April 3, 2020

Dear Signers:

Thank you for taking the time to write to me regarding transparency and democracy during the COVID-19 crisis. Please know that many of your concerns were carefully considered prior to the decision to temporarily suspend certain requirements of the State’s Sunshine Law, part 1 of chapter 92, Hawai‘i Revised Statutes (HRS). While I agree that transparency is of utmost importance, the ability of government to function at all during a pandemic of the unprecedented sort we currently face is also critical and all possible flexibility in this regard must be provided to government entities.

The temporary suspension of the Sunshine Law is just that — it is temporary. It was designed to address the need for government agencies to keep operations running as well as to respond to this crisis on behalf of the people of Hawai‘i. However, to address the very concerns you raised, State boards and commissions were advised not to meet unless absolutely necessary to comply with legal obligations or as part of an emergency response. Accordingly, the overwhelming majority of State boards and commissions have ceased meeting.

The reality is that some boards and commissions must continue to conduct business. Thus, if a State board or commission determines it must meet, the Sunshine Law provisions have been relaxed to ensure these meetings can be conducted consistent with the mandated social distancing requirements. This protects the members, their staff, and the public participants.

Moreover, State boards and commissions that continue to meet are in fact accommodating public participation to the extent they have the capacity to do so. For example, the Hawaii State Ethics Commission has deployed technology that allows for public participation in its rule making process. In addition, on March 17, the Commission on Water Resource Management met, with commissioners and applicants participating by voice conference call. The meeting was difficult to facilitate, and longer than usual, but the Commission was able to receive public testimony. Another example is a Regents meeting recently held by the University of Hawai‘i (UH). Prior to the Board of Regents meeting, the Board received written testimony, as is the normal course. Then, to conduct the actual meeting, the Board was socially distanced at its main location while
remote Regents located on four different islands were connected via Zoom with audio and video. Zoom’s livestreaming feature was used so that media and members of the public could listen and observe. Indeed, UH appears to be using this temporary suspension to work towards greater public participation and is in the process of creating a web interface to enable the submission of written testimony from the public. As I understand it, because of the remote participation flexibility, more people were able to participate, safely, rather than fewer.

Your suggestions regarding the creation of new processes and requirements for State board and commission meetings have been reviewed and will continue to be considered. However, I am reluctant to create new procedural requirements for such meetings during the present crisis, as doing so would cause confusion for government agencies and members of the public. I strongly believe that more confusion is dangerous at this time. Moreover, I recently became alerted to security concerns arising from the use of products such as Zoom and other remote public participation platforms, suggesting more examination is necessary. To the extent safety concerns exist, those will continue to take priority.

As you recognized in your letter, the State is under incredible pressure to address a number of unprecedented and critical needs at this moment. However, we are very aware of our obligation to ensure transparency and we are working towards safely enabling such transparency in this new reality. In the meantime, if any of you are aware of specific instances in which you believe a State board or commission has acted unreasonably under the current circumstances, please provide the details for me to consider.

This time of crisis is full of uncertainty, and I am asking the public to adapt to changes while we work through the myriad issues. My proclamations reflect the need to achieve flexibility, and to do so in the safest and most responsible manner possible so that key government functions may continue and government agencies may focus on the health and safety of all of Hawai‘i’s people.

With warmest regards,

David Y. Ige
Governor, State of Hawai‘i