
A BILL FOR AN ACT

RELATING TO BOARD MEETINGS.

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

1 SECTION 1. The legislature finds that the coronavirus
2 disease 2019 (COVID-19) pandemic forced the implementation of
3 emergency measures suspending certain requirements of the
4 State's sunshine law to allow boards to continue meeting and
5 conducting necessary business while protecting the participants'
6 health and safety and expanding public access to meetings
7 throughout the State. During the emergency stay-at-home orders
8 and travel restrictions, board members, staff, and members of
9 the public could not attend public meetings in person. In lieu
10 of traditional in-person meetings, remote meetings connected
11 people in different physical locations through the use of
12 interactive conference technology and thus enabled and enhanced
13 board and public participation. Remote meetings, popularly
14 referred to as "virtual meetings", could be safely held and
15 allow more people from different islands and different parts of
16 islands to effectively participate, often during times when they
17 would not otherwise be physically able or authorized to leave



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

3 Based on boards' experiences with remote meetings during
4 the COVID-19 pandemic in 2020, the legislature finds that the
5 increased costs of staffing, technological equipment, and
6 resources needed to conduct remote meetings are offset by the
7 savings in time, convenience, and travel costs for board members
8 and participants, especially those from the neighbor islands.
9 During the COVID-19 pandemic in 2020, remote meetings helped
10 prevent the spread of disease, and even when there is not an
11 ongoing stay-at-home-order, the legislature finds that remote
12 meetings can be a way to protect the health and safety of
13 participants. This is particularly true for those who have
14 disabilities or medical conditions that would place them at
15 greater risks during travel or at attendance at in-person public
16 meetings.

17 The legislature additionally finds that allowing board
18 members to participate in remote meetings from their homes or
19 private offices, while protecting their privacy by not requiring
20 them to allow members of the public onto private sites, may
21 increase the number of volunteers willing to serve on government



1 boards. This may especially be the case when members live on an
2 island different from where the boards' offices are located.
3 Additionally, allowing boards to conduct remote meetings within
4 reasonable restrictions to ensure board transparency and public
5 access would help to increase public participation in the
6 formation and conduct of public policy.

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



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

14 Recognizing that not all boards are equipped with adequate
15 staffing, technology, or resources to conduct remote meetings
16 that ensure public access, the legislature finds that this Act
17 will permit, but not require, boards to conduct remote meetings.
18 This Act will also continue to provide boards with an
19 alternative option to conduct an in-person meeting with board
20 members and other participants physically present at multiple
21 public meeting sites connected using interactive conference



1 technology, as the sunshine law currently allows. Retaining
2 this option will continue to allow for greater public
3 participation between islands and in circumstances when a board
4 may not have sufficient internet bandwidth, staffing, or
5 resources to effectively administer an online meeting or to
6 accommodate a potentially large, worldwide audience that could
7 possibly disrupt or overwhelm an online meeting and drown out
8 the voices of residents in Hawaii's communities.

9 The legislature additionally finds that boards should have
10 various options in how they could conduct public meetings:

- 11 (1) The traditional manner with all participants in person
12 at a single site;
- 13 (2) An in-person meeting with board members and other
14 participants physically present at multiple meeting
15 sites connected using interactive conference
16 technology; or
- 17 (3) A remote meeting that uses interactive conference
18 technology to connect board members and other
19 participants from non-public physical locations, with
20 at least one public meeting site where people can



1 attend in person to testify or view the remote meeting
2 using equipment provided by the board.

3 The legislature also recognizes that boards should be able to
4 list on their agendas additional locations open for public
5 participation where the loss of audiovisual connection to the
6 public meeting shall not necessarily result in termination of
7 the public meeting.

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

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



1 while still retaining the option to conduct traditional in-
2 person meetings at a single meeting site or at multiple meeting
3 sites connected by interactive conference technology.

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

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

- 17 (1) List at least one meeting location that is open to the
18 public; and
19 (2) Inform members of the public how to contemporaneously:
20 (A) Remotely view the video and audio of the meeting
21 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 audio-
9 visual 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 the meeting
15 electronically available to the public as soon as
16 practicable after a meeting and until the minutes
17 required by section 92-9 are electronically posted on
18 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 subsection shall
5 not 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; provided that 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 audio-visual 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, a
4 board may require members of the public attending a meeting in
5 person to:

6 (1) Provide their names and contact information solely for
7 the purpose of contact tracing; provided that the
8 information shall not be disclosed or used for any
9 other purpose and shall not be maintained any longer
10 than necessary; 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 the notice shall specify whether
5 the meeting will continue without that location or will be
6 automatically recessed to restore communication as provided in
7 subsection (c), in the event one of those additional locations
8 loses its audio connection to the remote meeting.

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 audio-visual
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 December 31,
11 2050.



Report Title:

Sunshine Law; Interactive Conference Technology; Remote Meetings

Description:

Allows boards to use interactive conference technology to remotely conduct public meetings under the Sunshine Law in conjunction with in-person meetings, even when no emergency has been declared by government authorities. Authorizes boards to exclude the public from nonpublic locations, such as homes, where board members are physically present when remote board meetings are held by interactive conference technology. Establishes requirements for the conduct of remote meetings. Establishes a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail. Amends existing option to hold in-person meetings at multiple public meeting sites connected by interactive conference technology to require termination of meeting only if audio communication is lost and cannot be reestablished within an hour and the board had not provided reasonable notice of how the meeting would be continued. Allows for additional courtesy sites open to the public for both remote and in-person meetings held by interactive conference technology. Allows for contact tracing and social distancing during states of emergency caused by contagious diseases. Effective 12/31/2050. (SD1)

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