



RESOLUTION

APPROVING THE INCLUSION IN THE 2006 HSAC LEGISLATIVE PACKAGE OF A PROPOSAL TO MAKE THE SUNSHINE LAW INAPPLICABLE TO EACH COUNTY COUNCIL AND REQUIRE EACH COUNTY COUNCIL TO ESTABLISH OPEN MEETING PROVISIONS BY ITS OWN RULES AND PROCEDURES.

WHEREAS, the state sunshine law, codified as Chapter 92, Part I, Hawaii Revised Statutes, sets forth provisions on open meeting, meeting notice, and other requirements for most state and county boards and commissions (termed collectively "open meeting provisions" for this Resolution); and

WHEREAS, the sunshine law has been interpreted to apply to each county council, but the state legislature has chosen to make the law inapplicable to itself; and

WHEREAS, the intent of the sunshine law to provide for governmental decision-making at open public meetings is laudable; and

WHEREAS, relatively recent interpretations of the sunshine law by the state office of information practices, however, have made it difficult for the county councils to carry out their legislative duties and responsibilities and conduct the councils' business in an effective manner; and

WHEREAS, primarily for this reason, the Maui county council has requested the county councils to include in the 2006 legislative package of the Hawaii state association of counties (HSAC) a proposal to (1) make the sunshine law inapplicable to each county council and (2) require each county council to establish open meeting provisions by its own rules and procedures; and

WHEREAS, the proposal is intended to (1) result in equal treatment under the sunshine law between the county councils and state legislature (2) acknowledge that, as elected officials of a legislative body, county councilmembers are ultimately accountable to the electorate alone and not to the oversight of a state agency consisting of an officer appointed by the governor and (3) conform to the mandate in Art. VIII, Sec. 2 of the Hawaii Constitution which grants matters relating to a political subdivision's executive, legislative and administrative structure and organization superiority over state statutory provisions; and

WHEREAS, the unanimous approval of the four county councils is necessary for the inclusion of a proposal in the 2006 HSAC legislative package; and



RESOLUTION

BE IT RESOLVED by the council of the city and county of Honolulu that this body approves the inclusion in the 2006 HSAC legislative package of the proposal, attached as Exhibit A, to make the sunshine law inapplicable to each county council and require each county council to establish open meeting provisions by its own rules and procedures; and

BE IT FURTHER RESOLVED that, if the proposal is enacted, this council intend to establish open meeting provisions that protect the public's right to be informed about and participate in decision-making yet not unduly hinder effective council operations; and

BE IT FURTHER RESOLVED that the HSAC Executive Committee, if deemed necessary or desirable, is authorized to revise the "purpose section" of the proposal before transmittal to the senate and house leadership for introduction; and

BE IT FINALLY RESOLVED that the clerk is directed to transmit a certified copy of this Resolution to the president of the Hawaii state association of counties.

INTRODUCED BY:

Romy M. Larkuh (B/R)

DATE OF INTRODUCTION:

OCT 18 2005
Honolulu, Hawaii

Councilmembers

EXHIBIT A

A BILL FOR AN ACT

RELATING TO THE SUNSHINE LAW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to propose an
2 amendment to Section 92-10, Hawaii Revised Statutes relating to
3 the applicability of the Sunshine Law. The Sunshine Law, as it
4 is currently applied, detracts from the effectiveness of the
5 county councils in carrying out their legislative
6 responsibilities. The law should be amended to make the
7 Sunshine Law inapplicable to all elected legislative boards,
8 including the county councils.

9 Open meeting laws are needed to require appointed boards to
10 allow public input. Elected boards are directly accountable to
11 voters, and are very sensitive to public opinion; elected boards
12 are very motivated to provide reasonable opportunities for
13 public participation.

14 Open meeting laws preclude many informal interactions
15 between elected representatives and the public. These
16 interactions are essential for elected representatives to have a
17 balanced perspective of the needs and opinions of the entire

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1 community. People need to be able to speak with legislators in
2 a variety of settings. In many cases legislative board members
3 cannot attend the same gatherings or even listen to the same
4 discussions, without having to conform to the three major
5 Sunshine Law requirements. These requirements are that notice
6 is posted and mailed, that testimony is accepted, and that
7 written minutes setting forth each participant's perspectives
8 are prepared.

9 Open meeting laws prevent legislators from participating in
10 informational and educational workshops and forums, thereby
11 limiting legislators' access to valuable information and sources
12 of knowledge that could be used to make better informed
13 decisions. The general public is also disadvantaged by not
14 being able to learn about issues and provide comments.

15 The county councils have general legislative
16 responsibilities for their county governments. Such boards have
17 responsibilities that encompass a broad range of topics, greatly
18 increasing the number of interactions that are prohibited by the
19 Sunshine Law. Under the Sunshine Law, almost anything can be
20 said to involve a topic that is within a legislative body's
21 scope, so nearly all private interactions could be considered
22 violations. The Legislature was right to exempt itself, knowing

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1 that it would have to establish realistic internal procedures to
2 ensure that the public would be kept informed.

3 The legislature is confident that the county councils will
4 establish open meeting rules and procedures which will promote
5 public knowledge of and participation in the county legislative
6 decision-making process.

7 SECTION 2. Section 92-10, Hawaii Revised Statutes, is
8 amended to read as follows:

9 ~~Sec. 92-10~~ Legislative branch; applicability.

10 Notwithstanding any provisions contained in this chapter to the
11 contrary, open meeting requirements, and provisions regarding
12 enforcement, penalties and sanctions, as they are to related to
13 the state legislature, each county council, or to any [~~of its~~
14 ~~members~~] members of these bodies shall be such as shall be from
15 time to time prescribed by the respective rules and procedures of
16 the senate [~~and the~~], house of representatives, and each county
17 council, which rules and procedures shall take precedence over
18 this part. Similarly, provisions relating to notice, agenda and
19 minutes of meetings, and such other requirements as may be
20 necessary, shall also be governed by the respective rules and
21 procedures of the senate [~~and the~~], house of representatives [~~-~~],
22 and each county council."

23 SECTION 2. Statutory material to be repealed is bracketed
24 and stricken. New statutory material is underscored.

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1 SECTION 3. This Act shall take effect upon its approval.

2 INTRODUCED BY: _____