

COMMUNITY VOICE

Hawaii's Sunshine Law Is Getting Cloudy As Lawmakers Debate

Any changes in our open meetings law deserve careful and comprehensive study, not piecemeal special-interest legislation.

FEBRUARY 4, 2015 • By Brian Black 

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It is time for the Legislature to re-examine why Hawaii has an open meetings law.

This year marks the 40th anniversary of the Sunshine Law. Bills pending in the Legislature illustrate how the open meetings law has pulled in different directions over time. Sunshine needs a unifying philosophy that will guide it into the future.

In 1975, as Watergate festered in the public consciousness, the Legislature pressed forward with a comprehensive Sunshine Law to restore confidence in government. The Sunshine Law reacted to the perception and reality of “secret” government meetings, driven by influential elite, that set state policies impacting everyone in Hawaii.



Sunshine healed public confidence in two ways. First, it helped the public understand its government. Anyone could attend board meetings, observe the proceedings or read about them in the news, and learn the rationale for the policies that affected their daily lives. Second, it provided the public a voice in that decision-making process. By dragging board decisions out of the backroom, the average person had an opportunity to be heard.

Now, confidence in government is wavering again.

Unlike the 1970s, there is no shockingly criminal breach of trust. Instead, a malaise has descended after a stream of disappointments in the democratic ideal. The proud optimism of “one person, one vote” rings a little less brightly after *Citizens United*, so we have resorted to cajoling citizens with “no vote, no grumble.”

And with the advent of 24-hour news that micro-analyzes everything, all but the bravest (or most foolish) public officials have retreated to the safety of press releases. The perception and reality of influential lobbyists and poorly justified policies has led many in Hawaii to feel disconnected from their government.

The Legislature has pending bills that advance the original Sunshine tradition of

encouraging the people of Hawaii to learn more about and participate in the formation of state policy. For example, HB 1260 and SB 1322 — sponsored by Representatives LoPresti, Brower, Evans, Ichiyama, Kobayashi, Lee, Mizuno, Jordan, Kong, and San Buenaventura and Senators Ihara, Inouye, Keith-Agaran, and Slom—seek to modernize board meetings by requiring meeting notices on the Internet and by email if requested; public access to documents to be discussed at a meeting; and meeting minutes on the Internet.

On the flip side, there are bills premised on the concern that Sunshine is an obstacle to effective decision-making. Almost 20 years ago, the Legislature started creating complicated special exceptions to the open meetings mandate — “permitted interactions” — meant to preserve the quality of board decisions.

Since then, debates about Sunshine have shifted from a focus on backroom deals to the technical morass of specific interactions. Over time, those permitted interactions have grown, incrementally chipping away at the scope of the Sunshine Law.

Now, bills such as HB 202 and SB 410 — sponsored by the County of Maui — ask the Legislature to sanction as a permitted interaction an entire county council deliberating without any Sunshine protections at an “informational meeting or presentation of another entity.” No doubt many lobbyists are eager to hold such informational meetings.

It is time to address the philosophical split in the Sunshine Law. If open meetings might impact effective decision-making for boards, that issue deserves careful and comprehensive study, not piecemeal special-interest legislation.

In the end, Sunshine is not a panacea for voter apathy. But it is a critical component to any possible solution. Let's find a way to make it work.

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About the Author



GUEST CONTRIBUTOR

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Chad Blair · Works at Honolulu Civil Beat

Nice piece, Brian. Of course, a major part of having greater transparency in local government is that the Hawaii Legislature EXEMPTS itself from the Sunshine Law.

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Natalie Iwasa, Community Advocate

Great point, and this should be the first thing that is changed with respect to our sunshine law.

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Civil Beat

Comment from Lynne Matusow:

Mayor Caldwell, at the request of the Neighborhood Commission, is asking the legislature in HB317 and SB420 to amend the definition of board under the Sunshine Law to specifically exclude neighborhood boards. Openness should begin at the grass roots level, i.e. neighborhood boards. This is a disgrace.

Mayor Caldwell is also under HB313 and SB419 to add an additional permitted interaction for all neighborhood board members to attend free public meetings of other entitites without limitation on numbers. These free public meetings are now commonplace, and neighborho... See More

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Natalie Iwasa, Community Advocate

Thank you for your comments, Lynne. As a board member, one thing that especially bothered me last year was that a full neighborhood board was not allowed to attend the mayor's town hall meetings. The same apparently holds true for any public meeting -- city council, state legislature, or even another neighborhood board meeting. unless the board puts out a public adenda. I think this is wrong.

There must be a way to put some balance in the law, so that board members may attend publicly-noticed meetings such as the examples I list, without jeopardizing the intent of the sunshine law.

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Bryan Mick · University of Hawaii at Manoa

Just to clarify, this was at the request of the Neighborhood Commission Office, not the Commission.

Like · Reply · Feb 5, 2015 11:44am



Andy Parx

The thing about HB 202 and SB 410 (The "Maui" request) is that, at least here on Kaua`i, the Sunshine Law change was "sold" as simply allowing councilmembers to attend these "public" meetings (although there's dispute about what "public meeting" means too).

That's what the Kaua`i resolution exclusively referred to- attending. However a closer look at the state legislative bill the reso referred to actually allows them to "speak" during the meetings, obliterating the current prohibition on more than two members of the board doing so, Pretty sneaky, eh?

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