

Quick Review: Sunshine Law Requirements for Public Meeting Minutes (July 2018)

For boards subject to the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), here is a quick review of the Sunshine Law's minutes requirements for public meetings, as amended, effective July 1, 2018.

All Hawaii State and county boards that are subject to the Sunshine Law must keep minutes of all meetings, including executive sessions. **Minutes of a public meeting must be posted on the board's website, or on an appropriate State or county website if the board does not have its own website (e.g., the department's website), within 40 days after the date of the meeting.** HRS § 92-9(b).

This automatic disclosure requirement **does not apply to the minutes of executive meetings** that are properly closed to the public. Executive meeting minutes may be withheld to the extent that their disclosure would defeat the purpose of closing the meeting to the public in the first place. HRS § 92-9(b). While the Sunshine Law does not require executive meeting minutes to be posted online, keep in mind that they may eventually be disclosed to the public, such as in response to a record request under the Uniform Information Practices Act, chapter 92F, HRS (UIPA). For example, minutes of an executive meeting to discuss a proposed land purchase could generally be disclosed once the deal was completed. On the other hand, if an executive meeting was held to protect the privacy of an employee being evaluated, the purpose for the executive session generally could continue to apply indefinitely.

Whether or not public meeting minutes have been approved by the board, the Sunshine Law requires that they be posted online within 40 days after the meeting. The Sunshine Law does not require board approval of meeting minutes. However, if the minutes have not been approved or finalized, the board should provide a record or notes of the meeting in whatever form it then exists on the 40th day, which must include all the information required by the Sunshine Law, but can be stamped as a "DRAFT." The draft minutes can be replaced later with a final version approved by the board.

Draft minutes are often circulated to board members to review and make corrections in advance of the meeting at which the minutes will be approved. But to avoid potential problems with serial communications and discussions outside of a properly noticed meeting, board members' comments and revisions to draft minutes should not be circulated to other board members. **Changes should instead be directed to and made by staff for distribution of a revised draft to board members,** without identifying the board members who suggested the revisions, or alternatively raised at the meeting when the board is considering approval of the minutes.

Even after voting to approve a particular set of minutes, a board may choose to amend the minutes at some later time. So long as the minutes continue to provide a true reflection of what happened at the meeting and include the information required by law, there is no Sunshine Law violation when amending old minutes. Just as the Sunshine Law does not have procedures for adopting minutes in the first place, it also does not have procedures for amending minutes that have already been adopted. OIP recommends that boards follow their own procedures or consult

with their attorneys regarding such amendments.

The board's record retention policy, and not the Sunshine Law or UIPA, determines how long minutes must be kept available on a website or maintained by the board.

FORM OF MINUTES

With the 2018 changes to the Sunshine Law, boards can opt to keep minutes in one of two forms: (1) written, or (2) recorded, with a written summary.

(1) Requirements for Written Minutes

Written minutes must provide "a true reflection of the matters discussed at the meeting and the views of the participants." HRS § 92-9(a). The primary purpose for minutes is to record what the decision-makers (the board members) did and discussed during the meeting, so that the public can scrutinize their actions. While the law also requires the minutes to reflect the views of participants in the meeting who are not board members, it is sufficient for the minutes to describe, in very general terms, the positions expressed by these other meeting participants.

Written minutes are required to include the following specific information:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes. HRS § 92-9 (a).

A board is not required to keep a transcript of a meeting, although a transcript can serve as minutes if the board prefers. Paraphrasing the discussions and testimony taking place at the meeting is fine, so long as readers can tell what was discussed and what the various participants' views were. Boards are not required to record meetings. Sometimes a board that plans to prepare written minutes will record a meeting solely to help it prepare its written minutes and plans to delete or record over the recording once those minutes are prepared. So long as the board is preparing and posting its written minutes, there is no requirement for the temporary recording to also be posted online and it typically need not be retained once it is no longer needed by the board.

Practice tips:

- A board member's right to request that specific information be included in the minutes only applies while the meeting is still taking place. Thus, during a meeting, a board member can make a request such as, "Please let the minutes reflect that I own property adjacent to the parcel discussed in agenda item 5," or "I would like these written remarks

included in the minutes verbatim,” and the board must honor the request. The board member cannot wait until after the meeting and then insist that the minutes be amended to include additional information.

- Minutes should reflect who spoke and the gist of what was said. Instead of simply stating that “Discussion was had,” minutes should summarize or paraphrase the board members’ discussion, such as, “Member A asked whether . . .” and “Member B stated that . . .”
- Minutes should reflect a participant’s testimony that was presented, but it is sufficient for the minutes to reflect it in a minimal form, such as, “KimoDoe testified against the proposal to . . .”

(2) Requirements for Recorded Minutes, with Written Summaries

With the Sunshine Law revisions that went into effect on July 1, 2018, boards may opt to keep a recording of the entire meeting in digital or analog recording format (e.g., a camcorder video, a cell phone video or audio recording, a tape recording), instead of doing written minutes. HRS § 92-9 (b). This option to create recorded minutes does not impose any requirement to record meetings or keep transcripts for boards that prefer to keep written minutes.

In addition to the recording, boards must also provide a written summary that includes:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent; and the times when individual members entered or left the meeting;
- (3) A record, by individual member, of motions and votes made by the board; and
- (4) A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

The written summary requirements are intended to allow the public to quickly find key information about a meeting and skip to the point in the recording where an item of interest was discussed, without having to listen all the way through what may be hours of recorded content.

Practice tip:

- There is note-taking software that allows a board to make written notes linked to an audio recording, including setting time-stamps during the course of the meeting by clicking a command. OneNote is one example of software that can do this. Alternatively, someone can listen to or watch the recording afterward, forwarding as appropriate, to find the needed time references. Making a written note of what time a discussion began or a vote was taken will at least narrow down where in a recording the person preparing the minutes should be watching or listening to get the precise time reference.

For additional assistance, please see OIP's other training materials, including the Sunshine Law Guide, at oip.hawaii.gov. For general advice, you may contact OIP's attorney of the day by calling (808) 586-1400 or e-mailing oip@hawaii.gov.