
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 legislature finds that the COVID-19
2 pandemic forced the implementation of emergency measures
3 suspending certain requirements of the State's sunshine law in
4 order to allow boards to continue meeting and conducting
5 necessary business, while protecting participants' health and
6 safety and expanding public access to meetings throughout our
7 island state. During the emergency stay-at-home orders and
8 travel restrictions, board members, staff, or members of the
9 public could not attend public meetings in person. In lieu of
10 traditional in-person meetings, remote meetings connected people
11 in different physical locations through the use of interactive
12 conference technology, and thus enabled and enhanced board and
13 public participation. Remote meetings, popularly referred to as
14 "virtual meetings", could be safely held and allowed more people
15 from different islands or parts of islands to effectively
16 participate, often during times when they would not otherwise be



1 physically able or authorized to leave their work, homes, or
2 schools to participate in an in-person meeting.

3 Based on boards' experiences with remote meetings during
4 the COVID-19 pandemic, the legislature finds that the increased
5 costs of staffing, technological equipment, and resources needed
6 to conduct remote meetings are offset by the savings in time,
7 convenience, and travel costs for board members and
8 participants, especially those from the neighbor islands.

9 During the COVID-19 pandemic, remote meetings helped to prevent
10 the spread of disease, and even when there is not an ongoing
11 pandemic, the legislature finds that remote meetings can be a
12 way to protect the health and safety of participants,
13 particularly those who have disabilities or medical conditions
14 that would place them at greater risks during travel or
15 attendance at in-person public meetings. The legislature also
16 finds that allowing board members to participate in remote
17 meetings from their homes or private offices, while protecting
18 their privacy by not requiring them to allow members of the
19 public into private sites, may increase the number of volunteers
20 willing to serve on government boards, particularly when they
21 live on an island different from where the boards' offices are



1 located. Additionally, allowing boards to conduct remote
2 meetings within reasonable restrictions to ensure board
3 transparency and public access, would help to increase public
4 participation in the formation and conduct of public policy.

5 The legislature further finds that the benefits of remote
6 meetings should continue in non-emergency times, which requires
7 permanent amendments to the sunshine law, part I of chapter 92,
8 Hawaii Revised Statutes. For remote meetings not held during
9 times of emergency, the legislature recognizes the need for
10 boards to also provide for an in-person meeting location where
11 members of the public can come to observe the remote meeting or
12 testify in person using interactive conference technology
13 equipment provided by the board, without requiring board members
14 to be at the in-person location. This allows members of the
15 public who do not have the equipment, internet connection,
16 desire, or ability to readily access an online meeting a way to
17 view the meeting and testify in person, as has traditionally
18 been the method of conducting meetings, even if the board
19 members themselves are not physically in the same room.

20 Remote meetings could also take advantage of the relative
21 ease of recording a meeting using interactive technology via



1 many remote meeting platforms, and thus this proposal would
2 require, when practicable, a board conducting a remote public
3 meeting to also record the meeting and provide public access to
4 the recording until such time as the actual meeting minutes have
5 been posted online. This would benefit the public by allowing
6 even those members of the public who were not able to attend the
7 meeting itself to still find out what happened via the
8 recording, without requiring the board to record a remote
9 meeting or provide access to the recording when it determines
10 that doing so is not practicable.

11 Recognizing that not all boards are equipped with adequate
12 staffing or technological equipment and resources to conduct
13 remote meetings in a manner that ensures public access as
14 outlined in this Act, the legislature finds that these
15 amendments should permit, but not require, boards to conduct
16 remote meetings. These amendments would also continue to
17 provide boards an alternative option to conduct an in-person
18 meeting with board members and other participants physically
19 present at multiple public meeting sites connected using
20 interactive conference technology, as the sunshine law currently
21 allows. Retaining this option will continue to allow for



1 greater public participation between islands or parts thereof in
2 those circumstances when a board may not have sufficient
3 internet bandwidth, staffing, or resources to effectively
4 administer an online meeting or to accommodate a potentially
5 large, worldwide audience that could possibly disrupt or
6 overwhelm an online meeting and drown out the voices of
7 residents in Hawaii's communities.

8 Thus, this Act gives boards various options in how they
9 could conduct public meetings:

- 10 (1) In the traditional manner with all participants in
11 person at a single site;
- 12 (2) In an in-person meeting with board members and other
13 participants physically present at multiple meeting
14 sites connected using interactive conference
15 technology; or
- 16 (3) In a remote meeting using interactive conference
17 technology to connect board members and other
18 participants from non-public physical locations, with
19 at least one public meeting site where people can
20 attend in person to testify or view the remote meeting
21 using the equipment provided by the board.



1 To supplement the public meeting sites, this Act also recognizes
2 that boards may list on their agendas additional locations open
3 for public participation where the loss of audiovisual
4 connection to the public meeting shall not necessarily result in
5 termination of the public meeting.

6 While all public meeting options require at least one
7 physical location where participants can attend in person, this
8 Act does not affect the governor's emergency powers to suspend
9 in-person meetings or other sunshine law requirements that are
10 not feasible if the COVID-19 pandemic continues or another
11 emergency arises.

12 The purpose of this Act is to expand and enhance public
13 participation in public meetings, to lower the costs of holding
14 meetings, to protect public health and safety, to promote
15 voluntary participation on boards, and to avoid unnecessary and
16 possibly burdensome travel by board members, staff, testifiers,
17 observers, other participants, and the general public, by
18 allowing boards the option to use interactive conference
19 technology to conduct remote meetings under the sunshine law,
20 while still retaining the option to conduct traditional in-



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1 person meetings at a single meeting site or at multiple meeting
2 sites connected by interactive conference technology.

3 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
4 by adding two sections to part I to be appropriately designated
5 and to read as follows:

6 "§92- Remote meeting by interactive conference
7 technology; notice; quorum. (a) A board may hold a remote
8 meeting by interactive conference technology. A board holding a
9 remote meeting pursuant to this section shall not be required to
10 allow members of the public to join board members in person at
11 nonpublic locations where board members are physically present
12 or to identify those locations in the notice required by section
13 92-7; provided that at the meeting, each board member shall
14 state who, if anyone, is present at the nonpublic location with
15 the member. The notice required by section 92-7 shall:

16 (1) List at least one meeting location that is open to the
17 public; and

18 (2) Inform members of the public how to contemporaneously:

19 (A) Remotely view the video and audio of the meeting
20 through internet streaming or other means; and



1 (B) Provide remote oral testimony in a manner that
2 allows board members and other meeting
3 participants to hear the testimony, whether
4 through an internet link, a telephone conference,
5 or other means.

6 The notice required by section 92-7 may also list additional
7 locations open for public participation and shall specify
8 whether, in the event an additional location loses its
9 audiovisual connection to the remote meeting, the meeting will
10 continue without that location or will be automatically recessed
11 to restore communication as provided in subsection (c).

12 (b) For a remote meeting held by interactive conference
13 technology pursuant to this section:

14 (1) The interactive conference technology used by the
15 board shall allow interaction among all members of the
16 board participating in the meeting and all members of
17 the public attending the meeting;

18 (2) Except as provided in subsections (c) and (d), a
19 quorum of board members shall be visible and audible
20 to other members and the public during the meeting;
21 provided that so long as a quorum of board members is



1 visible, no other meeting participants shall be
2 required to be visible during the meeting;
3 (3) Any board member participating in a meeting by
4 interactive conference technology shall be considered
5 present at the meeting for the purpose of determining
6 compliance with the quorum and voting requirements of
7 the board;
8 (4) At the start of the meeting the presiding officer
9 shall announce the names of the participating members;
10 (5) Unless unanimous, votes shall be conducted by roll
11 call so that it is clear how each board member voted;
12 and
13 (6) When practicable, boards shall record meetings open to
14 the public and make the recording of any such meeting
15 electronically available to the public as soon as
16 practicable after a meeting and until such time as the
17 minutes required by section 92-9 are electronically
18 posted on the board's website.
19 (c) A meeting held by interactive conference technology
20 shall be automatically recessed for up to one hour to restore
21 communication when audiovisual communication cannot be



1 maintained with a quorum of members or with the public location
2 identified in the board's notice pursuant to subsection (a)(1)
3 or with the remote public broadcast identified in the board's
4 notice pursuant to subsection (a)(2)(A). This section shall not
5 apply based on the inability of a member of the public to
6 maintain an audiovisual connection to the remote public
7 broadcast, unless the remote public broadcast itself is not
8 transmitting an audiovisual link to the meeting. The meeting
9 may reconvene when either audiovisual communication is restored,
10 or audio-only communication is established after an unsuccessful
11 attempt to restore audiovisual communication, but only if the
12 board has provided reasonable notice to the public as to how to
13 access the reconvened meeting after an interruption to
14 communication. If audio-only communication is established, then
15 each speaker shall be required to state their name prior to
16 making their remarks. Within fifteen minutes after audio-only
17 communication is established, copies of nonconfidential visual
18 aids, which are required by or brought to the meeting by board
19 members or as part of a scheduled presentation, shall be made
20 available either by posting on the Internet or by other means to
21 all meeting participants, including those participating



1 remotely, and those agenda items for which visual aids are not
2 available for all participants shall not be acted upon at the
3 meeting. If it is not possible to reconvene the meeting as
4 provided in this section within one hour after an interruption
5 to communication, and the board has not provided reasonable
6 notice to the public as to how the meeting will be continued at
7 an alternative date and time, then the meeting shall be
8 automatically terminated.

9 (d) During executive meetings from which the public has
10 been excluded, board members shall be audible to other
11 authorized participants and are not required to be visible. To
12 preserve the executive nature of any portion of a meeting closed
13 to the public, the presiding officer shall publicly state the
14 names and titles of all authorized participants, and upon
15 convening the executive session all participants shall confirm
16 to the presiding officer that no unauthorized person is present
17 or able to hear them at their remote locations or via another
18 audio or audiovisual connection. The person organizing the
19 interactive conference technology shall confirm that no
20 unauthorized person has access to the executive meeting as



1 indicated on the control panels of the interactive conference
2 technology being used for the meeting, if applicable.

3 §92- **Contact tracing.** Notwithstanding section 92-3 to
4 the contrary, a board may require members of the public
5 attending a meeting in person to:

6 (1) Provide their names and contact information solely for
7 the purpose of contact tracing, which information
8 shall not be disclosed or used for any other purpose
9 and shall not be maintained any longer than necessary;

10 and

11 (2) Abide by the board's requirements for facial
12 coverings, physical distancing, or other safety
13 measures,

14 when the governor has previously declared a state of emergency
15 for a contagious illness and, without regard to whether the
16 state of emergency is still in effect, a board reasonably
17 believes that such requirements are necessary because of the
18 continuing prevalence of the contagious illness for which the
19 state of emergency was declared."



1 SECTION 3. Section 92-2, Hawaii Revised Statutes, is
2 amended by amending the definition of "interactive conference
3 technology" to read as follows:

4 ""Interactive conference technology" means any form of
5 [~~audio or~~] audio and visual conference technology, or audio
6 conference technology where permitted under this part, including
7 teleconference, videoconference, and voice over internet
8 protocol, that facilitates interaction between the public and
9 board members."

10 SECTION 4. Section 92-3.5, Hawaii Revised Statutes, is
11 amended to read as follows:

12 "~~§92-3.5 [Meeting]~~ In-person meeting at multiple sites by
13 interactive conference technology; notice; quorum. (a) A board
14 may hold [a] an in-person meeting at multiple meeting sites
15 connected by interactive conference technology; provided that
16 the interactive conference technology used by the board allows
17 audio or audiovisual interaction among all members of the board
18 participating in the meeting and all members of the public
19 attending the meeting, and the notice required by section 92-7
20 identifies all of the locations where participating board
21 members will be physically present and indicates that members of



1 the public may join board members at any of the identified
2 locations. The notice may list additional locations open for
3 public participation but where no participating board members
4 will be physically present, and in the event one of those
5 additional locations loses its audio connection to the meeting,
6 the notice shall specify whether the meeting will continue
7 without that location or will be automatically recessed to
8 restore communication as provided in subsection (c).

9 (b) Any board member participating in a meeting by
10 interactive conference technology under this section shall be
11 considered present at the meeting for the purpose of determining
12 compliance with the quorum and voting requirements of the board.

13 (c) A meeting held by interactive conference technology
14 under this section shall be [~~terminated~~] automatically recessed
15 for up to one hour to restore communication when audio
16 communication cannot be maintained with all locations where the
17 meeting by interactive conference technology is being held, even
18 if a quorum of the board is physically present in one location.
19 [~~If copies of visual aids required by, or brought to the meeting~~
20 ~~by board members or members of the public, are not available to~~
21 ~~all meeting participants, at all locations where audio-only~~



1 ~~interactive conference technology is being used, within] The~~
2 meeting may reconvene when either audio or audiovisual
3 communication is restored. Within fifteen minutes after audio-
4 only communication is [used,] established, copies of
5 nonconfidential visual aids, which are required by or brought to
6 the meeting by board members or as part of a scheduled
7 presentation, shall be made available either by posting on the
8 internet or by other means to all meeting participants,
9 including those participating remotely, and those agenda items
10 for which visual aids are not available for all participants at
11 all meeting locations [cannot] shall not be acted upon at the
12 meeting. If it is not possible to reconvene the meeting as
13 provided in this section within one hour after an interruption
14 to communication, and the board has not provided reasonable
15 notice to the public as to how the meeting will be continued at
16 an alternative date and time, then the meeting shall be
17 automatically terminated.

18 (d) Notwithstanding the other provisions of this section
19 to the contrary, a board member with a disability that limits or
20 impairs the member's ability to physically attend the meeting
21 may participate in a board meeting from a location not



1 accessible to the public; provided that the member with a
2 disability is connected to other members of the board and the
3 public by both visual and audio means, and the member identifies
4 where the member is located and who, if anyone, is present at
5 that location with the member."

6 SECTION 5. Section 92-7, Hawaii Revised Statutes, is
7 amended by amending subsection (a) to read as follows:

8 "(a) The board shall give written public notice of any
9 regular, special, emergency, or rescheduled meeting, or any
10 executive meeting when anticipated in advance. The notice shall
11 include an agenda that lists all of the items to be considered
12 at the forthcoming meeting; the date, time, and place of the
13 meeting; the board's electronic and postal contact information
14 for submission of testimony before the meeting; instructions on
15 how to request an auxiliary aid or service or an accommodation
16 due to a disability, including a response deadline, if one is
17 provided, that is reasonable; and in the case of an executive
18 meeting, the purpose shall be stated. If an item to be
19 considered is the proposed adoption, amendment, or repeal of
20 administrative rules, an agenda meets the requirements for
21 public notice pursuant to this section if it contains a



1 statement on the topic of the proposed rules or a general
2 description of the subjects involved, as described in section
3 91-3(a)(1)(A), and a statement of when and where the proposed
4 rules may be viewed in person and on the Internet as provided in
5 section 91-2.6. The means specified by this section shall be
6 the only means required for giving notice under this part
7 notwithstanding any law to the contrary."

8 SECTION 6. Statutory material to be repealed is bracketed
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect on July 1, 2021.

11

INTRODUCED BY:



JAN 22 2021



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Report Title:

Sunshine Law; Boards; Interactive Conference Technology; Remote Meetings

Description:

Allows boards to use interactive conference technology to remotely conduct public meetings under the sunshine law and outlines the requirements for such meetings. Allows boards to require information for purposes of contact tracing in times of emergency due to a contagious disease. Allows for the holding of in-person meetings at multiple sites connected by interactive conference technology. Requires that notices include the board's electronic and postal contact information.

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