

**CHAPTER 92**  
**PUBLIC AGENCY MEETINGS AND RECORDS**

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### **Law Journals and Reviews**

The Lum Court, Land Use, and the Environment: A Survey of Hawai`i Case Law 1983 to 1991. 14 UH L. Rev. 119.

### **Case Notes**

Rule regarding confidentiality of development proposals neither conflicted with nor contradicted "mandate" of either §92-3 or the Sunshine Law (this chapter) as a whole; plaintiff not entitled to disclosure of development proposals under those statutory provisions. 74 H. 365, 846 P.2d 882.

As this chapter governs board meetings and board meeting minutes, including those of executive sessions, and this section, by its plain language, permits "any person," including the county, to bring suit in circuit court "to determine the applicability of part I of this chapter to the discussions or decisions" of the council, the circuit court did not err in

determining it had jurisdiction pursuant to this chapter to determine whether county council's executive session minutes had to be disclosed. 120 H. 34 (App.), 200 P.3d 403.

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapter 92F and this chapter applied; if the meeting met an exception to the open meeting requirements put forth in this chapter, such as an exception enumerated in §92-5, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to §92-9 and §92F-12. 120 H. 34 (App.), 200 P.3d 403.

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## **PART I. MEETINGS**

### **Law Journals and Reviews**

Hawai'i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.

### **Attorney General Opinions**

Department of agriculture advisory committee on plants and animals subject to provisions of this part; subcommittees not subject to this part. Att. Gen. Op. 90-7.

**§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]

### **Attorney General Opinions**

This section and sections 92-7 and 92-9 require commission to specify subject matter of items on public meeting agenda. Att. Gen. Op. 85-2.

Interpretation of "board" as excluding county council would be inconsistent with policy and intent of sunshine law. Att. Gen. Op. 86-5.

### **Hawaii Legal Reporter Citations**

Openness in governmental discussions, deliberations, decisions, and actions. 79 HLR 79-0117;  
79 HLR 79-0543.

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**[\$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]

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**§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]

**Attorney General Opinions**

Trustees of travel agency recovery fund comprise board subject to sunshine law. Att. Gen. Op. 85-14.

Associated Students of University of Hawaii not a "board" subject to sunshine law. Att. Gen. Op. 85-18.

"Board" includes committees or subgroups of the board. Att. Gen. Op. 85-27.

County council is a "board". Att. Gen. Op. 86-5.

Agency's retreat would be a "meeting" subject to sunshine law. Att. Gen. Op. 86-19.

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**§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]

### **Law Journals and Reviews**

Hawai`i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.

### **Case Notes**

Although subsection (a) does not expressly preclude city counsel members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under §92-5(b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

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**§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]

### **Attorney General Opinions**

Sunshine law applies to meeting of standing or select committee of board of regents of University of Hawaii. Att. Gen. Op. 85-27.

Opportunity to present testimony, when it must be afforded; cannot delegate committee to hear testimony. Att. Gen. Op. 86-5.

### **Case Notes**

Rule regarding confidentiality of development proposals neither conflicted with nor contradicted “mandate” of either this section or the Sunshine Law, chapter 92, as a whole; plaintiff not entitled to disclosure of development proposals under those statutory provisions. 74 H. 365, 846 P.2d 882.

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**§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 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, c 20, §1]

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**§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]

### **Attorney General Opinions**

Transcript of agency hearing is a public record. Att. Gen. Op. 64-4.

Executive meeting to develop criteria for superintendent of education position may not be closed. Att. Gen. Op. 75-11.

### **Case Notes**

Certain police records not public records. 42 H. 14, (decided prior to enactment of section).

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**§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]

## Attorney General Opinions

Subsection (a)(1) is applicable only when a specific individual is involved. Att. Gen. Op. 75-11.

Even if there is no quorum, meeting to discuss official business may be prohibited unless sunshine law followed. Att. Gen. Op. 85-27.

Subsection (a)(2) and §92-9 read together permit board and commission members to disclose some matters deliberated or decided in executive session, but they cannot disclose matters which would be inconsistent with subsection (a)(2), i.e., matters affecting privacy of individuals under consideration for hire, and they must maintain this confidentiality for as long as disclosure would defeat purpose of convening the executive meeting. Att. Gen. Op. 94-1.

## Case Notes

Although §92-2.5(a) does not expressly preclude city council members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under subsection (b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapter 92F and this chapter applied; if the meeting met an exception to the open meeting requirements put forth in this chapter, such as an exception enumerated in this section, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to §92-9 and §92F-12. 120 H. 34 (App.), 200 P.3d 403.

Where it was clear from the county council executive session minutes that the county attorney consulted with the council consistently and at length throughout the executive session regarding the procedure to follow in conducting an investigation

of the county police department and that the council's consultation with the attorney largely concerned the ramifications of the sunshine law on the council's investigation -- a legal question, the council was justified in closing the meeting to the public in executive session. 120 H. 34 (App.), 200 P.3d 403.

Where the county council executive session conversation consisted of either direct communication between the council members and the county attorney or communication among council members that flowed from consultation with the county attorney, the attorney-client portions of the executive session were so intertwined with other portions of the executive session that redacting the privileged portions and disclosing the remainder of the minutes was impractical. 120 H. 34 (App.), 200 P.3d 403.

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**§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; am L 1998, c 240, §6]

## Rules of Court

Applicability of Hawaii Rules of Civil Procedure, see HRCP rule 81(b)(12).

## Case Notes

County planning commission's closed deliberations permissible under this section despite open meeting mandate of section 92-3. 64 H. 431, 643 P.2d 55.

Adjudicatory functions include adoption of conclusions of law. 4 H. App. 633, 675 P.2d 784.

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**§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]

### **Attorney General Opinions**

This section and sections 92-1 and 92-9 require commission to specify subject matter of items on public meeting agenda. Not sufficient to list broad categories of items. Att. Gen. Op. 85-2. Filing deadline should be established by using day, rather than hour increments. Att. Gen. Op. 92-06.

### **Law Journals and Reviews**

Hawai`i's Sunshine Law Compliance Criteria. 26 UH L. Rev. 21.

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**§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]

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**§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]

### **Attorney General Opinions**

This section and §§92-1 and 92-7 require commission to specify subject matter of items on public meeting agenda; agency responsible to make its minutes available to public. Att. Gen. Op. 85-2.

This section and §92-5(a)(2) read together permit board and commission members to disclose some matters deliberated or decided in executive session, but they cannot disclose matters which would be inconsistent with §92-5(a)(2), i.e., matters affecting privacy of individuals under consideration for hire and they must maintain this confidentiality for as long as disclosure would defeat purpose of convening the executive

meeting. Att. Gen. Op. 94-1.

### Case Notes

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapter 92F and this chapter applied; if the meeting met an exception to the open meeting requirements put forth in this chapter, such as an exception enumerated in §92-5, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to this section and §92F-12. 120 H. 34 (App.), 200 P.3d 403.

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**§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 §1]

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**§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]

### Case Notes

Violation not wilful. 4 H. App. 633, 675 P.2d 784.

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**§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]

### Case Notes

Entitles "any person" to "commence a suit in the circuit court of the circuit in which a prohibited act occurs", regardless of the person's participation in any proceeding. 74 H. 365, 846 P.2d 882.

Award of attorneys' fees under subsection (c) intended to apply where citizen prevails against government; prevailing defendant private party thus not entitled to attorneys' fees under this subsection. 86 H. 132, 948 P.2d 122.

Plaintiffs, as a "private attorney general", had standing pursuant to subsection (c) to present case to determine the applicability of the sunshine law to defendants' conduct--where five or more city council members participated in a series of private one-on-one conversations regarding, among other matters, the proposed reorganization of the council's standing

committees--and to seek a declaration that it violated the sunshine law. 117 H. 1 (App.), 175 P.3d 111.

Trial court did not err in hearing plaintiffs' suit as to the allegations that defendants' conduct relating to a council resolution violated the sunshine law where exceptions to the mootness doctrine applied to the case, including the public interest exception when the question involved affects the public interest and is likely that similar questions arising in the future would likewise become moot before a needed authoritative determination by an appellate court, and the exception when the case is capable of repetition, yet evades review. 117 H. 1 (App.), 175 P.3d 111.

Where plaintiffs prevailed on some, but not all, of their claims, but plaintiffs' claims for relief involved a common core of facts and were based on related legal theories, and much of counsel's time was devoted generally to litigation as a whole, making it difficult to divide the hours expended on a claim-by-claim basis, trial court should not have reduced the plaintiffs' attorney's fees request by seventy-five per cent; plaintiffs were thus entitled to full attorney's fees pursuant to subsection (c). 117 H. 1 (App.), 175 P.3d 111.

As this chapter governs board meetings and board meeting minutes, including those of executive sessions, and this section, by its plain language, permits "any person," including the county, to bring suit in circuit court "to determine the applicability of part I of this chapter to the discussions or decisions" of the council, the circuit court did not err in determining it had jurisdiction pursuant to this chapter to determine whether county council's executive session minutes had to be disclosed. 120 H. 34 (App.), 200 P.3d 403.

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**§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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**PART II. BOARDS: QUORUM; GENERAL POWERS****Note**

The sections of this part are renumbered to eliminate duplication of the section numbers in Part I, as enacted by L 1975, c 166.

**[§92-15] Boards and commissions; quorum; number of votes necessary to validate acts.** Whenever the number of members necessary to constitute a quorum to do business, or the number of members necessary to validate any act, of any board or commission of the State or of any political subdivision thereof, is not specified in the law or ordinance creating the same or in any other law or ordinance, a majority of all the members to which the board or commission is entitled shall constitute a quorum to do business, and the concurrence of a majority of all the members to which the board or commission is entitled shall be necessary to make any action of the board or commission valid; provided that due notice shall have been given to all members of the board or commission or a bona fide attempt shall have been made to give the notice to all members to whom it was reasonably practicable to give the notice. This section shall not invalidate any act of any board or commission performed prior to April 20, 1937, which, under the general law then in effect, would otherwise be valid. [L 1937, c 40, §1; RL 1945, §482; RL 1955, §7-26; HRS §92-11; ren §92-15]

**Attorney General Opinions**

"Concurrence" means affirmative vote, not abstention. Att. Gen. Op. 85-11.

**Case Notes**

Where the required majority exists without the vote of the disqualified member, disqualified member's participation will not invalidate the result. 63 H. 222, 624 P.2d 1353.

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**[\$92-15.5] Nonattendance of board member; expiration of**

**term.** (a) Notwithstanding any law to the contrary, the term of a board member shall expire upon the failure of the member, without valid excuse, to attend three consecutive meetings duly noticed to all members of the board and where the board failed to constitute quorum necessary to transact board business. The chair or acting chair of the board shall determine if the absence of the member is excusable. The expiration of the member's term shall be effective immediately after the third consecutive unattended meeting and unexcused absence. The vacancy shall be filled in the same manner as the original appointment.

(b) This section shall not apply to ex officio members of a board.

(c) Notwithstanding the definition of "board" in section 92-2, this section shall apply only to a state board and shall not apply to a board of any political subdivision of the State or whose authority is strictly advisory. [L 2004, c 234, §1]

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**[§92-16] Power of boards to issue subpoenas, administer oaths, appoint masters, etc.** (a) Any board (which term as used in this section means any board or commission of the State or of any political subdivision of the State) which is by law authorized or required to hold hearings for the purpose of receiving evidence, shall have the following powers, in addition to those provided for by any other law, in connection with the hearings:

(1) To subpoena witnesses upon subpoena signed by the chairperson, acting chairperson, or any member, or executive secretary, or executive officer of or under the board who is so authorized by the board. The subpoenas shall be served in the same manner, and the witnesses subpoenaed shall be entitled to the same witness fees, as in the case of a witness subpoenaed to testify before a circuit court. Any circuit court, upon the written application of any member of the board or of any master appointed by it as in this section provided, shall have power to enforce obedience to the subpoena by contempt proceedings.

(2) Through the chairperson, acting chairperson, or any member of the board, or through the executive secretary or executive officer of or under the board so authorized by the board, to administer oaths to witnesses and require the testimony of such witnesses on matters germane to the subject under inquiry at the hearing. Any party to the hearing upon request shall be allowed to be represented by counsel and be allowed reasonable rights of examination and cross-examination of witnesses. Any false swearing by a witness at the hearing upon any material issue or matter shall constitute perjury, and be punishable as such.

(3) To appoint, by written resolution adopted by vote of a majority of the board, a master or masters (who may, but need not be, a member or members of the board, or a disinterested attorney at law or other person, or a combination of any of them) to hold the hearing and take testimony upon the matters involved in the hearing and report to the board the master's or their findings and recommendations, together with a

transcript of the hearing or a summary of the evidence and testimony taken thereat, and to adopt the findings and recommendations, in whole or in part, or otherwise act upon the report and transcript or summary, and, in the board's discretion, to hold further hearings and take further evidence and testimony in connection therewith, before taking final action thereon. Any master may be paid such reasonable compensation as shall be determined by the board, provided that no member of the board shall be eligible to receive any additional compensation for services as master.

(b) Subpoena fees, master's fees, and other expenses in connection with the hearings shall be payable out of any moneys appropriated or available for expenditure by the board for personal services or current expenses, or both. Any master so appointed shall have all of the powers which would be held and enjoyed by the board or the chairperson or any member thereof in connection with the hearing. [L 1949, c 329, §1; RL 1955, §7-27; HRS §92-12; am L 1973, c 31, pt of §21; ren §92-16; gen ch 1985, 1993]

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**§92-17 Consumer complaints; procedures and remedies. (a)**

All boards as defined by section 92-2(1) established to license or regulate any profession, occupation, industry, or service, shall receive complaints from consumers and other persons claiming to be aggrieved by business practices related to their respective jurisdictions.

(b) Upon receipt of a written complaint or upon receipt of an investigation report generated by the board on its own motion or upon staff investigation which establishes an alleged violation of any provision of law or rule, the board or its authorized representative shall notify the licensee or person regulated of the charge against the licensee or person and conduct a hearing in conformity with chapter 91 if the matter cannot be settled informally. If the board finds that the charge constitutes a violation, the board may order one or more of the following remedies as appropriate relief:

- (1) Refunding the money paid as fees for services;
- (2) Correcting the work done in providing services;
- (3) Revocation of the licensee's permit or license;
- (4) Suspension of the licensee's permit or license;
- (5) Imposition of a fine; and
- (6) Any other reasonable means to secure relief as

determined by the board.

The board may also assess the licensee, as a penalty, any cost incurred in publishing the notice of hearing when service by registered or certified mail to the address listed on the licensee's record is unsuccessful.

(c) Notwithstanding any provision to the contrary:

(1) No license or permit shall be suspended by the board for a period exceeding five years.

(2) A person whose license or permit has been revoked by the board may not reapply for a license until the expiration of at least five years from the effective date of the revocation of the license or permit.

(3) A suspended license or permit shall be reinstated at the end of the suspension; provided that the suspension does not carry forward to the next license period, and the person satisfies all licensing requirements and conditions contained in the order of the suspension. If a suspension carries forward to the

next license period, the board shall not renew the suspended license or permit during the usual renewal period. At the end of the suspension period, a person whose license or permit was suspended may be reinstated upon filing a reinstatement form provided by the board and payment of the renewal fees, satisfaction of any other renewal requirements, and fulfillment of conditions, if any, contained in the order of suspension. If the person fails to file for reinstatement within thirty days after the end of the suspension, the person's license or permit shall be forfeited.

(d) The failure or refusal of the licensee to comply with any board order, including an order of license suspension, shall also constitute grounds for further disciplinary action, including a suspension or revocation of license, imposition of which shall be subject to chapter 91 and the procedural rules of the board. The board may also apply to any circuit court for injunctive relief to compel compliance with the board's order. Where appropriate, the board shall refer for prosecution to the proper authority any practice constituting a violation which is subject to criminal penalty.

(e) If the subject matter of the complaint does not come within its jurisdiction, or if it is found that the charge does not constitute a violation, the board shall notify and inform the complainant in writing with regard to the reasons for its inability to act upon the complaint.

(f) The complainant and the licensee or person regulated may agree to resolve the complaint through final and binding arbitration pursuant to chapter 658A. In the event of an agreement to arbitrate, the board may enter an order dismissing any proceeding instituted pursuant to subsection (b); provided that the order of dismissal may be conditioned upon prompt and complete compliance with the arbitrator's award. In the event that the licensee or person regulated fails to comply with the terms of the arbitrator's award, the board may reopen the proceeding and may, after a hearing in conformity with chapter 91, order one or more of the remedies set forth in subsection (b).

Notwithstanding any provision of chapter 658A to the

contrary, an arbitration agreement entered into pursuant to this section shall be approved by the board, and the parties shall agree on an arbitrator within five days after execution of the agreement. If the parties fail to agree on an arbitrator within the time above prescribed, the board may appoint an arbitrator from a list of arbitrators maintained for that purpose by the department of commerce and consumer affairs.

(g) A fine levied in a final order of a board or commission pursuant to subsection (b) shall be confirmed as a judgment by a circuit court in which the respondent resides or has property or in which the act complained of had occurred, by filing the board or commission's final order any time after thirty days after the issuance of that final order. The judgment issued thereon shall have the same force and effect and be enforceable and collectible as any other judgment issued in the circuit court. Nothing herein shall impair the right of the board or commission to apply to the circuit court for injunctive relief pursuant to subsection (d). [L 1974, c 117, §2; HRS §92-13; ren §92-17; am L 1977, c 94, §1; am L 1978, c 158, §1; am L 1982, c 174, §1 and c 204, §8; am L 1983, c 181, §1; am L 1984, c 45, §3; am L 1985, c 45, §1; gen ch 1985; am L 1986, c 274, §2; am L 1993, c 109, §1; am L 2001, c 265, §4]

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**PART III. COPIES OF RECORDS; COSTS AND FEES**

**§92-21 Copies of records; other costs and fees.** Except as otherwise provided by law, a copy of any government record, including any map, plan, diagram, photograph, photostat, or geographic information system digital data file, which is open to the inspection of the public, shall be furnished to any person applying for the same by the public officer having charge or control thereof upon the payment of the reasonable cost of reproducing such copy. Except as provided in section 91-2.5, the cost of reproducing any government record, except geographic information system digital data, shall not be less than 5 cents per page, sheet, or fraction thereof. The cost of reproducing geographic information system digital data shall be in accordance with rules adopted by the agency having charge or control of that data. Such reproduction cost shall include but shall not be limited to labor cost for search and actual time for reproducing, material cost, including electricity cost, equipment cost, including rental cost, cost for certification, and other related costs. All fees shall be paid in by the public officer receiving or collecting the same to the state director of finance, the county director of finance, or to the agency or department by which the officer is employed, as government realizations; provided that fees collected by the public utilities commission pursuant to this section shall be deposited in the public utilities commission special fund established under section 269-33. [L 1921, c 96, §1; RL 1925, §166; am L 1929, c 166, pt of §1; am L 1931, c 178, §1; RL 1935, §147; RL 1945, pt of §458; am L 1945, c 248, §1; am L 1949, c 345, §1; am L Sp 1949, c 23, §1; RL 1955, §7-1; am L Sp 1959 2d, c 1, §14; am L 1963, c 114, §1; HRS §92-21; am L 1974, c 145, §2; am L 1976, c 212, §3; am L 1991, c 145, §3; am L 1993, c 103, §1; am L 1994, c 226, §2; am L 1998, c 311, §4; am L 1999, c 160, §1 and c 301, §3(1)]

**Cross References**

Court documents, see §607-5.

**Case Notes**

Records not otherwise open to the public are not opened by this section. 42 H. 14.

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**§§92-22, 23 REPEALED.** L 1989, c 14, §§18, 19.

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**§92-24 Directors of finance and commerce and consumer affairs; fees.** Except as provided in section 91-2.5, the director of finance and the director of commerce and consumer affairs each shall charge the following fees:

- (1) For administering any oath, \$1;
- (2) For preparing every photostat copy of any document on record in the director's office, 50 cents per page or portion thereof;
- (3) For preparing every typewritten copy of any document on record in the director's office, 50 cents per page or portion thereof;
- (4) For preparing a certificate of compliance, \$5 for the original certificate, and \$1 for each additional copy thereof, of which \$4 from each certificate and 75 cents of each additional copy shall be deposited in the compliance resolution fund established pursuant to section 26-9(o);
- (5) For comparing any document submitted for certification, 15 cents per page or portion thereof;
- (6) For certifying any document on record in the director's office, 25 cents for each certification;
- (7) For all other acts and duties, the fees of which are not otherwise provided for, such charges as each may from time to time prescribe. [CC 1859, §690; RL 1925, §1253; RL 1935, §2212; RL 1945, §5813; am L 1949, c 172, §1; RL 1955, §132-14; am L Sp 1959 2d, c 1, §§14, 15; am L 1963, c 114, §§1, 3; HRS §92-24; am L 1983, c 153, §1; am L 1988, c 141, §9; gen ch 1993; am L 1999, c 129, §4 and c 301, §3(2)]

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**§92-25 No fees for copies of pleadings, etc.** No fees shall be charged for the certification of copies of any pleadings, order or other paper or document filed in any court, or process thereon, or any transcript of testimony, upon the original filing or issuance thereof, nor for the certification of records on appeal in any proceeding in any court. [RL 1925, pt of §166; am L 1929, c 166, pt of §1; RL 1945, pt of §458; RL 1955, §7-2; HRS §92-25]

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**§92-26 Fees; exemption.** One department of the state government shall not be required to pay any fee to any other department of the state government for the preparation and certification by the latter of any government record, nor shall section 92-21 be held to amend or repeal section 94-4. [L 1921, c 96, §2; RL 1925, §167; RL 1935, §148; RL 1945, §459; RL 1955, §7-3; HRS §92-26; am L 1991, c 145, §3]

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**§92-27 Fees to be accounted for.** All official and departmental fees shall be accounted for and paid over into the public treasury, except fees designated and intended to be applied in compensation of the officers receiving the same. No public officer in receipt of a salary for the officer's services, shall receive any other or further compensation therefor, unless specially allowed by law. [CC 1859, §1494; RL 1925, §168; RL 1935, §149; RL 1945, §460; RL 1955, §7-4; HRS §92-27; gen ch 1985]

### Case Notes

Receipt of an additional fee, not provided for by law, violates section. Officer is guilty of malfeasance thereby even if accepted in ignorance or mistake of law. 28 H. 733.

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**§92-28 State service fees; increase or decrease of.** Any law to the contrary notwithstanding, the fees or other nontax revenues assessed or charged by any board, commission, or other governmental agency may be increased or decreased by the body in an amount not to exceed fifty per cent of the statutorily assessed fee or nontax revenue, to maintain a reasonable relation between the revenues derived from such fee or nontax revenue and the cost or value of services rendered, comparability among fees imposed by the State, or any other purpose which it may deem necessary and reasonable; provided that:

(1) The authority to increase or decrease fees or nontax revenues shall be subject to the approval of the governor and extend only to the following: chapters 36, 92, 94, 142, 144, 145, 147, 150, 171, 188, 189, 231, 269, 271, 321, 338, 373, 412, 414, 414D, 415A, 417E, 419, 421, 421C, 421H, 421I, 425, 425E, 428, 431, 436E, 437, 437B, 438, 439, 440, 441, 442, 443B, 444, 447, 448, 448E, 448F, 448H, 451A, 451J, 452, 453, 453D, 454, 455, 456, 457, 457A, 457B, 457G, 458, 459, 460J, 461, 461J, 462A, 463, 463E, 464, 465, 466, 466K, 467, 467E, 468E, 468L, 468M, 469, 471, 482, 482E, 484, 485A, 501, 502, 505, 514A, 514B, 514E, 572, 574, and 846 (part II);

(2) The authority to increase or decrease fees or nontax revenues under the chapters listed in paragraph (1) that are established by the department of commerce and consumer affairs shall apply to fees or nontax revenues established by statute or rule;

(3) The authority to increase or decrease fees or nontax revenues established by the University of Hawaii under chapter 304A shall be subject to the approval of the board of regents; provided that the board's approval of any increase or decrease in tuition for regular credit courses shall be preceded by an open public meeting held during or prior to the semester preceding the semester to which the tuition applies;

(4) This section shall not apply to judicial fees as may be set by any chapter cited in this section;

(5) The authority to increase or decrease fees or nontax revenues pursuant to this section shall be exempt

from the public notice and public hearing requirements of chapter 91; and

(6) Fees for copies of proposed and final rules and public notices of proposed rulemaking actions under chapter 91 shall not exceed 10 cents a page, as required by section 91-2.5. [L 1964, c 32, §2; Supp, §7-4.5; HRS §92-28; am L 1983, c 167, §2; am L 1985, c 270, §4; am L 1987, c 283, §15; am L 1988, c 141, §10; am L 1989, c 89, §2; am L 1993, c 350, §3; am L 1995, c 95, §1; am L 1996, c 251, §2; am L 1999, c 301, §3(3); am L 2002, c 40, §3; am L 2003, c 210, §2; am L 2004, c 116, §2; am L 2006, c 75, §6 and c 229, §4; am L 2007, c 155, §§1, 2; am L 2009, c 11, §26]

### **Note**

The 2009 amendment is retroactive to April 3, 2008. L 2009, c 11, §76(2).

### **Attorney General Opinions**

Basis against which the 50 per cent maximum is to be applied is the individual fee item or individual nontax revenue. Att. Gen. Op. 64-24.

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**§92-29 Reproduction of government records.** Any public officer having the care and custody of any record, paper, or document may cause the same to be photographed, microphotographed, reproduced on film, or copied to an electronic format. Any device or electronic storage system used to copy or reproduce the record, paper, or document shall accurately reflect the information in the original thereof in all details. [L 1945, c 26, pt of §1; RL 1955, §7-5; HRS §92-29; am L 1991, c 145, §2; am L 2005, c 177, §3]

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**§92-30 Copy deemed original record.** A photograph, microphotograph, reproduction on film, or electronic copy of a government record shall be deemed to be an original record for all purposes, including introduction in evidence in all courts or administrative agencies. A transcript, exemplification, facsimile, or certified copy thereof, for all purposes recited in this section, shall be deemed to be a transcript, exemplification, facsimile, or certified copy of the original record. [L 1945, c 26, pt of §1; RL 1955, §7-6; HRS §92-30; am L 2005, c 177, §4]

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**§92-31 Disposition of original record.** A photograph, microphotograph, reproduction on film, or electronic form of a government record shall be placed in conveniently accessible files and provisions made for preserving, examining, and using the same. Thereafter, a public officer, after having first received the written approval of the comptroller as provided in section 94-3, may cause such record, paper, or document to be destroyed. The comptroller may require, as a prerequisite to the granting of such approval, that a reproduction or print of such photograph, microphotograph, or reproduction on film, or electronic form of the record be delivered into the custody of the public archives for safekeeping. The comptroller may also require the delivery into the custody of another governmental department or agency or a research library of any such record, paper, or document proposed to be destroyed under the provisions of this section. [L 1945, c 26, pt of §1; RL 1955, §7-7; am L 1959, c 7, §1; am L Sp 1959 2d, c 1, §12; HRS §92-31; am L 2005, c 177, §5]

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**[PART IV. NOTICE OF PUBLIC HEARINGS]**

**§92-41 Giving public notices.** Notwithstanding any law to the contrary, all governmental agencies scheduling a public hearing shall give public notice in the county affected by the proposed action, to inform the public of the time, place, and subject matter of the public hearing. This requirement shall prevail whether or not the governmental agency giving notice of public hearing is specifically required by law, and shall be in addition to other procedures required by law. [L 1972, c 188, §2; am L 1998, c 2, §29]

**Attorney General Opinions**

State agency required by section 91-3(a)(1) to publish notice of hearing must in addition comply with publication requirements of this section. Att. Gen. Op. 73-12.

This section does not require a public hearing in each county where a notice of public hearing is published. Att. Gen. Op. 73-13.

Notices must be published in a county newspaper and a newspaper with statewide circulation. Att. Gen. Op. 89-4.

For the repeal of rules, this section and §91-3 did not require individual notice to all property owners potentially affected by the change in the rules but only notice by publication, and a mailing to those persons who requested advance notice of department's rulemaking proceedings. Att. Gen. Op. 97-4.

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**PART V. PUBLIC RECORDS**

**§§92-50 to 52 REPEALED. L 1988, c 262, §3.**

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[PART VI. GENERAL PROVISIONS]

**[\$92-71] Political subdivision of the State; applicability.** The provisions contained in this chapter shall apply to all political subdivisions of the State. Provided, however, in the event that any political subdivision of the State shall provide by charter, ordinance or otherwise, more stringent requirements relating to mandating the openness of meetings, the more stringent provisions of said charter, ordinance, or otherwise, shall apply. [L 1976, c 212, §5]

**Attorney General Opinions**

Interpretation of "board" as excluding county council would be inconsistent with this section.  
Att. Gen. Op. 86-5.

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**[Part VII.] Neighborhood board**

**[§92-81] Neighborhood board; notice and agenda; public input; quorum.** (a) Any contrary provision in this chapter notwithstanding, the provisions of this part shall apply to neighborhood boards overseen by a neighborhood commission of the city and county of Honolulu, and such other neighborhood boards as may be created in other counties and overseen by a county-based commission.

(b) The agenda required to be included in written public notice of a neighborhood board meeting may include an opportunity for the board to receive public input on issues not specifically noticed for consideration at the forthcoming meeting.

(c) Any matter raised as part of the public input agenda allowed under subsection (b) may be discussed and information on the matter may be received by the board at the meeting; provided that the board shall not make a decision relating to the matter. The board may make decisions on matters originally raised as part of a public input agenda only at a later meeting, where the agenda for the meeting shall give notice of decision-making on the matter.

(d) A quorum for a meeting of a neighborhood board shall be required for:

- (1) Conducting official board business;
- (2) Discussions prior to and related to voting; and
- (3) Voting required to validate an act of the

board as part of official board business.

A neighborhood board may receive information or testimony on a matter of official board business without a quorum; provided that the board shall not make a decision on the issue. The board members, at the next meeting of the neighborhood board, shall report the matters presented as information or testimony.

[L 2008, c 153, pt of §1]

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**[\$92-82] Permitted interactions of neighborhood board**

**members.** (a) Two or more members of a neighborhood board, but fewer than the number of members necessary to constitute a quorum for the board, may attend informational meetings or presentations on matters relating to official board business, including meetings of another entity, seminars, and community meetings; provided that the presentation is not specifically and exclusively organized for or directed toward members of the board.

(b) Neighborhood board members may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation allowed by subsection (a); and provided further that there is no commitment made relating to a vote on the issue. The board members, at the next duly noticed meeting of the neighborhood board, shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation. [L 2008, c 153, pt of §1]

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**[\$92-83] Neighborhood board meeting; unanticipated events; public interest.** An unanticipated event that occurs after public notice of a neighborhood board meeting has been issued, but before the scheduled meeting, may be the subject of discussion at the scheduled meeting if timely action on the matter is necessary for public health, welfare, and safety. At a duly noticed meeting, a board may take action on an unanticipated event in the public interest that is not on the agenda in the same manner as if the board had held an emergency meeting to take action on the issue, pursuant to section 92-8. [L 2008, c 153 pt of §1]

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