

Quick Review: Sunshine Law Requirements for Audio- or Videoconferenced Meetings

(April 15, 2014)

The Sunshine Law allows boards to hold multi-site meetings where members at different sites are connected via audio- or videoconference or another form of interactive conference technology, subject to requirements listed in section 92-3.5, Hawaii Revised Statutes. The Sunshine Law does not address remote participation by members of the public, which means that such participation is not restricted but is also not required. In this Quick Review, OIP will go over the requirements for noticing the locations for a multi-site meeting, as well as recommendations for boards that want to provide additional unofficial “courtesy” locations to accommodate members of the public (but which are not available to board members).

Public Meeting Locations Listed on Notice

1. **The notice of meeting for a multi-site meeting by interactive conference technology must list all the locations from which board members will be attending as public meeting sites** (except that disabled board members have the ability to attend from a private site, as explained below.) **All public meeting locations are set at the time the notice is filed.**
2. **Board members may attend from any of the public meeting locations listed on the filed notice.** The notice is not required to specify which board members will attend from which location.
3. **The noticed locations cannot be cancelled or shut down early while the meeting goes on elsewhere.** The Sunshine Law does **not** require that at least one board member actually attend the meeting at each of the noticed locations. However, even if no board member or member of the public is at a noticed location, the location must be kept linked until the end of the meeting, and failure to do so could draw a complaint from a member of the public who showed up late.
 - If a board wants to cancel one of the noticed public meeting locations when the meeting is still more than 6 calendar days away, it has the option of cancelling the whole meeting and then filing a new notice with only the desired locations. If the meeting is less than 6 days away, the board must

either go forward with all the originally noticed locations, or cancel the entire meeting.

4. **A board is not required to have multiple meeting locations** at all, and the fact that a board has had multiple locations for previous meetings, or has used a particular location as a meeting site for previous meetings, does not create any obligation for the board to include that location as a public meeting site for future meetings.

5. **Meeting locations are not required to be linked by video – an audio connection is sufficient. However, if the audio connection between meeting sites goes down, the remainder of the meeting must be canceled, even if a quorum of members is present at one location.**
 - **And when a meeting location is connected only by audio, copies of visual aids being used at other locations must be made available** at the audio-only location within 15 minutes, or else the agenda items the visual aids were used for cannot be acted on at that meeting. Visual aids may be transmitted by e-mail, facsimile transmittal, or other means.

“Courtesy” Locations and Other Non-Noticed Locations

OIP uses the term “courtesy locations” to refer to unofficial locations available to the public and linked by interactive technology, but not noticed as official meeting sites under section 92-3.5, HRS. The Sunshine Law does not set forth standards for participation in a meeting by members of the general public; its restrictions on audio- or videoconferences apply only to board members. **For people who are not board members, the Sunshine Law does not restrict their participation in a meeting from any location. Instead, boards can determine whether or not to allow testifiers, presenters, and other members of the public to watch, testify, or otherwise participate in a meeting by:**

- **Calling in from home**
- **Audio- or videoconferencing from a location not listed on the notice**
- **Audio- or videoconferencing from a location listed on the notice only as a “courtesy” location that is not guaranteed to remain open for the whole meeting.**

Boards are **not required** to provide courtesy locations or accommodate requests from testifiers to testify remotely by telephone or other means. (Boards are, however,

required to modify policies and procedures to accommodate individuals in the public with disabilities under the Americans with Disabilities Act (ADA), and should consult with their own attorneys regarding compliance with the ADA.) If the notice lists one or more courtesy locations for the convenience of members of the public who cannot make it to the public meeting location(s), the **notice must make clear the distinction between the noticed public meeting location(s) and the listed courtesy location.**

A courtesy site may be cancelled or shut down early while the meeting continues at the public meeting locations listed on the filed notice. Moreover, as a general rule, **board members themselves cannot attend from a courtesy location or another non-noticed location, which also means that they cannot call in, cannot participate or just listen in by phone, and cannot vote or be counted toward quorum if they are at a non-noticed location.** The only exception to this rule is for disabled board members, as described below.

Practice Tip:

OIP recommends that the notice state that no board members will be attending from the courtesy location and if the connection between the courtesy location and the meeting site(s) is lost, the meeting will continue without the courtesy location.

Board Members with Disabilities

A board member with a disability that limits or impairs the member's ability to physically attending a noticed meeting **may participate from a location not noticed and not accessible to the public, so long as the member is connected by audio and video means and identifies where he or she is and who else is present with the member.** Thus, for example, a disabled board member may participate from a non-noticed location such as a private residence or hospital, so long as the other requirements are met.