

## **Quick Review: Sunshine Law Meeting Notice Requirements** (July 2019)

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 notice requirements for public meetings, which includes amendments that went into effect on July 1, 2018 and July 2, 2019.

All Hawaii State and county boards that are subject to the Sunshine Law **must provide timely notice of all regular, special, or rescheduled meetings, and of executive meetings that are anticipated in advance**, in accordance with section 92-7, HRS. Please note that **meetings held by interactive conference technology** (section 92-3.5, HRS), and **limited meetings** (section 92-3.1, HRS) are subject to the following provisions on notice as well as other conditions set forth in the applicable sections of the Sunshine Law. **Emergency meetings** (section 92-8, HRS) must also be noticed, but notice may be filed within a shorter time period than the normal six days, and there are additional conditions.

**Contents:** Notice **must** include the following:

- Agenda listing all items to be considered at the meeting,
- Date of the meeting,
- Time of the meeting,
- Location of the meeting,
- Instructions on how to request a disability accommodation, and
- If applicable, the purpose of an executive meeting.

**File/post/mail/email:** At least **six calendar days before** non-emergency meetings, notice **must** be:

- Electronically posted on the State Calendar (State agencies) or the appropriate county calendar (county agencies), which is the official filing;
- Filed with the Office of the Lt. Governor (State boards), or the county clerk's office (county boards) for physical posting by those offices in a central location in a public building (e.g., State Capitol or county buildings), and a proof of filing retained (but a failure to meet this requirement doesn't require cancellation of the meeting);
- Physically posted at the board's office for public inspection;
- Physically posted at the meeting site (when feasible); and
- Provided to persons requesting notification by postal or electronic mail.

**Practice tips:**

- Newspaper publication under section 1-28.5, HRS, is not required for Sunshine Law notices.
  
- The Sunshine Law now requires that boards maintain a list of persons who wish to receive the notice by **postal or electronic** mail. While people on the postal mailing list have always had a Sunshine Law remedy available in the event a board fails to

timely mail its notice to them, in the past an email list was an unofficial form of notice not required by the Sunshine Law. Now that the email list is part of the Sunshine Law's requirements, if a board fails to properly maintain its email list, or to send notices by email in a timely manner, there is now a Sunshine Law remedy available to the email recipient. For persons **who had requested to be on a board's email or postal mailing list, the emails should be sent out and the meeting notices should be postmarked for delivery by regular U.S. Postal Service at least six calendar days before the meeting, or OIP will routinely advise the board to cancel the meeting.**

- If the agenda electronically posted on the County Calendar does not reflect the date of the actual posting, then county boards should print and time-stamp a copy of the posted agenda to retain as proof of the date that the agenda was posted. The State Calendar provides this information, so State boards can just print out and keep a copy of the posted agenda in its files.
- Boards are not required by the Sunshine Law to file a notice when **cancelling a meeting**. A board's mere failure to be present at a noticed meeting automatically cancels the meeting. However, as a courtesy to the public, OIP recommends taking down the electronic calendar notice, posting notification of the cancelled meeting at the board's office and at the meeting location, and informing those people who have asked to receive notice by email.
- When a board is unable to complete an agenda, the Sunshine Law allows the board to **continue a meeting** by announcing a reasonable date and time for the continued meeting to those in attendance at the meeting. At the continued meeting, the discussion may only be a continuation from the original meeting, taking up discussions where the board left off. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting. Boards need not file notices for continued meetings, but if practicable, a board should fill out and attach OIP's "Notice of Continuance of a Meeting" form to the agenda that was filed for the meeting to be continued and then post it at the board's office as well as electronically posting it and sending it to the board's email list. A board should not place the items continued from a previous meeting together with new items on the agenda for a new meeting unless it is prepared to hear testimony again on the continued agenda items, as they would then effectively be agenda items to be considered at the new meeting rather than agenda items still under consideration as part of a continued meeting. For more detailed information, see OIP's "Quick Review: Continuance of a Meeting Under the Sunshine Law," which is posted, along with the Notice form, on the [Training page at oip.hawaii.gov](#).
- Boards wishing to **change the date or time of a meeting** should cancel the original meeting and file a new notice at least six days in advance of the new date and time.

- If a board must **change the location** of a meeting on the day of the meeting (for example, the room loses power or air conditioning), it should call the meeting to order at the noticed location, and then announce that the meeting will be recessed and continued shortly thereafter in the new location, in accordance with section 92-7(d), HRS. A written notification of the new meeting location should be posted at the originally noticed location.
- If there is a non-emergency **joint meeting** with two or more boards, then each board is responsible for meeting the Sunshine Law’s requirements, but they can coordinate to avoid duplicative actions. **All boards must ensure that notices are mailed to persons on their own postal and email mailing lists; but if a person is on more than one mailing list, then only one of the boards must send the notice to that person.** If one board meets all Sunshine Law requirements, but the other board in a joint meeting fails to do so, then the first board can proceed with the meeting without the second board. The second board must cancel its meeting and cannot have a quorum or more of its members in attendance at what was originally planned as a joint meeting with the first board. For additional information about joint meetings, see OIP’s “Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law,” which is posted on the [Training page at oip.hawaii.gov](#).
- To meet the Sunshine Law’s requirement to include instructions on how to request an auxiliary aid or accommodation, the State Disability and Communication Access Board (DCAB) recommends the following language for a board’s agenda: “If you require an auxiliary aid or accommodation due to a disability, please contact (808) \_\_\_\_\_ (voice/tty) or email [the board] at \_\_\_\_\_ by [date].” For more information, contact DCAB at (808) 586-8121.

**Failure to follow the Sunshine Law’s notice requirements may necessitate cancelling the meeting.** If the meeting nevertheless proceeds, a court may void any final action taken in violation of the Sunshine Law’s notice requirements. A suit to void any final action must be commenced within 90 days of the action.

For guidance and examples on how to write an agenda, please consult related materials on [OIP’s Training page at oip.hawaii.gov](#), which include Agenda Guidance for Sunshine Law Boards, a Public Meeting Notice Checklist, a Notice of Continuance form and a Quick Review on Meeting Continuances. For additional assistance, please contact OIP’s Attorney of the Day by calling (808) 586-1400 or emailing [oip@hawaii.gov](mailto:oip@hawaii.gov).