeting

HRS §§ 92-4 & -5



17

Executive Meeting Purposes

- Professional or vocational license applicants;
- Personnel matters;
- Authority of labor negotiator or person designated to negotiate purchase of land;
- Legal matters with board's attorney;
- Criminal misconduct;
- Sensitive matters relating to public safety;
- Private donations; and,
- Matters confidential by law or court order



18

Limited Meetings

- Dangerous location or public attendance impracticable
- OIP concurrence (forms available)
- Requires 2/3 Vote
- Show video next time
- No decisions made



HRS § 92-3.1

19

Videoconference Meetings



- Audio and visual interaction at all locations
- Notice where board members will be
- Public can attend at any location
- Meeting ends if audio interaction not maintained at all locations

HRS § 92-3.5

20

Amending the Agenda

- Only with 2/3 vote of all members
- Cannot add item if:
 - of reasonably major importance, and
 - will affect a significant number of people



21

Emergency Meetings

- Imminent peril to public health, safety and welfare or,
- Unanticipated event; and
- Requires meeting in less than 6 calendar days

HRS § 92-8



22

Penalties

- Final actions may be voided if in violation of open meeting and notice requirements
- Suit may be commenced within 90 days of action taken
- Willful violation is a misdemeanor, and upon conviction, member may be summarily removed from the board
- Enforced by Attorney General, prosecuting attorney, & public

HRS §§ 92-11 to -13

23

Need Help?

- Attorney of the day -- 586-1400



- E-mail: oip@hawaii.gov
- OIP Website: www.hawaii.gov/oip

24



OPEN MEETINGS

a guide to
“The Sunshine Law”



**Office of Information Practices
State of Hawaii**

August 2008

OPEN MEETINGS “The Sunshine Law”



Part I of Chapter 92, Hawaii Revised Statutes

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INTRODUCTION

This guide is prepared by the Office of Information Practices (“OIP”) and is intended to be a reference tool for board members and members of the public in understanding Hawaii’s Sunshine Law.

Every year, OIP receives hundreds of questions and complaints about the manner in which State and county boards conduct their respective business and initiates numerous investigations into alleged Sunshine Law violations. Many of the questions, complaints and violations arise because of a misunderstanding or a lack of understanding, and sometimes both, about the statute and its requirements.

The Sunshine Law imposes numerous requirements and restrictions on the manner in which a State or county board can conduct its business. Many board members, especially those who serve or have served on non-governmental boards, are surprised by the restrictions placed on the manner in which they, in their capacity as state or county board members, must conduct board business.

For instance, with a few exceptions, board members are not allowed to discuss board business outside of a meeting, including by telephone or through e-mail. In addition, a board usually cannot consider at a meeting matters not included in its published agenda.

If you are elected or appointed to a government board, along with the honor and privilege of serving, there is the added responsibility of learning and complying with the Sunshine Law. We hope that this guide will assist you and members of the public in generally understanding the statute's requirements.

We have attempted to present the law in "plain English," through the types of questions that are most frequently asked. We have also included the statute, a flowchart regarding executive meetings, and a checklist for meeting notices. Finally, we have included short summaries of the opinions issued by OIP providing interpretation of the Sunshine Law.

Please note that the comments contained in this guide are general in nature. If you have questions about specific factual circumstances that may not be answered by this guide, you should consult with your attorney, your board's attorney, or OIP. OIP provides an "attorney of the day" service through which you may speak with an OIP staff attorney to receive general legal guidance on and assistance with Sunshine Law issues.

Paul T. Tsukiyama
Director

GENERAL INFORMATION



What is the Sunshine Law?

The Sunshine Law is Hawaii's open meetings law. It governs the manner in which all state and county boards must conduct their business. The law is codified at part I of chapter 92, Hawaii Revised Statutes ("HRS").



What is the general policy and intent of the Sunshine Law?

The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring state and county boards to conduct their business as openly as possible. The Legislature expressly declared that "it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and actions of government agencies - shall be conducted as openly as possible."

In implementing this policy, the Legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to open meeting requirements be strictly construed against closed meetings. Thus, with certain specific exceptions, all discussions, deliberations, decisions and actions of a board relating to the official business of the board must be conducted in a public meeting.

In other words, absent a specific statutory exception, board business cannot be discussed in secret, without public notice, without public access to the board's discussions, deliberations and decisions, without the keeping of minutes, or without the opportunity for public testimony.



What boards are covered by the Sunshine Law?

Unfortunately, there is no list that specifically identifies the boards that are subject to the Sunshine Law. As a general statement, all state and county boards, commissions, authorities, task forces and committees that have supervision, control, jurisdiction or advisory power over a specific matter and are created by the State Constitution, statute, county charter, rule, executive order or some similar official act are subject to the Sunshine Law. A committee or other subgroup of a board that is subject to the Sunshine Law is also considered to be a “board” for purposes of the Sunshine Law and must comply with the statute’s requirements.

Examples of state and county boards that are subject to the Sunshine Law include the county councils, the neighborhood boards, the Board of Water Supply, the liquor commissions, the board of the Hawaii Tourism Authority, the police commissions, the board of the Aloha Tower Development Corporation, the Board of Land and Natural Resources, the Board of Agriculture, the Board of Health, the board of the Hawaii Health Systems Corporation, the University of Hawaii’s Board of Regents, the Board of Education, the island burial councils, the Small Business Regulatory Review Board, the Real Estate Commission, the board of the Natural Energy Laboratory of Hawaii Authority, and the board of the Stadium Authority.

The Sunshine Law does not apply to the judicial branch or to the adjudicatory functions exercised by certain boards (with the exception of Land Use Commission hearings, which are open to the public). The legislative branch sets its own rules and procedures concerning notice, agenda, minutes, enforcement, penalties, and sanctions, which take precedence over similar provisions in the Sunshine Law.



What government agency administers the Sunshine Law?

In 1998, the administration of the law was transferred to OIP. OIP also oversees the Uniform Information Practices Act (Modified) (“UIPA”), chapter 92F, HRS. The UIPA is Hawaii’s freedom of information act.

PUBLIC MEETINGS

MEETINGS DEFINED



Are all meetings of state and county boards open to the public?

Yes. All meetings of state and county boards are required to be open to the public unless an executive meeting or other exception is authorized under the law. The open meeting requirement also applies to the meetings of a board's committees or subgroups.



Are site inspections, presentations, workshops, retreats and other informal sessions that involve board business considered to be meetings?

Generally, yes. Apart from the permitted interactions set forth in section 92-2.5, HRS, and discussed below, the Sunshine Law requires all of a board's discussions, deliberations, decisions, and actions regarding matters over which the board has supervision, control, jurisdiction, or advisory power to be conducted in either an open or executive meeting.

Moreover, based upon the express policy and intent of the legislature — that the formation and conduct of public policy be conducted as openly as possible — OIP interprets the statute to require that any site inspection or presentation regarding a matter before the board, or which is reasonably likely to come before the board for a decision in the foreseeable future, be conducted as part of a properly noticed meeting.

That conclusion is based upon OIP's determination that the site inspection or the presentation is an integral part of the board's deliberation and decision-making process, two types of actions that the statute requires be conducted in a properly

noticed meeting. Should it not be practical to allow the public to attend, for example, a site inspection as part of a meeting, a board is not authorized to participate in the site inspection. Under certain circumstances, however, a portion of the board may be able to participate in the site inspection. *See Permitted Interactions*, discussed below.

Similarly, with respect to board retreats, if board business is to be discussed at the retreat, the retreat must be conducted as a meeting, requiring public notice and the keeping of minutes and allowing for public testimony.

TELEPHONIC AND VIDEOCONFERENCE MEETINGS



May a board hold a meeting via telephone?

No. Board members are not allowed to participate in a meeting by telephone. The statute, however, does not prohibit staff, consultants or non-board members from participating in the meeting by telephone.



May a board convene a meeting via videoconference?

Boards are authorized to hold meetings by videoconference. The meeting, however, must be terminated if both the audio and the video communication cannot be maintained at all of the videoconference locations. When noticing a videoconference meeting, boards must indicate the locations where board members will be physically present, including the videoconference locations, and must indicate that the public can attend the meeting at any of the specified locations.

If the video communication cannot be maintained during the meeting by videoconference, the meeting may be continued by audio communication alone if: (1) all visual aids have already been provided to all meeting participants at all videoconference locations where the meeting is held; or (2) participants are able to readily transmit visual aids by some other means (e.g.,

fax copies), to all other meeting participants at all other videoconference locations where the meeting is held; and (3) no more than fifteen minutes shall elapse in implementing the requirements listed in (2) above (e.g., fax copies).

TESTIMONY



Must a board accept testimony at its meetings?

Boards are **required** to accept testimony from the public, both oral and written, on any item listed on the meeting agenda. Boards can decline to accept public testimony that is unrelated to a matter listed on the agenda.



Is a board required to read aloud the written testimony during its meeting?

No. There is no requirement that a board read aloud each piece of written testimony during its meeting for the benefit of those attending the meeting. A board, however, must ensure that written testimony is distributed to each board member for that member's consideration before the board's action. Moreover, upon request, any member of the public is entitled to receive copies of the written testimony submitted to the board.



Is written communication regarding a matter on the board's meeting agenda received by one board member considered written testimony?

Possibly. For instance, on occasion, the board chair or individual board members may receive e-mail or other written correspondence regarding a matter on the board's agenda. If a writing is received prior to the meeting and reasonably appears to be testimony relating to an agenda item (as opposed to correspondence directed only to the recipient), irrespective of whether the writing is specifically identified as "testimony," the board member receiving the communication must make

reasonable efforts to cause the testimony or copies of the testimony to be distributed to the other members of the board.



How can a board avoid the possible problem of one board member receiving testimony intended for the entire board?

One suggestion to avoid possible confusion regarding whether an e-mail or other written communication received by one board member is intended as to be “testimony” to the entire board is to specifically identify a mailing address and an e-mail address to where written testimony should be directed on the meeting notice.

While such a process does not completely relieve individual board members of their obligation to consider whether written communication that they individually receive is intended by the sender to be “testimony” for consideration by the entire board, it may reduce the likelihood of written testimony being received by individual board members and may excuse a board member’s reasonable failure to recognize that a written communication was intended to be “testimony.”



How must a board distribute written testimony to its members?

The board is empowered to determine how to best and most efficiently distributed the testimony to its members, i.e., whether to transmit it electronically or to circulate in paper format; however, the testimony must be distributed in a way that is reasonably calculated to be received by each board member.



May a board limit the length of each person’s oral testimony offered at its meetings?

Yes. Boards are authorized to adopt rules regarding oral testimony, including, among other things, rules setting limits on the amount of time that a member of the public may testify. For instance, the City Council for the City and County of Honolulu currently limits each person’s oral testimony to three

minutes. Boards also are not required to accept oral testimony unrelated to items on the agenda for the meeting at which the testimony is being offered.

RECESSING AND RECONVENING MEETINGS



Can a board recess and later reconvene a meeting?

Boards are authorized to recess their meetings, both public and executive meetings, and reconvene at another date and time to continue and/or complete public testimony, discussion, deliberation and decision-making relating to the items listed on the agenda. The meeting must be continued to a reasonable date and time, and the date, time and location of the reconvened meeting must be announced at the time that the meeting is recessed.



Can the meeting be reconvened at a different location?

Yes. A board may reconvene a meeting at a location different from where the meeting was initially convened as long as the board announces the location where the meeting is to be reconvened at the time when it recesses the meeting. OIP also strongly recommends that the new location be included in all announcements and other such publications, if any, regarding the reconvened meeting.

DISCUSSIONS BETWEEN BOARD MEMBERS OUTSIDE OF A MEETING

Can board members discuss board business outside of a meeting?

The Sunshine Law, generally, prohibits discussions about board business between board members outside of a properly noticed meeting, with certain exceptions set out in the statute. While the Sunshine Law authorizes certain interactions between board members outside of a meeting, the statute expressly cautions that such interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

In practical terms, that means that board members cannot “caucus” or meet privately before or during a meeting to discuss business that is before the board or that is reasonably likely to come before the board in the foreseeable future.

The statute, however, does not prohibit discussion between board members outside of a properly noticed meeting about matters over which the board does not have supervision, control, jurisdiction or advisory power. For instance, where the chair of a board has the sole discretion and authority to dictate how the board will expend certain funds allocated to it, the board has no “power” over that decision and, therefore, board members may discuss the expenditure outside of a properly noticed meeting.



Does the Sunshine Law also prohibit board members from communicating between themselves about board business by telephone, memo, fax or e-mail outside of a meeting?

Yes. Board members cannot discuss board business outside of a properly noticed meeting through the telephone or by memoranda, fax or e-mail. As a general rule, if the statute

prohibits board members from discussing board business face-to-face, board members cannot have that same discussion through another type of media.



Can board members discuss board business with non-board members outside of a meeting?

Generally, yes. The Sunshine Law applies to boards and their discussions, deliberations, decisions, and actions, not to non-board members. Accordingly, the Sunshine Law does not prohibit a board member from discussing board business with non-board members outside of a meeting.

However, it is contrary to, at a minimum, the spirit of the statute for a board member to engage in a public discussion with non-board members about a matter that is board business in the presence of other board members. For instance, four county council members cannot participate in a discussion at a neighborhood board meeting about a matter that is council business even if the council members do not discuss the matter between themselves. In OIP's opinion, such an exchange is part of the discussion and deliberation process that can only take place in a properly noticed meeting.

SOCIAL EVENTS



What about social and ceremonial events attended by board members?

The Sunshine Law does not apply to social or ceremonial gatherings at which board business is not discussed. Therefore, board members can attend functions such as Christmas parties, dinners, inaugurations, orientations and ceremonial events without, among other things, posting notice or allowing public participation so long as they do not discuss official business that is pending or that is reasonably likely to come before the board in the foreseeable future.



If I am a board member, what should I do if another board member starts talking about board business at a social event?

The Sunshine Law is, for the most part, self-policing. It is heavily dependent upon board members understanding what they can and cannot do under the law. In the situation where a board member raises board business with other board members outside of a meeting, you should remind the board member that such discussion can only occur at a duly noticed meeting. If the board member persists in discussing the matter, you should not participate in the discussion and should physically remove yourself from the discussion.

PERMITTED INTERACTIONS



What are “permitted interactions”?

In 1996, the Legislature added six “permitted interactions” to the law that are designed to address instances and occasions in which members of a board may discuss certain board matters outside of a meeting and without the procedural requirements, such as notice, that would otherwise be necessary. The statute specifically states that the “[c]ommunications, interactions, discussions, investigations, and presentations described in [the permitted interaction] section are not meetings for purposes of [the Sunshine Law].”



What are the types of “permitted interactions” allowed by the statute?

- ***Two Board Members.*** Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought. Nevertheless, it would be contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings.

• ***Investigations.*** A board can designate two or more board members, but less than the number of members that would constitute a quorum of the board, to investigate matters concerning board business. The board members designated by the board are required to report their resulting findings and recommendations to the entire board at a properly noticed meeting. This permitted interaction can be used by a board to allow some of its members (numbering less than a quorum) to participate in, for instance, a site inspection outside of a meeting or to gather information relevant to a matter before the board.

• ***Presentations/Negotiations/Discussion.*** The board can assign two or more of its members, but less than the number of members that would constitute a quorum of the board, to present, discuss or negotiate any position that the board has adopted.

• ***Selection of Board Officers.*** Two or more board members, but less than the number of members that would constitute a quorum of the board, can discuss between themselves the selection of the board's officers.

• ***Discussions With the Governor.*** Discussions between one or more board members and the Governor are authorized to be conducted in private, provided that the discussion does not cover a matter over which a board is exercising its adjudicatory function.

• ***Administrative Matters.*** Certain routine administrative matters can be discussed between two or more members of a board and the head of a department to which the board is administratively assigned.

EXECUTIVE MEETINGS



What is an executive meeting?

An executive meeting is a meeting of the board that is closed to the public. Executive meetings are authorized in eight specific circumstances and cannot be convened for any other purpose.



What are the eight purposes for which an executive meeting can be convened?

- ***Licensee Information.*** A board is authorized to meet in executive session to evaluate personal information of applicants for professional and vocational licensees.
- ***Personnel Decisions.*** A board may hold a meeting closed to the public to consider the hire, evaluation, dismissal or discipline of an officer or employee, if consideration of the matters may affect that individual's privacy. However, if the person who is the subject of the board's meeting requests that the board conduct its business about him or her in an open meeting, the request must be granted and an open meeting must be held.
- ***Labor Negotiations/Public Property Acquisition.*** A board is allowed to deliberate in an executive meeting concerning the authority of people designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations.
- ***Consult with Board's Attorney.*** Boards are authorized to consult with their attorneys concerning the board's powers, duties, immunities, privileges and liabilities outside of a public meeting.

• ***Investigate Criminal Misconduct.*** A board with the power to investigate criminal misconduct is authorized to do so in an executive meeting.

• ***Public Safety/Security.*** A board may hold a closed meeting to consider sensitive matters related to public safety or security.

• ***Private Donations.*** A board may consider matters relating to the solicitation and acceptance of private donations in executive meetings.

• ***State/Federal Law or Court Order.*** A board may hold an executive meeting to consider information that a state or federal law or a court order requires be kept confidential.



Can a board discuss “embarrassing” or “highly personal” information in an executive meeting?

Not unless the discussion falls within one of the eight circumstances listed in the statute for which an executive meeting is allowed.



How about confidential or proprietary information, can’t that be considered in a closed door meeting?

Again, unless there is an exception that permits the board to convene in an executive meeting, no matter how sensitive the information may be, a board cannot consider such information outside of an open meeting.



Must a board give notice that it intends to convene an executive meeting?

If the executive meeting is anticipated in advance, yes.



What must the agenda contain where the board anticipates convening an executive meeting?

Generally, the agenda for the open meeting must indicate that an executive meeting is anticipated. The agenda also must state, at a minimum, the statutory authority for convening the anticipated executive meeting and should describe the subject of the executive meeting with as much detail as possible without compromising the closed meeting's purpose.

For instance, if the board is to consider a proposed settlement of a lawsuit in an executive meeting, the agenda should note that the meeting will be convened for the purpose of consulting with the board's attorney on questions or issues regarding the board's powers, duties, privileges, immunities and liabilities, citing section 92-5(a)(4), HRS, and, unless such description would compromise the purpose of closing the meeting from the public, should describe the purpose of the meeting as, for instance, "proposed settlement" and state the case name and civil number.



Can a board convene an executive meeting when it is not anticipated in advance?

The statute also allows the board to convene an executive meeting when the need for excluding the general public from the meeting was not anticipated in advance. If, for example, during the discussion of an open meeting agenda item, the board determines that there are legal issues that need to be addressed by its attorney, the board is entitled to immediately convene an executive meeting to discuss those matters pursuant to section 92-5(a)(4), HRS.

The board, however, **cannot** convene an executive meeting to discuss a matter that is not on the meeting agenda without first amending the agenda in accordance the statute's requirements. *See the Executive Meeting Flowchart on page 27.*



How does a board convene an executive meeting?

To convene an executive meeting, a board, in an open meeting, must vote to do so and must publicly announce the purpose of the executive meeting. Two-thirds of the board members present must vote in favor of holding the executive meeting, and the minutes of the open meeting must reflect the vote of each board member on the question of closing the meeting to the public.



Can non-board members participate in an executive meeting?

The board is entitled to invite into an executive meeting any non-board member whose presence is either necessary or helpful to the board in its discussion, deliberation and decision-making regarding the topic of the executive meeting. Once the non-board member's presence is no longer needed, the non-board member must be excused from the executive meeting.

Because the meeting is closed to the general public, the board should be sensitive to allowing the non-board members to be present during the executive meeting only for the portions of the meeting for which their presence is necessary or helpful. OIP, however, interprets the statute to allow the board's attorney to participate in the entire executive meeting, even where the executive meeting is called for a purpose other than to consult with the board's attorney.



May a board vote in an executive meeting?

Generally, no. In most instances, the board must vote in an open meeting on the matters considered in an executive meeting; however, in those rare instances where the vote, if conducted in an open meeting, would defeat the purpose of the executive meeting, i.e., it would reveal the matter for which confidentiality may be needed, the Sunshine Law allows the board to vote in the executive meeting.

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OTHER TYPES OF MEETINGS

EMERGENCY MEETINGS



Where public health, safety or welfare requires a board to take action on a matter, can a board convene a meeting with less than six days notice?

A board may hold an emergency meeting with less notice than required by the statute or, in certain circumstances, no notice where there is “an imminent peril to the public health, safety, or welfare.” Where the board finds that an emergency meeting is appropriate, it must state its reasons in writing, two-thirds of the board members must agree that an emergency exists, and the board must file an emergency agenda and the board’s reasons in its office and with the Office of the Lieutenant Governor or the appropriate county clerk’s office.

UNANTICIPATED EVENTS



What about where an unanticipated event requires a board to take immediate action; in that circumstance, can a board convene a meeting with less than six days notice?

Yes. An emergency meeting may also be convened with less than six days notice where a board must take action on a matter over which it has supervision, control, jurisdiction or advisory power because of an unanticipated event. The law defines an unanticipated event to mean (1) an event that the board did not have sufficient advance knowledge of or reasonably could not have known about, (2) a deadline beyond the board’s control established by a legislative body, a court or an agency, and (3) the consequence of an event for which the board could not have reasonably taken all necessary action.

A board may deliberate and decide whether and how to respond to the unanticipated event as long as the board states, in writing, its reasons for finding that an unanticipated event has occurred and that an emergency meeting is necessary, the attorney general and two-thirds of the board members concur with the board's finding, and the board's findings and the agenda for the emergency meeting are filed in the board's office and with the Office of the Lieutenant Governor or the appropriate county clerk's office.

LIMITED MEETINGS



If a board finds it necessary to inspect a location that is dangerous or impracticable for public attendance, may the board hold a meeting that is not open to the public?

Boards may hold a "limited meeting" that is not open to the public where it determines it necessary to inspect a location that is dangerous or that is impracticable for public attendance, and the OIP director concurs in that determination. The board must deliberate on the need for the limited meeting at the prior open meeting of the board, and two-thirds of the board's members must then agree that it is necessary to hold the limited meeting at the specified location.

If a limited meeting is held, notice must be provided, and a videotape of the meeting must be made available at the next regular board meeting, unless the OIP director waives the videotape requirement. No decision-making can occur during the limited meeting.

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PROCEDURAL REQUIREMENTS

NOTICE AND AGENDA



What are the Sunshine Law's requirements for giving notice of meetings?

With the exception of emergency meetings, a board must give public notice of any regular, special or rescheduled meeting as well as any anticipated executive meeting at least six calendar days in advance of the meeting.

The notice must be filed with either the Office of the Lieutenant Governor or the appropriate county clerk's office, and posted at the meeting site, whenever feasible.

The notice of the meeting must include an agenda, which lists all of the items to be considered at the forthcoming meeting, the date, time and place of the meeting, and if an executive meeting is anticipated, the notice must state the purpose of the executive meeting. *See the Public Meeting Notice Checklist on page 28.*



Does a board have to notify individual members of the public of every meeting?

The statute requires the board to maintain a list of names and addresses of those persons who have requested notification of meetings and to mail a copy of the notice to those persons at the time that the notice is filed.



What happens if a board files its notice less than six days before the date of the meeting?

If a board files its notice less than six calendar days before the meeting, the meeting is cancelled as a matter of law and no

meeting can be held. The Lieutenant Governor or the appropriate county clerk is to notify the board chair or the director of the department within which the board is established of the late filing, and the board must post a notice canceling the meeting at the meeting site.



What must the agenda contain?

The agenda must list all of the business to be considered by the board at the meeting. It must be sufficiently detailed so as to provide the public with adequate notice of the matters that the board will consider so that the public can choose whether to participate.

For anticipated executive meetings, as noted above, the agenda must be as descriptive as possible without compromising the purpose of closing the meeting to the public and must identify the statutory basis that allows the board to convene an executive meeting regarding the particular matter.



Are general descriptions such as “Unfinished Business” or “Old Business” allowed?

No. The practice of certain boards of listing general descriptions on their agendas such as “Unfinished Business” or “Old Business” without any further description is insufficient and does not satisfy the agenda requirements.



Can a board amend its meeting agenda once it has been filed?

Boards may amend an agenda during a meeting to add items to be considered by the board by the affirmative vote of two-thirds of its members. Adding an item to the agenda, however, is **not** permitted if: (1) the item to be added is of reasonably major importance, and (2) action on the item by the board will affect a significant number of persons. Determination of whether a specific matter may be added to an agenda must be done on a case-by-case basis.

MINUTES



Is a board required to keep minutes of its meetings?

Written minutes must be kept of all meetings and must include the date, time and place of the meeting, the members recorded as either present or absent, the substance of all matters proposed, discussed or decided, a record by individual member of votes taken, and any information that a board member asks to be included. Boards are not required to create a transcript of the meeting or to electronically record the meeting.



Are the minutes of a board's meeting available to the public?

Yes. Minutes of public meetings are required to be made available to the public within 30 days after the meeting. If the official minutes are not available within 30 days after the meeting, upon request, the board must make available the draft or yet-to-be-approved minutes of the meeting. Minutes of executive meetings can be withheld only so long as publication would defeat the lawful purpose of the executive meeting.

Once disclosure of the executive meeting minutes would not defeat the purpose of closing the meeting to the public (e.g., the property that the board was negotiating to acquire, and which was the reason for the executive meeting, was acquired), those minutes should be made available to the public.

RECORDINGS



Must a board allow a member of the public to tape record or video record the meeting?

The board must allow the public to tape record any portion or all of an open meeting as long as the recording does not actively interfere with the meeting. The statute does not require a board to permit videotaping of its meetings; however, given the intent of the law, if the videotaping does not unduly interfere with a board's ability to do its business, OIP suggests that a board should allow videotaping of its meetings.

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SUIT TO VOID BOARD ACTION



Can a member of the public file a lawsuit for an alleged Sunshine Law violation?

Yes. When the open meetings and the notice provisions of the Sunshine Law are not complied with, any person may file a lawsuit to void the board's action within 90 days of the allegedly improper board action. Enforcement is in circuit court of the circuit in which the prohibited act occurred.

Under certain circumstances, the judge can grant an injunction; however, the filing of a lawsuit challenging a board's action does not stay enforcement of the action. Attorneys' fees and costs can be awarded to the prevailing party.



What is the penalty for an intentional violation of the statute?

A willful violation of the Sunshine Law is a misdemeanor and, upon conviction, may result in the person being removed from the board. The Attorney General and the county prosecutor have the power to enforce any violations of the statute.

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**OFFICE OF INFORMATION
PRACTICES**



**If I have additional questions about the
Sunshine Law, where can I go?**

You are welcome to direct any questions that you may have about the Sunshine Law to OIP. OIP provides general advice regarding the Sunshine Law to boards as well as to members of the public over the telephone (586-1400) or by e-mail (oip@hawaii.gov) through its Attorney-of-the-Day service.

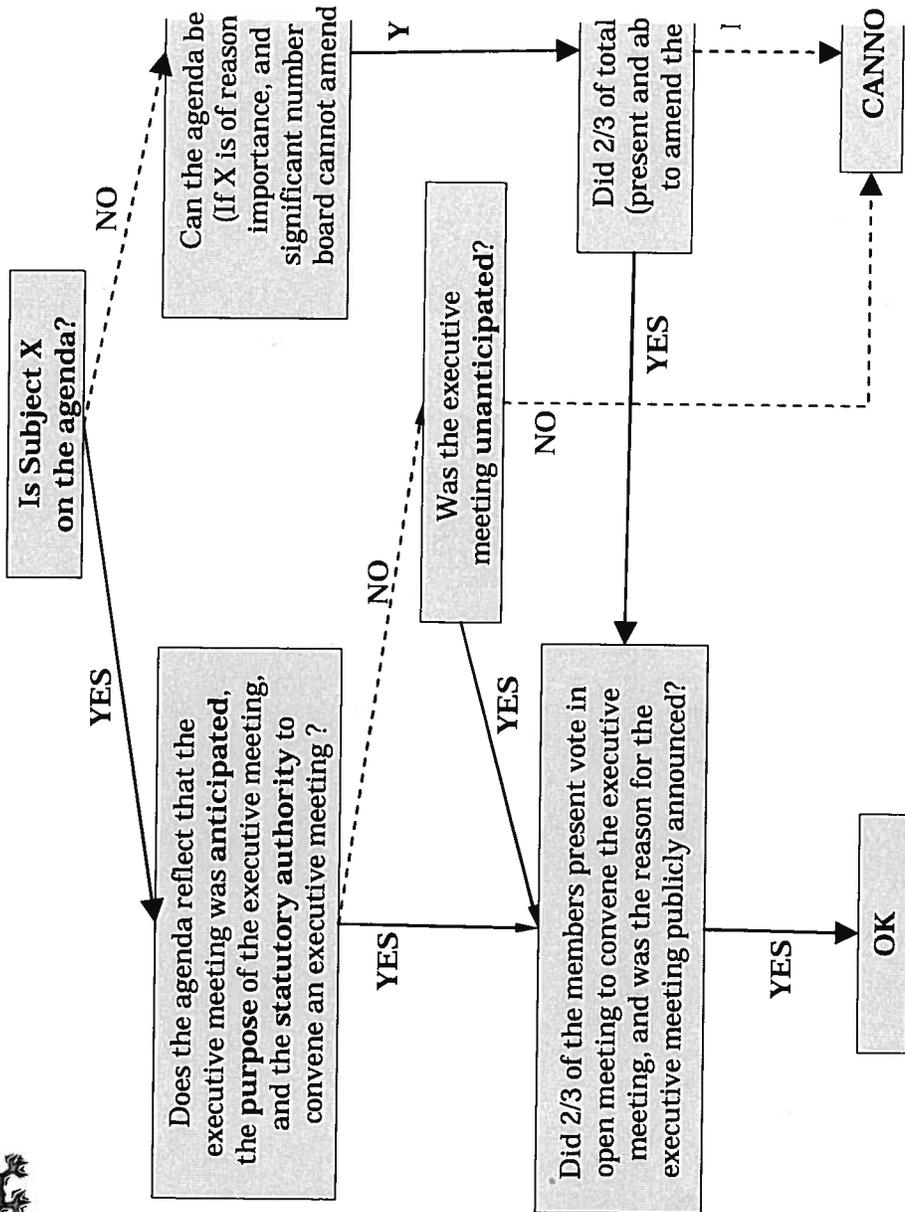
If you believe that a board has violated the statute, you may request an investigation by OIP.

We also encourage you to visit our website at www.hawaii.gov/oip. The text of the Sunshine Law, as well as OIP's opinions relating to various open meeting issues, are posted on the website.

EXECUTIVE MEETINGS



Can the board convene an executive meeting to talk about Subject X?



OFFICE OF INFORMATION PRACTICES

SUNSHINE LAW PUBLIC MEETING NOTICE CHECKLIST

Notice Includes:

- Date
- Place
- Time
- Agenda describing with reasonable specificity matters to be considered
- If an executive meeting is anticipated, agenda states purpose and statutory authority

Filing Notice:

- 6 calendar days or more prior to meeting

File at:

- Lieutenant Governor's Office (State) or County Clerk (county)
- Board's office
- Site of meeting (when feasible)
- Mailing list
- www.charaonline.org (optional)

Meeting Cancelled for Late Filing of Notice:

- Notice announcing meeting posted at meeting site

Special Instructions for Emergency Meetings (less than 6 calendar days prior to meeting):

- File emergency agenda and board's findings justifying emergency meeting at:
 - Lieutenant Governor's office or County Clerk
 - Board's office
- Persons on mailing list contacted by mail or telephone

Chapter 92, Hawaii Revised Statutes
PUBLIC AGENCY MEETINGS AND RECORDS

The following is an unofficial copy of part I of chapter 92, Hawaii Revised Statutes, which is current through the 2008 legislative session. Amendments may have been made to the Sunshine Law after publication of this manual. To view these amendments, please visit OIP's website at www.hawaii.gov/oip and look under Laws/Rules/Opinions.

PART I. – MEETINGS

Section

- 92-1 Declaration of Policy and Intent**
- 92-1.5 Administration of This Part**
- 92-2 Definitions**
- 92-2.5 Permitted Interactions of Members**
- 92-3 Open Meetings**
- 92-3.1 Limited Meetings**
- 92-3.5 Meeting by Videoconference; Notice; Quorum**
- 92-4 Executive Meetings**
- 92-5 Exceptions**
- 92-6 Judicial Branch, Quasi-Judicial Boards and Investigatory Functions; Applicability**
- 92-7 Notice**
- 92-8 Emergency Meetings**
- 92-9 Minutes**
- 92-10 Legislative Branch; Applicability**
- 92-11 Voidability**
- 92-12 Enforcements**
- 92-13 Penalties**

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of § 1]

§92-1.5 Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session.

[L 1998, c 137, §2]

§92-2 Definitions. As used in this part:

- (1) "Board" means any agency, board, commission, authority, or committee of the State or its political subdivisions 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.
- (2) "Chance meeting" means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.
- (3) "Meeting," means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1]

§92-2.5 Permitted interactions of members.

- (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.
- (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. [L 1996, c 267, §2; am L 2005, c 84 §1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of § 1; am L 1985, c 278, §1]

§92-3.1 Limited meetings.

- (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
 - (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies the reasons for its determination that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
 - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and

- (3) Notice of the limited meeting is provided in accordance with section 92-7.
- (b) At all limited meetings, the board shall:
 - (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
 - (2) Make the videotape available at the next regular meeting; and
 - (3) Make no decisions at the meeting. [L 1995, c 212, §1; am L 2008, c20, §1]

§92-3.5 Meeting by videoconference; notice; quorum.

- (a) A board may hold a meeting by videoconference; provided that the videoconference system used by the board shall allow both audio and visual interaction between all members of the board participating in the meeting and the public attending the meeting, at any videoconference location. The notice required by section 92-7 shall specify all locations at which board members will be physically present during a videoconference meeting. The notice shall also specify that the public may attend the meeting at any of the specified locations.
- (b) Any board member participating in a meeting by videoconference shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.
- (c) A meeting held by videoconference shall be terminated if, after the meeting convenes, both the audio and video communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location; provided that a meeting may be continued by audio communication alone, if:
 - (1) All visual aids required by, or brought to the meeting by board members or members of the public have already been provided to all meeting participants at all videoconference locations where the meeting is held; or
 - (2) Participants are able to readily transmit visual aids by some other means (e.g., fax copies), to all other meeting participants at all other videoconference locations where the meeting is held. If copies of visual aids are not available to all meeting participants at all videoconference locations where the meeting is held, those agenda items related to the visual aids shall be deferred until the next meeting; and
 - (3) No more than fifteen minutes shall elapse in implementing the requirements listed in paragraph (2). [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1]

§92-4 Executive meetings. A board may hold an executive meeting closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2]

§92-5 Exceptions.

(a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- (5) To investigate proceedings regarding criminal misconduct;
- (6) To consider sensitive matters related to public safety or security;
- (7) To consider matters relating to the solicitation and acceptance of private donations; and
- (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

(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). No chance meeting, 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. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.

- (a) This part shall not apply:
 - (1) To the judicial branch.
 - (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:
 - (A) Hawaii labor relations board, chapters 89 and 377;
 - (B) Labor and industrial relations appeals board, chapter 371;
 - (C) Hawaii paroling authority, chapter 353;
 - (D) Civil service commission, chapter 26;
 - (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
 - (F) Crime victim compensation commission, chapter 351; and
 - (G) State ethics commission, chapter 84.
- (b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11]

§92-7 Notice.

- (a) The board shall give written public notice of any regular, special, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated.
- (b) The board shall file the notice in the office of the lieutenant governor or the appropriate county clerk's office, and in the board's office for public inspection, at least six calendar days before the meeting. The notice shall also be posted at the site of the meeting whenever feasible.
- (c) If the written public notice is filed in the office of the lieutenant governor or the appropriate county clerk's office less than six calendar days before the meeting, the lieutenant governor or the appropriate county clerk shall immediately notify the chairperson of the board, or the director of the department within which the board is established or placed, of the tardy filing of the meeting notice. The meeting shall be canceled as a matter of law, the chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting, and no meeting, shall be held.
- (d) No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is

entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.

- (e) The board shall maintain a list of names and addresses of persons who request notification of meetings and shall mail a copy of the notice to such persons at their last recorded address no later than the time the agenda is filed under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, § 1; am L 1985, c 278, §4; am L 1995, c 13, §2]

§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) 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. [L 1975, c 166, pt of §1; am L 1996, c 267, §4]

§92-9 Minutes.

- (a) The board shall keep written minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the written minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. The minutes shall include, but need not be limited to:
 - (1) The date, time and place of the meeting;
 - (2) The members of the board recorded as either present or absent;
 - (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
 - (4) Any other information that any member of the board requests be included or reflected in the minutes.
- (b) The minutes shall be public records and shall be available within thirty days after the meeting, except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer.
- (c) All or any part of a meeting, of a board may be recorded by any person in attendance by means of a tape recorder or any other means of sonic reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be

governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §11]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

§92-12 Enforcement.

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.
- (c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney fees and costs to the prevailing party in a suit brought under this section.
- (d) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:
 - (1) There is likelihood that the party bringing the action will prevail on the merits;
 - (2) Irreparable damage will result if a stay is not ordered;
 - (3) No irreparable damage to the public will result from the stay order; and
 - (4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

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01-01 Application of Sunshine Law to Vision Teams

OIP concluded that the neighborhood Vision Teams, created by the Mayor for the City and County of Honolulu, are “boards” covered by the Sunshine Law, and as such must provide public notice and keep minutes of their meetings. However, given the peculiar nature of membership in a Vision Team, participants are Vision Team “members” only when they are actually attending a Vision Team meeting. For this reason, outside of the Vision Team meetings, Vision Team members are not required to restrict their interactions or otherwise act as board members.

Neighborhood Board members, who are clearly subject to the Sunshine Law, are permissibly restricted in their ability to attend and participate in Vision Team meetings where official business of the Neighborhood Board is discussed. To resolve concerns about the inability of Neighborhood Board members to participate in Vision Team meetings and thus gather information about issues of concern to the Neighborhood Boards, OIP recommended that the Neighborhood Boards jointly notice their meetings with the relevant Vision Team meetings.



01-06 Public’s Right to Testify on Agenda Items at Every Meeting; Continued Meetings

The Liquor Commission held separate meetings on March 19, 1998 and April 9, 1998. OIP found that the Liquor Commission, at its April 9 meeting, violated the Sunshine Law by prohibiting public testimony on the agenda item listed as “Decision-making on Proposed rules of the Liquor Commission (Continued from March 19, 1998).”

Even when the public has had an opportunity to testify on an agenda item at a previous meeting, section 92-3 of the Sunshine Law requires a board to afford interested members of the public an opportunity to present oral or written testimony on any agenda item at every meeting.

OIP found no conflict between sections 91-3 and 92-3, HRS. Section 91-3, which requires a public hearing as part of the rulemaking process, does not prohibit an agency from accepting public testimony on the date the agency announces its decision as to proposed rule revisions. Thus, it is possible for a board to follow both sections 91-3 and 92-3 without violating either.

A board may make its decision on proposed rule revisions at a later date than the public hearing without hearing further public testimony however, by continuing the decision making portion of the public hearing or meeting to a reasonable date and time as provided by section 92-7(d), HRS.



02-02 Restrictions on Testimony by Rule

The City Council had a rule that precluded individuals from testifying orally if they failed to register by a prescribed time. The OIP found that oral testimony must be allowed even if a person wishing to testify did not sign up. The Sunshine Law requires that boards shall afford all interested persons an opportunity to present oral testimony on any agenda item, and that boards may provide for reasonable administration of oral testimony by rule. Haw. Rev. Stat. §92-3. A rule that limits testimony to those who sign up by a certain time, however, is not reasonable because it would preclude all latecomers from testifying orally, as well as those who are not familiar with Council rules.

OIP noted that the Council may place time restrictions on testimony by rule as long as the rule meets the reasonableness requirement under the Sunshine Law as well as requirements of the Freedom of Speech and Equal Protection Clauses of the United States Constitution.



02-06 Minutes of Public Meeting

Audiotape recordings and full transcripts made by boards of meetings open to the public are public records.

Notes taken by an individual assigned to record the minutes of a meeting may be withheld during the editorial process, but if minutes have not been approved by 30 days after the date of the meeting, minutes, even if in note or “draft” form, must be made available to the public.

OIP noted that there is no requirement in the Sunshine Law that a board approve minutes, and therefore boards do not have the discretion to withhold minutes from the public based on whether or not the minutes have been approved by a board.

OIP therefore encouraged boards that wish to formally approve minutes to do so within 30 days of the date of the meeting, to ensure that the public has access to minutes that have been reviewed for accuracy and completeness. OIP also suggested that the board stamp or mark the minutes “DRAFT” when disclosing unapproved minutes, to put the public on notice that the minutes may be corrected or amended at a later date.



02-09 Actions on Bills and Resolutions Without Notice

Boards may not discuss or act upon any item, including a proposed bill or resolution, that is not specifically listed on the meeting agenda. The Sunshine Law requires that notices and agendas be posted six days prior to meeting dates, and that such agendas list, among other things, all items to be considered at the meeting. Haw. Rev. Stat. §92-7(a) (Supp. 2001).

OIP acknowledged that there may be unforeseen circumstances in which a discussion at a meeting results in the decision to draft a bill or resolution to address an agenda item. OIP found that if a sufficient nexus exists between what was noticed and what resulted from the discussion, there would be no violation

of the Sunshine Law. However, this nexus should be reflected in the meeting minutes, and voting on such a bill or resolution should take place at a future meeting that is properly noticed.



02-11 Meetings of Councilmembers Who Have Not Yet Officially Taken Office to Discuss Selection of Officers

Board members are not subject to the Sunshine Law prior to officially taking office when they meet to discuss the selection of officers. After election, the Sunshine Law only permits discussion concerning officer selection between two or more members of a board, but less than the number of members that would constitute a quorum for the board.



03-06 Electronic Transmission of Testimony

E-mail use is widespread and has become an acceptable method of communication for governmental agencies. Boards must accept testimony submitted by e-mail in the same manner as other forms of written testimony and reasonably ensure distribution to board members.



03-07 Voting in Executive Meetings

Boards subject to the Sunshine Law may vote in executive meetings. Votes taken in executive meetings need not be disclosed to the public because the Sunshine Law allows minutes of executive meetings to be withheld so long as their publication would defeat the lawful purpose of the executive meeting. Once disclosure of votes taken in executive meetings would not defeat the lawful purpose of holding the executive meeting, the votes should be disclosed.



03-08 UIPA, Not Sunshine Law, Governs Disclosure of Records Relating to Agenda Items

The Sunshine Law does not require that records relating to items on an agenda be available to the public at the time the notice and the agenda are filed. The disclosure and availability of government records are governed by the Uniform Information Practices Act (the "UIPA"). See Part II, chapter 92F, HRS.



03-12 Attendance at Executive Meetings by Parties Other Than Council or Board Members

When a board requires the assistance of non-board members to accomplish the purpose of convening an executive meeting, the Sunshine Law authorizes the board to summon the non-board members to participate in the closed board meeting. Non-board members should remain at the meeting only so long as their presence is essential to the agenda item being considered in the executive meeting.

More than one of a board's attorneys may attend an executive meeting to advise the board concerning the board's powers, duties, privileges, immunities, and liabilities.



03-13 Views of Non-Board Members Included in Minutes

OIP found that minutes of a Land Use Commission ("LUC") meeting were sufficient despite a complaint by a member of the public that points enumerated in her presentation to the LUC were not individually listed in the minutes.

The Sunshine Law requires that boards keep written minutes of all meetings which "give a true reflection of the matters discussed at the meeting and the views of the participants."

Haw. Rev. Stat. §92-9 (1993). With this statutory mandate in mind, and given the Sunshine Law's policy of protecting the public's right to know, OIP found that the primary purpose for keeping minutes is to reflect the actions taken by the decision-makers (board members) so that the public can scrutinize their actions.

Thus, OIP concluded that the Sunshine Law requires that minutes reflect the views of non-board members who participate in meetings, but that it is sufficient for the minutes to describe those views in very general terms.



03-17 Attorneys' Presence Allowed Where Required to Accomplish the Essential Purposes of an Executive Meeting

In OIP Opinion Letter Number 03-12, OIP advised that the Sunshine Law authorizes boards to summon non-board members to participate in a closed board meeting if necessary to further the purpose for which the executive meeting is convened.

The Hawaii County Corporation Counsel thereafter sought clarification on whether the Sunshine Law only authorizes attorneys to be present in executive meetings convened to consult the attorneys concerning a board's "powers, duties, privileges, immunities, and liabilities." Specifically, the County asked whether their presence was also authorized for consultation concerning any purpose listed in section 92-5(a), HRS (setting forth the authorized purposes for closed meetings) and consultation concerning board compliance with 92-5(b), HRS (requiring that boards deliberate and decide in executive meetings only matters directly related to the eight purposes listed in 92-5(a), HRS).

OIP advised the County that the attorneys' presence in both those circumstances is allowed, but only for as long as their presence is essential to accomplish the purpose of the executive meeting.



03-20 Oversight Committee for the First Circuit Family Court

A member of the public asked OIP for an opinion on the Judiciary's denial of his request for records relating to the Oversight Committee for the First Circuit Family Court ("Oversight Committee"). The Oversight Committee meetings were closed.

The Judiciary is not required to hold open meetings. Haw. Rev. Stat. §92-6. Thus, minutes of the Oversight Committee meetings were not required to be made available as minutes of a meeting open to the public. *See* Haw. Rev. Stat. §92F-12(a)(7).



03-22 Attorney's Presence Required for Board to Convene Executive Meeting Under 92-5(a)(4)

The Department of Land and Natural Resources State Historic Preservation Division Oahu Island Burial Council convened an executive meeting on March 12, 2003 under section 92-5(a)(4), HRS, which allows a board subject to the Sunshine Law to have executive meetings to consult with the board's attorney on the board's powers, duties, privileges, immunities, and liabilities. The meeting was improper because no attorney was present.



04-01 Discussion of Official Business Outside of a Duly Noticed Meeting; E-Mail Voting

A state legislator asked OIP to investigate the Landfill Selection Committee's (the "Committee") compliance with the Sunshine Law. The Committee is an advisory board established by the City and County of Honolulu (the "City") to assist in the selection of Oahu's future landfills. According to the City, the Committee is subject to the Sunshine Law. The legislator alleged that, outside of a properly noticed meeting, a committee member individually solicited and obtained signatures of other

committee members on documents related to the decision making function of the Committee.

The general rule is that discussion among board members outside of a duly noticed meeting, concerning 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 (“Official Business”), violates the Sunshine Law. However, there is no violation if the discussion is authorized as a permitted interaction under the Sunshine Law, such as where only two members meet to gather information. *See* Haw. Rev. Stat. §92-2.5.

In this case, OIP found that the committee member’s actions did not constitute a permitted interaction because (1) the committee member did not solely gather information but sought a commitment to vote; and (2) the serial communications violated, if not the rule, the spirit of the Sunshine Law.

OIP further found that a vote taken via e-mail on Official Business violated the Sunshine Law. Section 92-5(b), HRS, states that electronic communications cannot be used to circumvent the spirit or requirements of the Sunshine law or to make a decision upon Official Business. OIP noted, however, that the use of e-mail for routine, administrative matters, such as scheduling purposes, is permissible under the Sunshine Law.



04-04 Voting on Board Business by Poll Not Allowed

The Hawaii Civil Rights Commission (the “HCRC”) asked OIP whether it could poll the Commissioners relating to the agency’s legislative testimony. OIP advised the HCRC that the Sunshine Law requires that all decisionmaking take place in meetings open to the public, unless the Sunshine Law authorizes an executive meeting. Where the purpose of calls or e-mails to board members is to receive their position, i.e., their vote, on proposed legislation involving the HCRC’s

powers, the voting is in effect a decision concerning official Commission business.

Therefore, OIP opined that the HCRC staff cannot poll individual Commissioners outside of a properly noticed meeting for the purpose of determining and/or approving the HCRC's legislative testimony. That does not mean that staff cannot gather information from Commissioners to assist staff in drafting testimony, so long as staff ensures that there is no facilitation of deliberation through staff's discussion with multiple Commissioners. OIP also suggested alternatives to assist the HCRC in consulting with Commissioners without violating the Sunshine Law.



04-09 Anonymous Testimony; Liability for Disclosure of Testimony Containing Potentially Defamatory Statements

OIP was asked for an opinion on receipt of anonymous testimony and disclosure of testimony containing potentially defamatory statements provided to boards.

OIP opined that boards must accept anonymous testimony. Because the Sunshine Law requires that "all interested persons" be given the opportunity to provide written and oral testimony on agenda items and the policy underlying the Sunshine Law requires liberal construction in favor of openness, it is not appropriate to condition submission of testimony on whether a potential testifier identifies himself or herself.

OIP also opined that an agency or agency employee is immune from liability under section 92F-16 of the UIPA for disclosing testimony that may contain defamatory statements because the UIPA requires agencies to disclose public testimony upon request. OIP noted, however, that section 92F-16, HRS, has never been tested in court.

 **04-10 Barred Employee's Right to Testify**

Even though a county charter bars county employees from appearing before boards, if a county employee does appear before a board seeking to testify, the board must hear his or her testimony. OIP noted that the charter provisions themselves do not violate the Sunshine Law.

 **04-11 Adjudicatory Functions**

A staff briefing of the Board of Land and Natural Resources regarding pending contested cases is part of the Board's "adjudicatory functions," which are not subject to the Sunshine Law.

The Board could not meet in executive session to receive sensitive information about an alleged violator's personal problems offered as a defense or mitigating factor for the alleged violation because OIP found that the privacy provision of the State Constitution did not require the Board to keep such information confidential.

 **04-14 Sunshine Law Compliance**

OIP was asked whether the University of Hawaii Institutional Animal Care & Use Committee (the "UH IACUC") must conduct its meetings in compliance with the provisions of the Sunshine Law. OIP opined that the Sunshine Law does not apply to an agency, board, commission, authority, or committee created by or pursuant to federal law. OIP found that the UH IACUC was created pursuant to federal law and therefore is not subject to the provisions of the Sunshine Law.



05-01 Task Force

Because the Downtown Homeless Task Force did not meet two of the five elements of the Sunshine Law's definition of a "board," OIP concluded that the Task Force is not a board subject to the Sunshine Law. OIP found that the Task Force does not "take official actions" because it does not create recommendations that are to be acted upon by the City. OIP also found that the Task Force was not "required to conduct meetings" because the group does not need a quorum to reach a decision.



05-02 Public Testimony

A board may permit the public to speak at its meetings on matters that are not on the agenda, but is not required to do so. If the board elects to hear such public statements and the statements concern "board business," the board must be careful not to respond to or discuss those matters because they are not on the agenda.



05-04 Executive Session

The Kauai County Council asked whether it could meet in executive session to interview the Mayor's appointees to county boards and commissions. OIP concluded that the Council could not do so because the interviews did not fall within any of the exemptions to the Sunshine Law's open meeting requirements.

OIP found that neither the county charter provision that appeared to allow closed meetings for this purpose nor the UIPA are "state laws" requiring confidentiality and, therefore, the exemption allowing an executive meeting to consider information that must be kept confidential pursuant to state or federal law or court order did not apply. OIP further found that an uncompensated board or commission member is not a "hire" under the exemption allowing for closed meetings to consider the hire of an officer or employee.

 **05-07 Board Requirements**

Boards (except the Land Use Commission) are not subject to the Sunshine Law when exercising their adjudicatory functions. Boards must follow the Sunshine Law at public hearings on proposed agency rules in addition to the requirements under section 91-3, HRS.

If a board fails to give proper notice of an agenda item required under a statute or ordinance other than the Sunshine Law, the board can avoid violating that other law by cancelling its meeting or cancelling the individual agenda item without discussion.

 **05-09 Charter School Boards**

Charter school boards are “boards” as defined by the Sunshine Law and, therefore, must comply with the Sunshine Law’s requirements. (Subsequent to this opinion, section 302B-9, HRS, was enacted, which exempts charter school boards from the Sunshine Law.)

 **05-11 Closed Buildings and Public Meetings**

A member of the public asked (1) whether the building in which the Kauai County Council was meeting in executive session could be closed to the public; and (2) whether the Council could commence a meeting more than seven hours after the time stated on the notice for the meeting. OIP concluded that closing the building during the executive meeting did not violate the Sunshine Law. OIP found that any deviation from the time stated in a notice must be reasonable or the notice will be rendered insufficient. OIP found a seven hour delay to be unreasonable.

 **05-15 Serial Interactions**

A council member may not use the two member “permitted interaction,” which allows two members to discuss “board business” with each other outside of an open meeting as long as no commitment to vote is made or sought, to discuss council business with another council member, then use the same permitted interaction to discuss the same council business with other council members through a series of private one-on-one discussions. No permitted interaction may be used to circumvent the spirit or requirements of the Sunshine Law.

 **06-01 Public’s Right to Testify**

A board may choose to take public testimony on all agenda items at the beginning of a meeting, but must allow a person to testify on as many of the agenda items as the person wishes. The public’s right to present oral testimony does not give a person testifying the right to question board members during that testimony.

 **06-02 Investigative Task Force**

The Board of Directors of the Natural Energy Laboratory of Hawaii Authority (“NELHA”) formed a Finance Investigative Committee, as a “permitted interaction,” to investigate the charges to be used in negotiating the land rental rates with NELHA’s tenants. After the Committee reported back to the Board on the matter it was originally authorized to investigate, it ceased to be an investigative task force. At that point, the Committee’s meetings were required to be open to the public unless another permitted interaction or exception applied.



06-05 Agenda Item Amendments

An agenda item may not be amended to add an item if it is of reasonably major importance and action on the item will affect a significant number of persons. OIP found that the Hawaii County Council could not amend its agenda to add an item relating to the settlement of a lawsuit because that lawsuit could potentially have had widespread legal effect and created substantial county liability, and where consideration of matters related to the lawsuit could realistically affect the settlement of the litigation.



06-06 Notice Filings

A board may file its meeting notice up to midnight on the sixth calendar day prior to the meeting for which the notice is being filed. A board may file its notice after normal business hours on the sixth day prior to the meeting if the office receiving the filing, i.e. the Lieutenant Governor's office for state boards or the County Clerk's office for county boards, will accept filings after their respective offices' normal business hours.



07-02 Agenda Language

OIP found that the use of standard language in an agenda regarding possible reconsideration of actions on agenda items did not provide sufficient notice to allow a county council at the noticed meeting to discuss and deliberate on the merits of a motion to reconsider a bill passed at a previous meeting.



07-03 Oral Testimony

The City Council is not required to accept oral testimony on an agenda item that is cancelled before any consideration of the item. However, once the Council begins consideration of the item, it must accept oral testimony even if it then decides to defer the item to a subsequent meeting or indefinitely.



07-06 Agenda Items

A board may take action on an agenda item without indicating on its agenda that a decision would be made or the nature of the decision. The Maui County Salary Commission's agenda was found to provide sufficient notice of the subject matter of an agenda item to allow its approval of an issue arising directly under the item listed.



07-10 Agenda Item Scope

A board can require that testimony be related to an agenda item, but it must interpret the item broadly for that purpose. The board may not restrict the public from testifying on issues within the general subject matter of the agenda item. The scope of an agenda item is determined by the language used to describe the item on the agenda, not by what the board intended the item to cover.

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Section 26-35, Hawaii Revised Statutes:
***Administrative Supervision of
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§26-35 Administrative supervision of boards and commissions. (a) Whenever any board or commission is established or placed within or transferred to a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department, the following provisions shall apply except as otherwise specifically provided by this chapter:

- (1) The head of the department shall represent the board or commission in communications with the governor and with the legislature.
- (2) The financial requirements from state funds of the board or commission shall be submitted through the head of the department and included in the budget for the department.
- (3) All rules and regulations adopted by the board or commission shall be subject to the approval of the governor.
- (4) The employment, appointment, promotion, transfer, demotion, discharge, and job descriptions of all officers and employees of or under the jurisdiction of the board or commission shall be determined by the board or commission subject to the approval of the head of the department and to applicable personnel laws.
- (5) All purchases of supplies, equipment, or furniture by the board or commission shall be subject to the approval of the head of the department.

- (6) The head of the department shall have the power to allocate the space or spaces available to the department and which are to be occupied by the board or commission.
 - (7) Any quasi-judicial functions of the board or commission shall not be subject to the approval, review, or control of the head of the department.
 - (8) Except as set forth hereinabove, the head of the department shall not have the power to supervise or control the board or commission in the exercise of its functions, duties, and powers.
- (b) Every board or commission established or placed within a principal department for administrative purposes or subject to the administrative control or supervision of the head of the department shall be considered an arm of the State and shall enjoy the same sovereign immunity available to the State. [L Sp 1959 2d, c 1, §6; am L 1965, c 96, §140; Supp, §14A-4; HRS §26-35; am L 2004, c 16, §1]



Notes



Notes



Notes



Kauai	# projects	# Units
Federal	10	319
State	1	26
		<u>345</u>

Oahu	# projects	# Units
Federal	33	4,122
State	10	749
		<u>4,871</u>



Maui/Molokai	# projects	# Units
Federal	6	196
State	1	32
		<u>228</u>

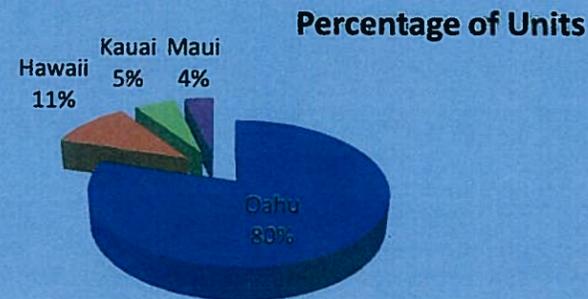


**Hawaii Public Housing Authority
Low Income Public Housing Program**

Statewide Totals	# projects	# Units
Federal	67	5,237
State	14	863
		<u>6,100</u>

East Hawaii	# projects	# Units
Federal	9	300
State	1	30
		<u>330</u>

West/North	# projects	# Units
Federal	9	300
State	1	26
		<u>326</u>



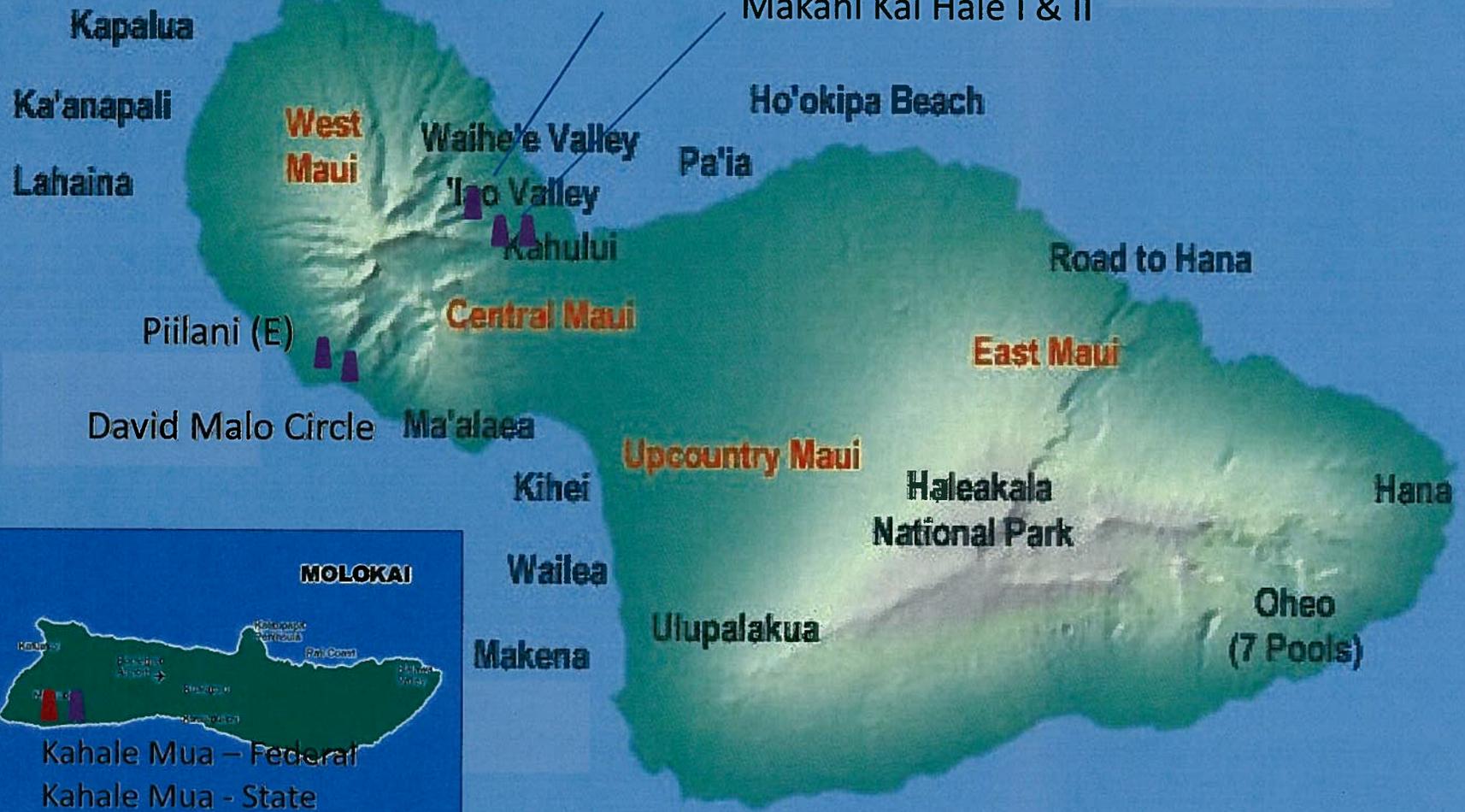
Maui # projects # units

Federal 6 196

State 1 32

AMP 39

Manager Ione Godsey

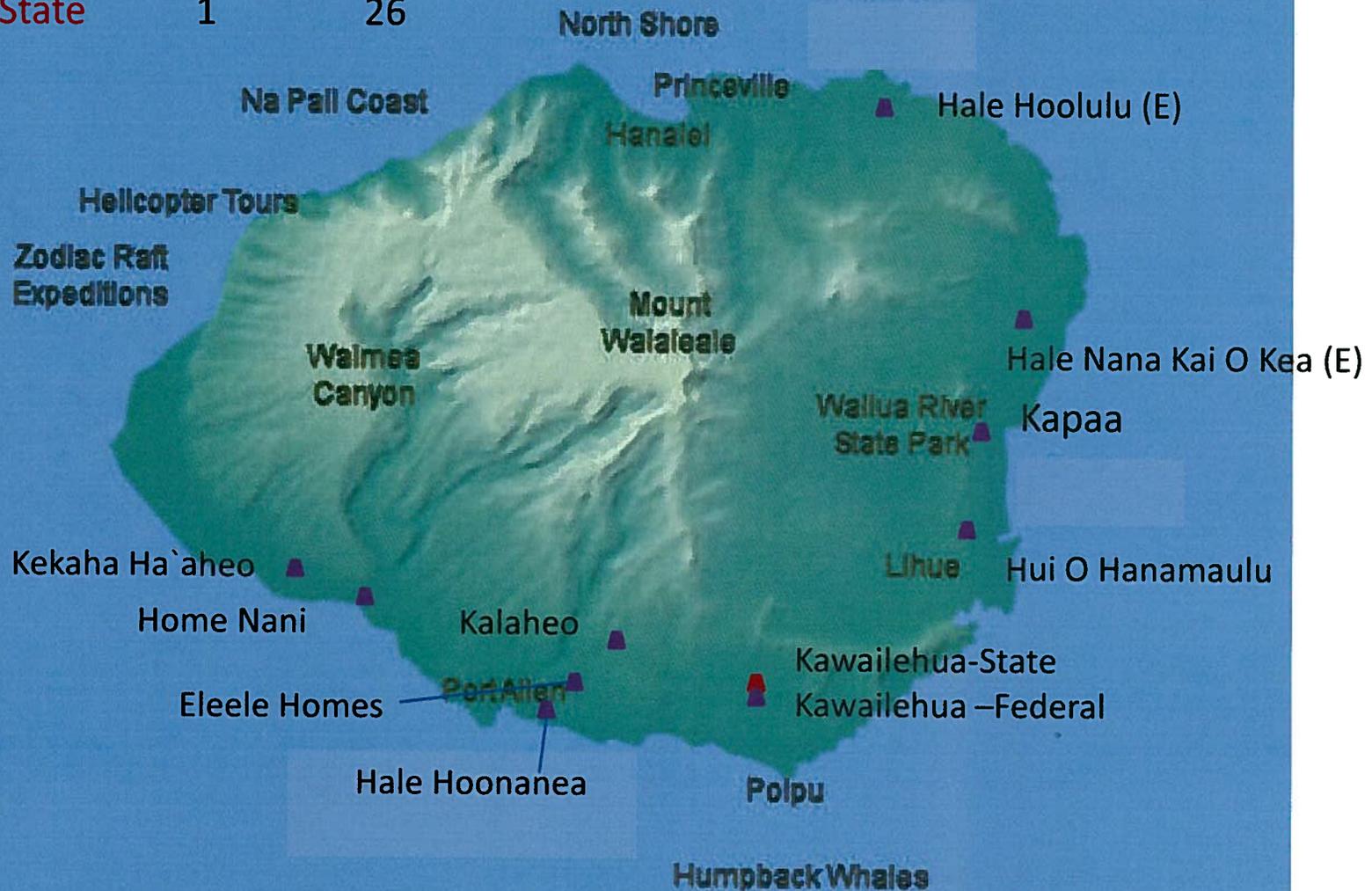


Kauai # projects # units

Fed. 10 319

State 1 26

**AMP 38,
Manager Sandra Kouchi**



East Hawaii

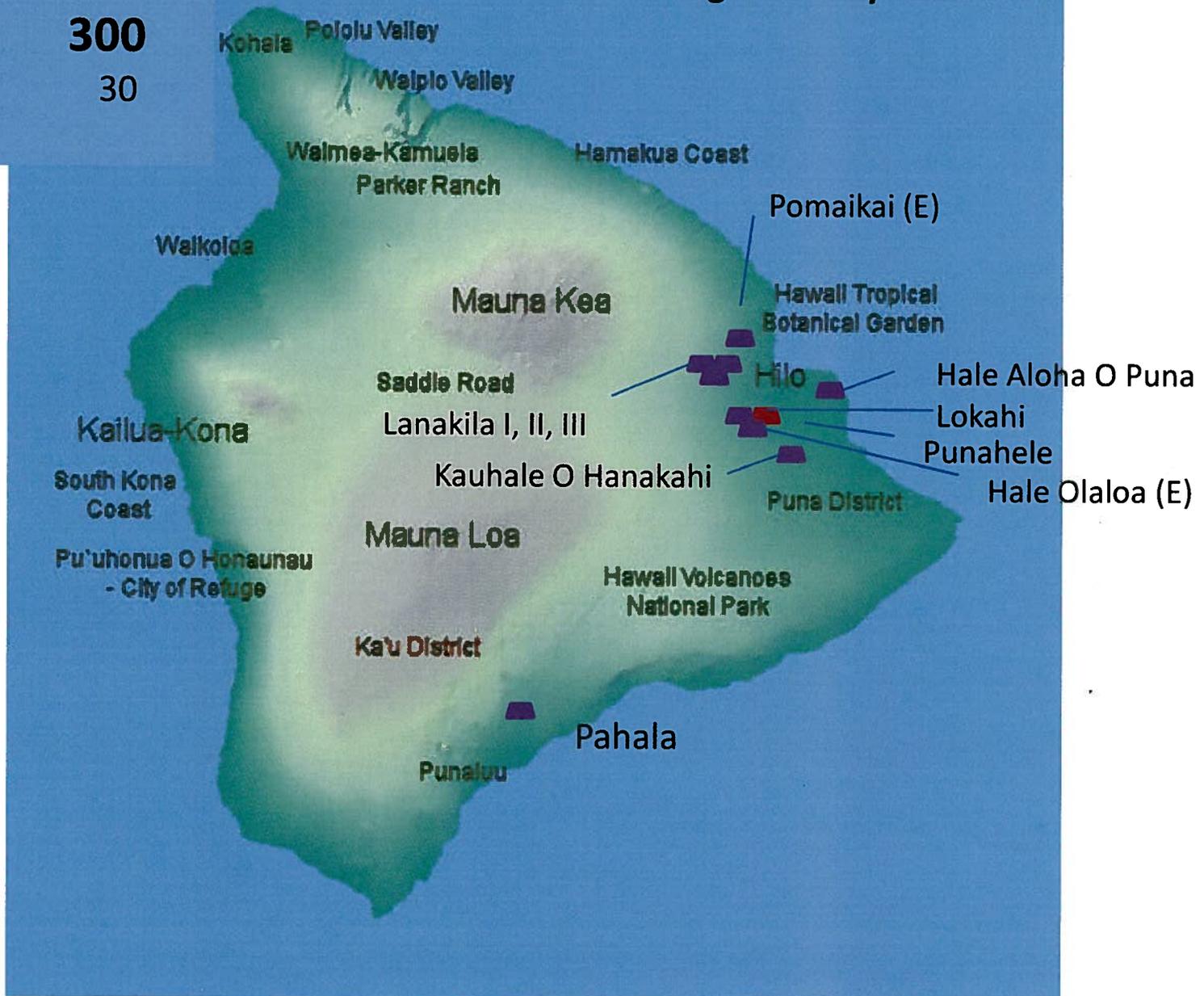
projects # units

Fed. 9 300

State 1 30

AMP 37

Manager Tammy Passmore



West/North

projects # units

Fed. 5 199

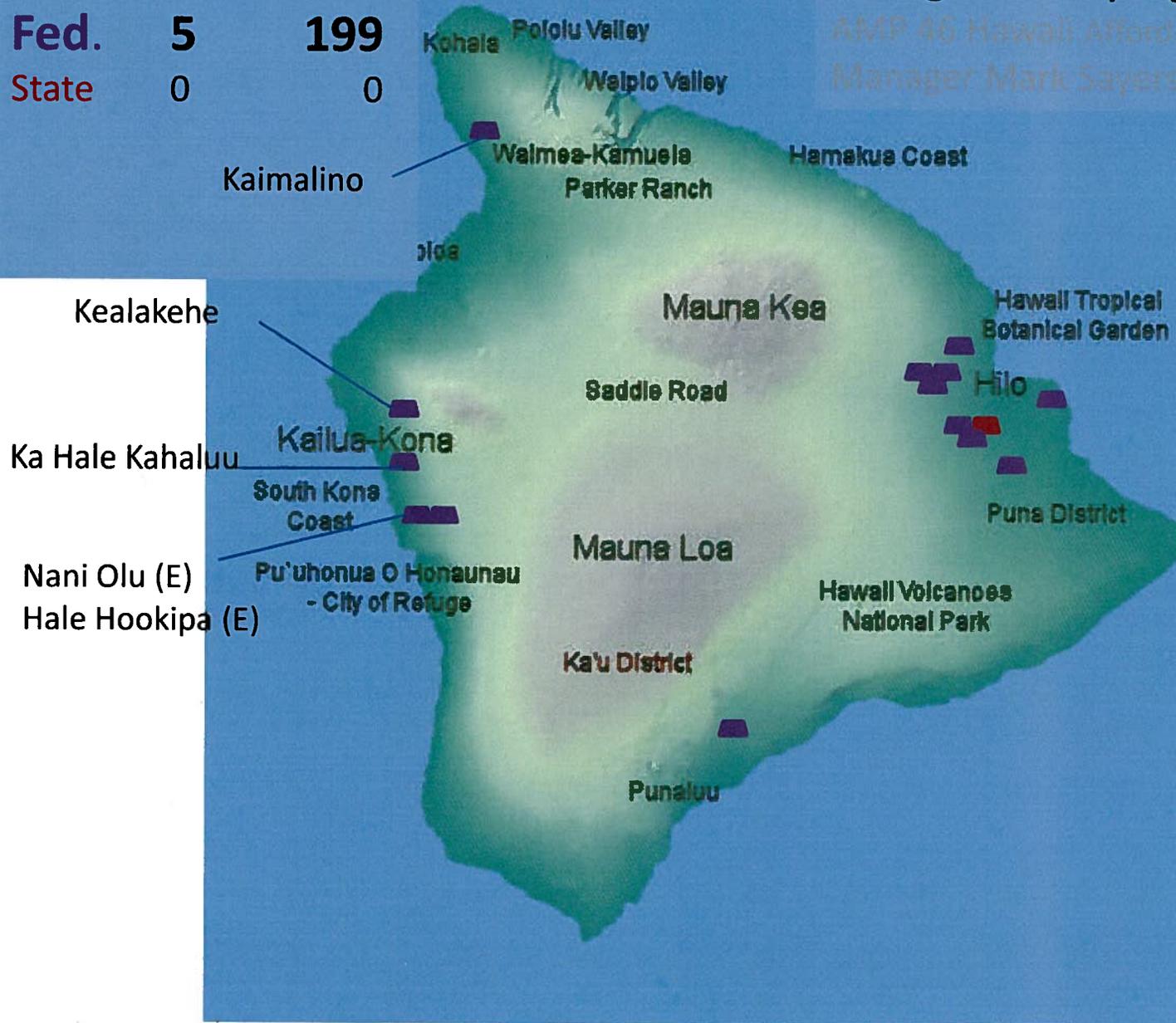
State 0 0

AMP 43 Hawaii Affordable Properties

Manager Paul Sopoaga

AMP 46 Hawaii Affordable Properties

Manager Mark Sayers



West/North

projects # units

Fed. 4 101

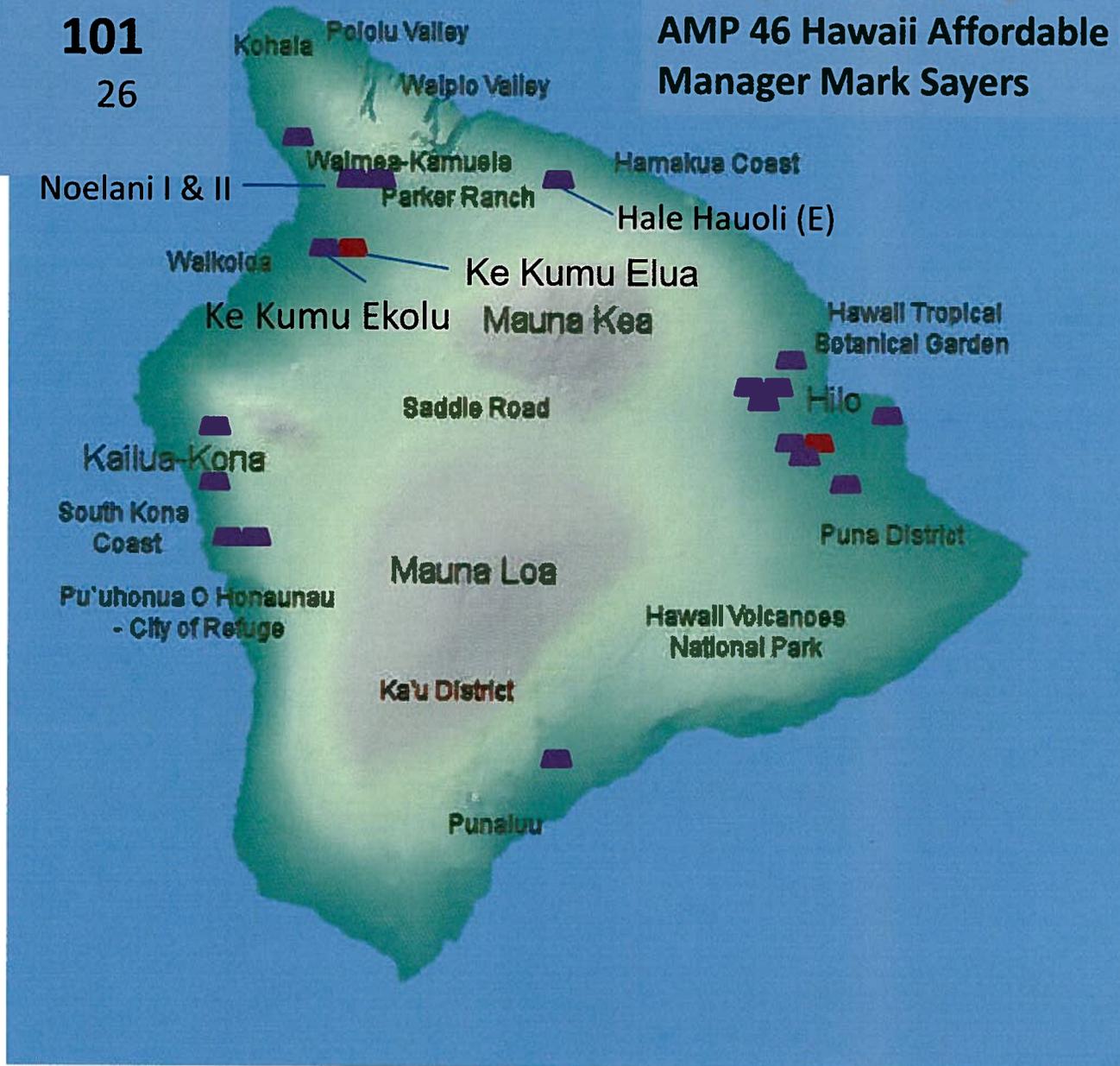
State 1 26

AMP 43 Hawaii Affordable Properties

Manager Paul Sopoaga

AMP 46 Hawaii Affordable Properties

Manager Mark Sayers



<u>Oahu</u>	<u># projects</u>	<u># units</u>
Federal	33	4,122
State	10	749

AMP 30, Mary Jane Hall-Ramiro

AMP 31, Gerald Kita

AMP 32, Joanna Chaves

AMP 33, Joanna Chaves

AMP 34, Janice Mizusawa

AMP 35, Gail Lee

AMP 50, Janice Mizusawa

AMP 40, Robert Faleafine

Realty Laua

MU 42, Venus Katano

Hawaii Affordable Properties

AMP 44, Veronica Mulabey

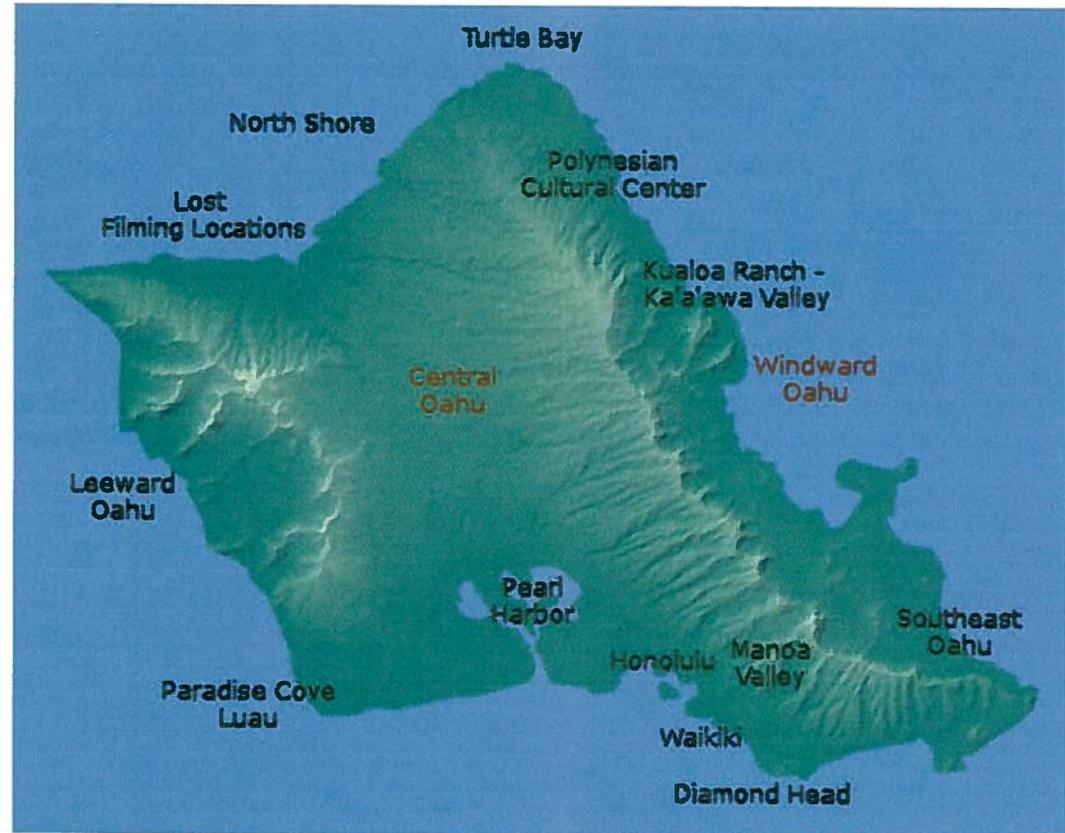
Ewa Pointe Realty

AMP 45, Patrick Mauga

Realty Laua

AMP 49, Lui Faleafine

Realty Laua



Locations

- AMP 30 Aiea
- AMP 31 Kalihi Valley Homes
- AMP 32 Mayor Wright Homes
- AMP 33 Kamehameha
- AMP 34 Kalakaua
- AMP 35 Punchbowl★Homes
- AMP 50 Palolo Valley Homes
- AMP 40 KPT/KH
- Mgmt Unit 42

Hawaii Affordable
Venus Katano

Kualoa Ranch
Ka'a'awa Valley

Windward
Oahu

Southeast
Oahu

Waialeale Cove
Luau

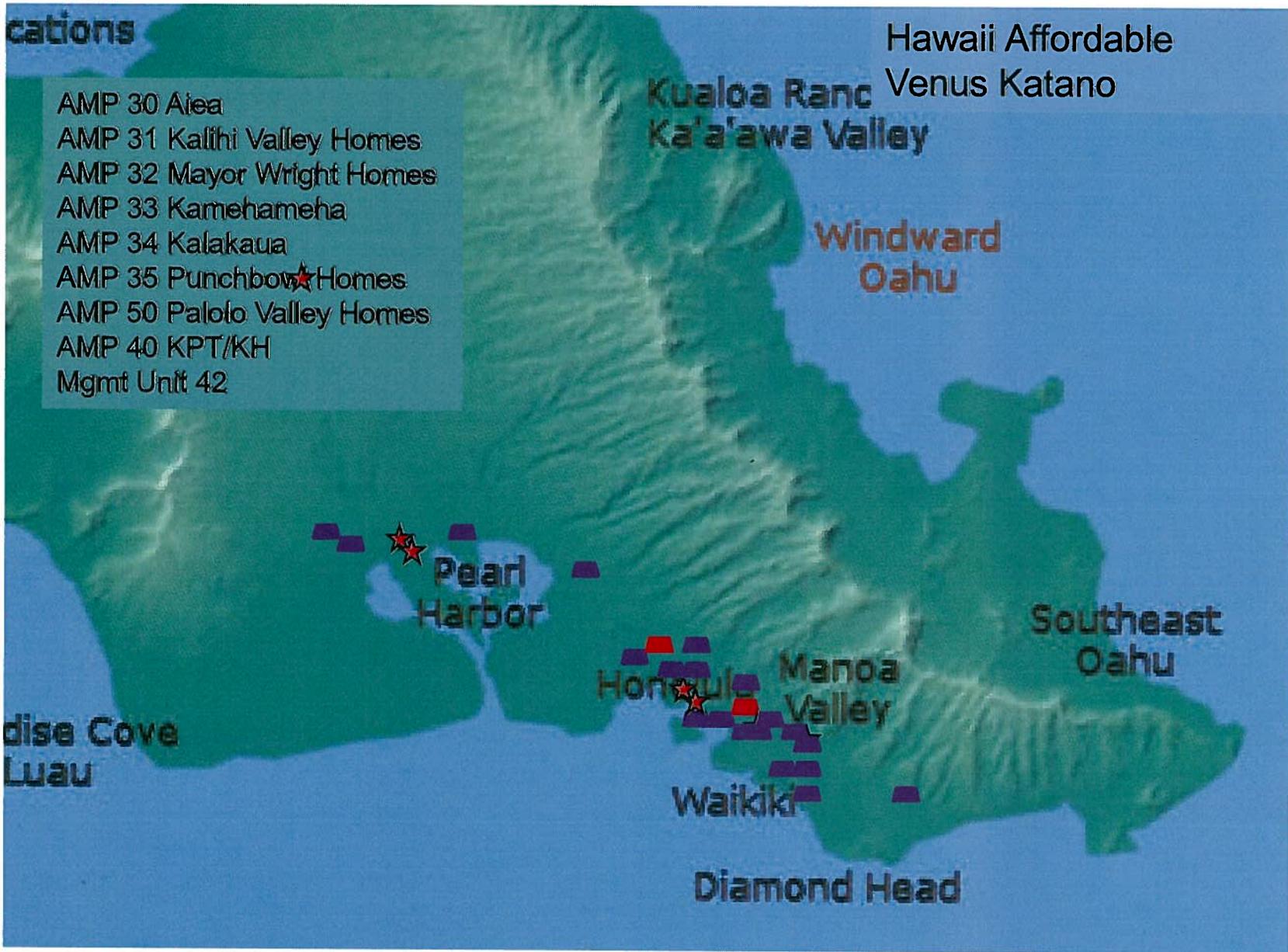
Pearl
Harbor

Honolulu

Manoa
Valley

Waikiki

Diamond Head



AMP 44 Leeward Oahu
AMP 45 Windward Oahu
AMP 49 Central Oahu

