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Hawaii News

Counties urge Legislature to open meetings

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Posted October 08, 2017

October 8, 2017



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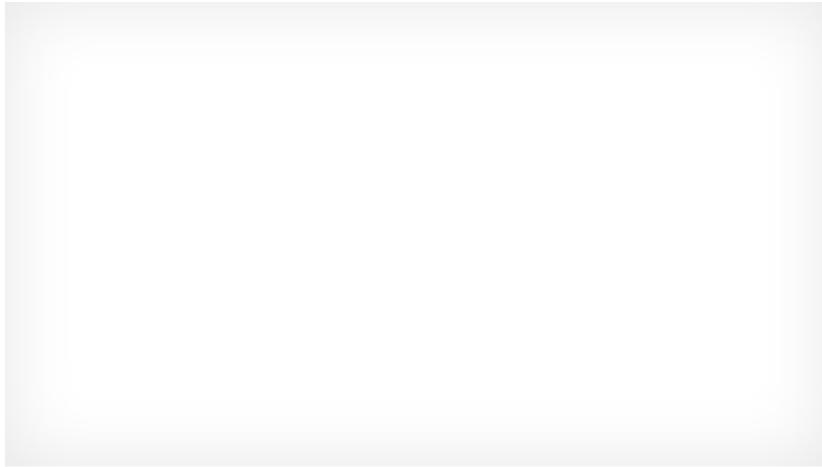
The Legislature effectively exempted itself from the Sunshine Law from the start by dictating that the rules of the state House and Senate trump the law. That means lawmakers literally make their own rules on matters of public access and openness at the Capitol.

Unhappiness with the recent special session to bail out the Honolulu rail project has prompted all three neighbor island county councils to advance resolutions urging the Hawaii Legislature to finally comply with the state's Sunshine Law.

The Kauai and Maui County councils adopted nonbinding resolutions last month calling on state lawmakers to “protect the public’s interest” and be accountable to the public by applying the Sunshine Law’s open meeting and other requirements to themselves.

The Hawaii island Council’s Committee on Government Relations and Economic Development unanimously approved a similar resolution last week. Council members said the resolutions grew out of frustration at being excluded from deliberations on the rail bailout.

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Neighbor islanders strongly objected to a proposed increase in the statewide hotel room tax to raise money for rail, but that feature was a key part of a larger agreement reached in private negotiations among leading state lawmakers that was announced the week before the special session.

The terms of that agreement were then incorporated into Senate Bill 4, which provided \$2.37 billion in extra funding for the financially strapped Oahu rail project. The House and Senate refused to change any provision of that bill during the five-day special session from Aug. 28 to Sept. 1.

“There was no advance warning that this was coming up, and we were called at the very last moment for them to tell us what they had already decided,” Hawaii County Council Chairwoman Valerie Poindexter told her Council colleagues Tuesday. “It was like it was a done deal, and yet we had not even begun public testimony.”

Hawaii lawmakers adopted the state Sunshine Law, formally known as Chapter 92 of the Hawaii Revised Statutes, in 1975 to govern how public meetings and records are handled by state and county councils, boards, commissions and agencies.

The law advocates for the most open government possible, arguing that “opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public’s interest.”

Among other requirements, the law prohibits county council and board members from discussing official business with each other outside of a public meeting, including by telephone or through email or social media.

But the Legislature effectively exempted itself from the Sunshine Law from the start by dictating that the rules of the state House and Senate trump the law. That means lawmakers literally make their own rules on matters of public access and openness at the Capitol.

In practice, decisions at the Legislature on the most important issues confronting the state are often made in private negotiations attended by just a handful of the most powerful lawmakers, or in Democratic caucuses that exclude both the public and the media.

That approach to governing was on dramatic display during the special session.

"I just felt that the deals were made," said Poindexter, who introduced Hawaii County Resolution 295-17. "When they called recess, they go into caucus. That caucus should be an open, public forum so that we know what they're discussing."

The Maui County Council approved a similar resolution on Sept. 8 out of frustration with "backroom decision making" during the special session, said Maui Council Chairman Mike White.

"It was pretty well known to us that the decision had already been reached as to where they were going before the special session started," White said. "After the special session was underway, it was made very clear that they were going to consider no amendments to the bills, and they weren't going to extend the session under any circumstances, and that's just simply not the kind of transparency that I think we need to be able to expect from our state Legislature."

House Speaker Scott Saiki said he won't try to apply the Sunshine Law to the state Legislature because there are important structural differences between the Legislature and the county councils.

The Legislature has many more members and committees than the councils, is a part-time body that officially meets for only 60 days each year, and has Senate and House districts that overlap one another, he said.

"When you look at all of these factors, they are not conducive to the requirements that are imposed by the Sunshine Law," he said. The House and Senate serve as a check and balance against one another, while the council is unicameral and has no such check, he said.

Saiki said he also disagrees that state lawmakers ignored the council members' concerns. "Just the fact that the Legislature approved Senate Bill 4 does not mean that the Legislature did not hear or listen to the counties' concerns. I would say, to the

contrary, that the Legislature heard loud and clear what the counties' concerns were," he said.

For example, the counties feared that neighbor island residents were being forced to pay a new tax to help fund the Honolulu rail project, but "that is not correct," Saiki said. The vast majority of the increased hotel room tax will be paid by visitors, he said.

Senate President Ron Kouchi did not respond to a request for comment.

The Hawaii County Council's resolution passed unanimously Tuesday, but Councilman Aaron Chung said he had major concerns about the resolution because "I don't like interfering in other people's business."

Chung said he supports transparency in government, but it is "highly unlikely" state lawmakers will agree with the county resolutions and suddenly comply with the Sunshine Law, "so it's almost like a provocation, in my opinion."

"That's the state Legislature. They call the shots over us," Chung said. "If we're going to piss them off, you're just going to make life more difficult for us in the long run."

White said he doesn't expect lawmakers will actually change the law to make it apply to themselves. The Maui resolution is the Council's way of saying that "we would at least like you to make an attempt to be more transparent, make an attempt to make us feel like testimony actually means something to you," White said.

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