

ACT 220

S.B. NO. 1034

A Bill for an Act Relating to Sunshine Law Boards.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The legislature finds that the coronavirus disease 2019 (COVID-19) pandemic forced the implementation of emergency measures suspending certain requirements of the State's sunshine law in order to allow boards to continue meeting and conducting necessary business while protecting participants' health and safety and expanding public access to meetings throughout the State. Due to the emergency stay-at-home orders and travel restrictions, board members, staff, or members of the public could not attend public meetings in person. In lieu of traditional in-person meetings, remote meetings connected people in different physical locations through the use of interactive conference technology and thus enabled and enhanced board and public participation.

The legislature further finds that, based on boards' experiences with remote meetings during the COVID-19 pandemic, the increased costs of staffing, technological equipment, and resources needed to conduct remote meetings are offset by the savings in time, convenience, and travel costs for board members and participants, especially those from the neighbor islands. During the COVID-19 pandemic, remote meetings helped to prevent the spread of disease, and even when there is not an ongoing pandemic, remote meetings can be a way to protect the health and safety of participants, particularly those who have disabilities or medical conditions that would place them at greater risks during travel or attendance at in-person public meetings.

The legislature additionally finds that the benefits of remote meetings should continue in non-emergency times, requiring permanent amendments to

the sunshine law. For remote meetings not held during times of emergency, there is a need for boards to provide for an in-person meeting location where members of the public can come to observe the remote meeting or testify in person using interactive conference technology equipment provided by the board, without requiring board members to be at the in-person location.

The purpose of this Act is to allow boards the option to use interactive conference technology to conduct remote meetings under the sunshine law, while still retaining the option to conduct traditional in-person meetings at a single meeting site or at multiple meeting sites connected by interactive conference technology.

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

“§92- Remote meeting by interactive conference technology; notice; quorum.

(a) A board may hold a remote meeting by interactive conference technology; provided that the interactive conference technology used by the board allows audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided under this section; provided further that there is at least one meeting location that is open to the public and has an audiovisual connection. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at nonpublic locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall state who, if anyone, is present at the nonpublic location with the member. The notice required by section 92-7 shall:

- (1) List at least one meeting location that is open to the public that shall have an audiovisual connection; and
- (2) Inform members of the public how to contemporaneously:
 - (A) Remotely view the video and audio of the meeting through internet streaming or other means; and
 - (B) Provide remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.

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

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

- (1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;
- (2) Except as provided in subsections (c) and (d), a quorum of board members participating in the meeting shall be visible and audible to other members and the public during the meeting; provided that no other meeting participants shall be required to be visible during the meeting;
- (3) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the

purpose of determining compliance with the quorum and voting requirements of the board;

- (4) At the start of the meeting the presiding officer shall announce the names of the participating members;
- (5) All votes shall be conducted by roll call unless unanimous; and
- (6) When practicable, boards shall record meetings open to the public and make the recording of any meeting electronically available to the public as soon as practicable after a meeting and until a time as the minutes required by section 92-9 are electronically posted on the board's website.

(c) A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). This subsection shall not apply based on the inability of a member of the public to maintain an audiovisual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audiovisual link to the meeting. The meeting may reconvene when either audiovisual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audiovisual communication, but only if the board has provided reasonable notice to the public as to how to access the reconvened meeting after an interruption to communication. If audio-only communication is established, then each speaker shall be required to state their name before making their remarks. Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

(d) During executive meetings from which the public has been excluded, board members shall be audible to other authorized participants but shall not be required to be visible. To preserve the executive nature of any portion of a meeting closed to the public, the presiding officer shall publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection. The person organizing the interactive conference technology shall confirm that no unauthorized person has access to the executive meeting as indicated on the control panels of the interactive conference technology being used for the meeting, if applicable."

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

““Interactive conference technology” means any form of ~~audio or~~ audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice

over internet protocol, that facilitates interaction between the public and board members.”

SECTION 4. Section 92-3.5, Hawaii Revised Statutes, is amended by amending its title and subsections (a) through (c) to read as follows:

“§92-3.5 [Meeting] In-person meeting at multiple sites by interactive conference technology; notice; quorum. (a) A board may hold [a] an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, and the notice required by section 92-7 identifies all of the locations where participating board members will be physically present and indicates that members of the public may join board members at any of the identified locations. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

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

(c) A meeting held by interactive conference technology under this section shall be [~~terminated~~] automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. [~~If copies of visual aids required by, or brought to the meeting by board members or members of the public, are not available to all meeting participants, at all locations where audio-only interactive conference technology is being used, within] The meeting may reconvene when either audio or audiovisual communication is restored. Within fifteen minutes after audio-only communication is [used,] established, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations [cannot] shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.”~~

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

“(a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board’s electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service

or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an executive meeting, the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.”

SECTION 6. The office of information practices shall, in consultation with the disability and communication access board and the office of enterprise technology services, assess the implementation of meetings held using interactive conference technology, including participation by members of the public who need an accommodation due to a disability. The office shall submit a report of its assessment, including recommendations and proposed legislation, to the legislature no later than forty days prior to the convening of the regular session of 2023.

SECTION 7. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.¹

SECTION 8. This Act shall take effect on January 1, 2022.

(Approved July 6, 2021.)

Note

1. Edited pursuant to HRS §23G-16.5.