



OPEN MEETINGS

Guide to
“The Sunshine Law”
for State and County Boards

Office of Information Practices
State of Hawaii

July 2019



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Part I of Chapter 92,
Hawaii Revised Statutes

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INTRODUCTION

This Open Meetings Guide was prepared by the Office of Information Practices (“OIP”) as a reference tool for board members and members of the public to understand the open meetings requirements of Hawaii’s “Sunshine Law” (Part I of Chapter 92, HRS). This edition of the Open Meetings Guide is applicable to all State and county boards, except neighborhood boards. A separate edition was developed by OIP specifically for neighborhood boards, which have some unique provisions under Part VII of Chapter 92, HRS. Both editions have been revised to incorporate changes to the Sunshine Law effective July 1, 2019.

Every year, in response to questions and complaints about the manner in which State and county boards conduct their business, OIP initiates investigations into alleged Sunshine Law violations. Many of the questions, complaints, and violations arise because of a misunderstanding or a lack of understanding, and sometimes both, about the statute and its requirements.

The Sunshine Law imposes numerous requirements and restrictions on the manner in which a State or county board can conduct its business. Many board members, especially those who serve or have served on non-governmental boards, are surprised by the restrictions placed on how they, in their capacity as State or county board members, must conduct board business.

For instance, with a few exceptions, board members are not allowed to discuss board business with each other outside of a meeting, including by telephone or through email or social media. In addition, a board usually cannot consider at a meeting matters that were not included in its published agenda.

If you are elected or appointed to a government board, the honor and privilege of serving comes with the added responsibility of learning and complying with the Sunshine Law. We hope that this guide will assist you and members of the public in generally understanding the statute’s requirements.

We have attempted to present the law in “plain English” through the

types of questions that are most frequently asked. We have also included the statute, various forms, and checklists.

Please note that the comments contained in this guide are general in nature. OIP provides more detailed comments on various topics in Quick Reviews and other guidance that can be found on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

If you have questions about specific factual circumstances that may not be answered by this guide, you should consult with your attorney, your board's attorney, or OIP. OIP provides an "Attorney of the Day" (AOD) service, through which you may speak with an OIP staff attorney to receive, typically on the same day, general legal guidance and assistance with Sunshine Law issues.

Thank you for your participation in Hawaii's open government.

Cheryl Kakazu Park, Director

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GENERAL INFORMATION

What is the Sunshine Law?

The Sunshine Law is Hawaii's open meetings law. It governs the manner in which all State and county boards must conduct their business. The law is codified at part I of chapter 92, Hawaii Revised Statutes ("HRS").

What is the general policy and intent of the Sunshine Law?

The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring State and county boards to conduct their business as openly as possible. The Legislature expressly declared in the statute that "it is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions, and actions of governmental agencies—shall be conducted as openly as possible."

In implementing this policy, the Legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to open meeting requirements be strictly construed against closed meetings. Thus, with certain specific exceptions, all discussions, deliberations, decisions, and actions of a board relating to the official business of the board must be conducted in a public meeting.

In other words, absent a specific statutory exception, board business cannot be discussed in secret. There must be advance notice; public access to the board's discussions, deliberations, and decisions; opportunity for public testimony; and board minutes.

What boards are covered by the Sunshine Law?

There is no list that specifically identifies the boards that are subject to the Sunshine Law. As a general statement, the Sunshine Law applies to all State and county boards, commissions, authorities, task forces, and committees that have supervision, control, jurisdiction, or advisory power over a specific matter and are created by the State Constitution, statute, county charter, rule, executive order, or some similar official act. A committee or other subgroup of a board that is subject to the Sunshine Law is also considered to be a “board” for purposes of the Sunshine Law and must comply with the statute’s requirements.

Examples of State and county boards that are subject to the Sunshine Law include the county councils, neighborhood boards, police commissions, liquor commissions, licensing boards, island burial councils, Board of Water Supply, Board of Land and Natural Resources, Land Use Commission, Board of Agriculture, Board of Health, University of Hawaii’s Board of Regents, Board of Education, Small Business Regulatory Review Board, Real Estate Commission, and the boards of the Hawaii Tourism Authority, Aloha Tower Development Corporation, Hawaii Health Systems Corporation, Natural Energy Laboratory of Hawaii Authority, and Stadium Authority.

The Sunshine Law does not apply to the judicial branch or to the adjudicatory functions exercised by certain boards (with the exception of Land Use Commission hearings, which are open to the public). The legislative branch sets its own rules and procedures concerning notice, agenda, minutes, enforcement, penalties, and sanctions, which take precedence over similar provisions in the Sunshine Law.

What government agency administers the Sunshine Law?

Since 1998, OIP has administered the Sunshine Law. OIP also oversees the Uniform Information Practices Act (Modified), chapter 92F, HRS (“UIPA”), which is commonly referred to as Hawaii’s “open records” law or Hawaii’s version of the federal Freedom of Information Act.

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PUBLIC MEETINGS

MEETINGS DEFINED

Are all meetings of State and county boards open to the public?

Generally, yes. All meetings of State and county boards are required to be open to the public unless an executive meeting or other exception is authorized under the law. The open meeting requirement also applies to the meetings of a board's committees or subgroups.

Are site inspections, presentations, workshops, retreats and other informal sessions that involve board business considered to be meetings open to the public?

Generally, yes. Apart from the permitted interactions set forth in section 92-2.5, HRS, which are discussed below, the Sunshine Law requires a board to conduct, in either open or executive meeting, all of its discussions, deliberations, decisions, and actions regarding matters over which the board has supervision, control, jurisdiction, or advisory power.

Moreover, based upon the express policy and intent of the Legislature that the formation and conduct of public policy be conducted as openly as possible, OIP interprets the statute to require that any site inspection or presentation regarding a matter before the board, or which is reasonably likely to come before the board for a decision in the foreseeable future, be conducted as part of a properly noticed meeting.

Because the site inspection or presentation of a matter before the board are an integral part of the board's deliberation and decision-making process, they must be conducted in a properly noticed meeting. If it is not practical to allow the public to attend a site inspection as part of a meeting, the board may still be able to conduct the site inspection as a "limited" meeting under section 92-3.1, HRS.

With respect to board retreats, if board business is to be discussed, the retreat must be conducted as a meeting, which requires public notice, the keeping of minutes, the opportunity for public testimony, and public access to the board's discussions, deliberations, and decisions.

TELEPHONIC AND VIDEOCONFERENCE MEETINGS

May a board hold a meeting via telephone?

Yes. Under section 92-3.5, HRS, board members may participate in a board meeting by "interactive conference technology." See the answer below for further details.

If copies of visual aids are brought to the meeting by board members or members of the public, they must be available to all meeting participants at all locations. If audio-only interactive conference technology (e.g., teleconference) is being used, all visual aids must be available within 15 minutes to all participants, or those agenda items for which visual aids are not available cannot be acted upon at the meeting.

May a board convene a meeting via videoconference?

Yes. Board members may remotely participate in a board meeting through "interactive conference technology," which includes teleconference, Skype, videoconference, or voice over internet protocol. If audio communication cannot be maintained at all locations, then the meeting must be terminated, even if a quorum of board members is physically present in one location.

Members generally may only participate in a meeting from **public** locations listed in the meeting notice. When noticing a meeting to be held using interactive conference technology, boards must indicate all locations where board members will be physically present, and must indicate that the **public can attend the meeting at any of the specified locations**. As described below, however, a disabled member's **private** address need not be identified as a meeting location on the notice.

For a detailed discussion, please see OIP's "Quick Review: Sunshine Law Requirements for Audio- or Videoconferenced Meetings," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

May a sick or disabled board member participate from home or another private location?

Yes, “a board member **with a disability** that limits or impairs the member’s ability to physically attend the meeting” may attend a meeting via a connection by **audio and video** means (*i.e.*, by videoconference or Skype) from a **private** location not open to the public, such as a home or hospital room. The disability need not be permanent, so for example, a board member that has the flu or is hospitalized may participate via videoconference from home or a hospital room. A disabled board member attending from a private location must identify the location and any persons who are present at that location with the member. To protect the disabled member’s privacy interests and because members of the public are not able to participate from the private location, the disabled member’s location during a meeting may be generally identified, such as “home” or “hospital,” without providing an exact address.

Because members of the public are not able to participate from the private location and because a board member could become disabled due to illness or injury in the time after a meeting notice goes out, OIP does not require the filed notice to state that a disabled board member will be participating from home, a hospital, or other location. It is sufficient for the disabled board member to announce at the meeting that he or she is participating from a stated location, without providing an exact address, and to state the names of any person that are present at the location with the member.

Must a board provide remote meeting sites to allow the public to participate?

No. The Sunshine Law does not require accommodating requests to participate remotely made by members of the general public; similarly, its limitations on the use of audio- or videoconferences apply only to board members. For people who are not board members, the Sunshine Law does not restrict their remote participation in a meeting from any location. However, it is **up to the board to decide** whether or not to allow testifiers, presenters, and other members of the public to watch,

testify, or otherwise participate in a meeting by:

- Allowing testifiers to call in from home;
- Allowing their participation via audio- or videoconferencing from a location not listed on the notice; or
- Setting up audio- or videoconferencing at a location where no board member will be present, such as a “courtesy” location listed as such on the notice and not guaranteed to remain open for the whole meeting.

Boards are not required by the Sunshine Law to provide courtesy locations or accommodate requests from testifiers to testify remotely by telephone or other means. Boards may be required, however, to reasonably accommodate individuals with disabilities under the Americans with Disabilities Act (ADA), and should consult with their own attorneys or the Disability and Communication Access Board at (808) 586-8121 (Voice) or (808) 586-6162 (TTY), email dcab@doh.hawaii.gov, or go to DCAB’s website at health.hawaii.gov/dcab/ for advice on how to comply with the ADA. OIP does not have authority to provide legal advice on 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, in most cases 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 courtesy location or other non-noticed location. The only exception to this rule is for disabled board members, as described above.

For more detailed guidance, see OIP’s “Quick Review: Audio- or Videoconferenced Meeting Requirements,” which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov/training/).

BOARD PACKETS

What is a board packet?

A board packet consists of the documents that are compiled by the board or its staff and distributed to board members before a public meeting for use at that meeting. Not all boards create and distribute board packets, and the requirements relating to board packets only apply to those boards that actually distribute board packets.

Must board packets be made available to the public?

Yes, but documents may be redacted or withheld as discussed below. Any board packet prepared for a meeting must be made available for public inspection in the board's office at the time it is distributed to board members. Although the board is not required to automatically mail or email the packet itself to people on its notification list, it must notify them that the board packet is available for inspection in the board's office and must provide "reasonably prompt" access to the packet to any person upon request. The board must accommodate requests for electronic access to the board packet as soon as practicable, which it can do by emailing the packet to requesters or by posting the packet on its website or in a file-sharing site and letting the public know where it can be found.

What board packet documents may be withheld or redacted from public inspection?

The public disclosure requirement for board packets only applies to information that would be disclosable under the UIPA; in other words, non-public information within board packets can be redacted. In addition, the law allows the board to potentially withhold more records in creating the public version of the board packet than could have been withheld in response to a formal UIPA record request. Specifically, the public version of a board packet is not required to include executive meeting minutes, license applications, and other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the meeting. In this way, the board packet provision recognizes the challenge facing a board when it must both put together a board packet and create a public version of the board packet in the short time before a meeting, when the board packet

may include materials from third parties that the board has not previously reviewed, or materials with public information and nonpublic information mixed together.

For example, if a board packet includes a long document with confidential information embedded throughout it, which would make redaction unreasonable or overly time-consuming in the days before the board meeting, the board could withhold the entire record from the public board packet. On the other hand, if a similarly long document is made up of several distinct sections, only some of which are confidential, then it may be relatively straightforward for the board to separate them and include only the non-confidential sections in the public board packet. If a document includes some confidential information but is only a few pages long, then the confidential information can readily be redacted before the record is included in the public board packet. If a document of any length is fully public, then it should be included in an unredacted form in the public board packet.

If a board has made a public board packet available, does it still need to respond to a UIPA request for the original packet?

Yes. The UIPA has separate and different requirements from the Sunshine Law, and the Sunshine Law's new board packet disclosure requirement does not replace the existing right of a member of the public to request a board packet under the UIPA. In responding to such a request, a board would follow the UIPA's deadlines, standards for what may be redacted, and fees. For most members of the public, however, free access to the public version of the board packet prior to the meeting under the Sunshine Law will be preferable to waiting two weeks or more to receive what may be a slightly less redacted version for which review and segregation fees may be assessed under the UIPA.

Do you have any practice tips for boards to prepare public board packets?

- When compiling a board packet, prepare the public version at the same time. As each document comes in, determine whether it must be included in the public packet and prepare a redacted version if necessary.
- Have a copy of the public board packet available in the board's office by the time the packet goes out to board members, and if the public board packet is available for public inspection only in electronic format,

have equipment available for the public to be able to view the packet.

- Have a PDF version of the public packet ready to be emailed or faxed upon request, or if the board prefers, available to download from the board's website or a file-sharing service.

TESTIMONY

Must a board accept testimony at its meetings?

Yes. Boards are required to accept both oral and written testimony from the public on any item listed on the meeting agenda. Boards can decline to accept public testimony that is unrelated to a matter listed on the agenda.

Can the public provide testimony from a remote location by telephone, videoconference, or using other interactive technology?

OIP has interpreted HRS section 92-3.5 to allow **board members'** remote participation in a meeting. When board members are present at more than one location, members of the public may participate (including providing testimony) from any site listed on the notice as a location where board members would be present. However, this section does NOT require a board to allow public testimony or participation from a location that was not listed on the notice as a meeting site, such as a person's home. **A board may choose, but is not required** by the Sunshine Law, to hear speakerphone testimony from members of the public who are not physically present at a meeting location. Similarly, a board may accept public testimony via videoconference or Skype from sites that were not included in the public notice, or from a location listed in the board's notice as a courtesy site where no board member will be physically present, as further explained earlier in the section for Telephonic and Videoconference Meetings.

Is a board required to read aloud the written testimony during its meeting?

No. There is no requirement that a board read aloud each piece of written testimony during its meeting for the benefit of those attending the meeting. A board, however, must ensure that written testimony is

distributed to each board member for that member's consideration before the board's action. Moreover, upon request, any member of the public is entitled to receive copies of the written testimony submitted to the board.

Is written communication received by only one board member regarding a matter on the board's meeting agenda considered written testimony?

Possibly. For instance, on occasion, the board chair or individual board members may receive email or other written correspondence regarding a matter on the board's agenda. If a written communication is received prior to the meeting and reasonably appears to be testimony relating to an agenda item (as opposed to correspondence directed only to the recipient), irrespective of whether the writing is specifically identified as "testimony," the board member receiving the communication must make reasonable efforts to cause the testimony to be distributed to the other members of the board.

How can a board avoid the possible problem of only one board member receiving testimony intended for the entire board?

To avoid possible confusion as to whether an email or other written communication received by only one board member is intended as to be "testimony" to the entire board, the meeting notice could specifically identify a mailing address and an email address to where written testimony should be directed.

While such a process does not completely relieve individual board members of their obligation to consider whether written communication that they individually receive is intended by the sender to be "testimony" for consideration by the entire board, it may reduce the likelihood of written testimony being received by individual board members and may excuse a board member's reasonable failure to recognize that a written communication was intended to be "testimony."

How must a board distribute written testimony to its members?

Subject to the board packet requirements discussed above, the board is empowered to determine how to best and most efficiently distribute the testimony to its members, *e.g.*, whether to transmit it electronically or to

circulate copies in paper format, and whether to distribute it in advance of the meeting or at the beginning of the meeting, so long as the testimony is distributed in a way that is reasonably calculated to be received by each board member. To avoid improper discussion of board business outside a meeting, however, the distribution of any testimony or other documents should be done by the board's staff, not members.

May a board limit the length of each person's oral testimony offered at its meetings?

Yes. Boards are authorized to adopt rules regarding oral testimony, including, among other things, rules setting limits on the amount of time that a member of the public may testify. For instance, a council could adopt rules limiting each person's oral testimony to three minutes per item. Boards also are not required to accept oral testimony unrelated to items on the agenda for the meeting.

**RECESSING, CONTINUING, CANCELLING, OR
RELOCATING MEETINGS**

Can a board recess and later reconvene a meeting?

Yes, boards are authorized to recess both public and executive meetings, and to reconvene at another date and time to continue and/or complete public testimony, discussion, deliberation, and decision-making relating to the items listed on the agenda. Meeting continuances were extensively discussed by the Hawaii Supreme Court in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (Kanahele) (2013). The Court recognized that section 92-7(d), HRS, requires items of reasonably major importance, which are not decided at a scheduled meeting, to "be considered only at a meeting continued to a reasonable date and time." The Court also found that a board is not limited by this statute to only one continuance of a meeting and is not required to post a new agenda or accept oral testimony at a continued meeting.

What kind of notice should a board provide for a meeting that will be continued?

Although the Sunshine Law contains no specific requirements for a

written public notice or oral announcement for continued meetings, the Hawaii Supreme Court stated in Kanahele that “the means chosen to notify the public of the continued meeting must be sufficient to ensure that meetings are conducted ‘as openly as possible; and in a manner that ‘protect[s] the people’s right to know.’” Id. at 1198. When a meeting is being recessed for longer than 24 hours, the board should provide, if practicable, both oral and written (including, if possible, electronic) notice of the date, time, and place of a continuance. The date, time, and location of the reconvened meeting generally should be orally announced at the time that the meeting is recessed.

Based on the Court’s guidance and examples in Kanahele, OIP has prepared a “Notice of Continuance of Meeting” form, which is available on the [Forms page at oip.hawaii.gov](https://oip.hawaii.gov/forms) and attached at the end of this Guide. This notice may be used to continue an ongoing meeting that had been originally posted as required under section 92-7, HRS. Consequently, the continuance notice is not subject to the same requirements of the original notice under section 92-7, HRS. Rather than post a new agenda for a continued meeting, a board should attach the agenda of the meeting being continued to a “Notice of Continuance of Meeting,” on which the board should type, hand write, or otherwise note the agenda item(s) being continued. See the forms section of this Guide for the “Notice of Continuance of Meeting” sample form.

Can the meeting be reconvened at a different location?

Yes. A board may reconvene a meeting at a location different from where the meeting was initially convened, as long as the board announces the location where the meeting is to be reconvened at the time when it recesses the meeting or otherwise notifies the public of the new location. The new location should be included in all announcements and other such publications, if any, regarding the reconvened meeting.

Must the continuance notice be posted?

Yes. A board should physically post in the board’s office and, if practicable, at the meeting site, a “Notice of Continuance of a Meeting,” with the agenda from the continued meeting attached thereto. Additionally, if possible and time permits, the Notice and agenda should be electronically posted on the board’s website or the State or county electronic calendar, and emailed to persons on the board’s email list.

Keep in mind that because the meeting notice requirements of section 92-7, HRS, do not apply to the notice of continuance, the failure to electronically post the continuance notice on the State or county electronic calendar or to give six days' advance notice would not require the cancellation of the continued meeting. In fact, the State electronic calendar currently does not allow any notice to be posted with less than six days' advance notice.

Does a board have to re-hear testimony or accept new testimony at a continuation of a meeting?

No. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting.

Must a notice be posted online when cancelling a meeting?

Boards are not required by the Sunshine Law to electronically file a notice when cancelling a meeting, and in fact, the State electronic calendar will not allow such a notice to be posted with less than six days' advance notice. 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 posting notification of a cancelled meeting at the board's office and at the meeting location, taking down the original meeting notice from the online calendar, and informing those people who have asked to receive notice by email.

What notice must be provided if the meeting location must be changed?

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 may call the meeting to order at the noticed location and announce that it will be recessed and then reconvened shortly thereafter in the new location. A written notification of the new meeting location should be posted at the originally noticed location.

DISCUSSIONS BETWEEN BOARD MEMBERS OUTSIDE OF A MEETING

Can board members discuss board business outside of a meeting?

The Sunshine Law generally prohibits discussions about board business between board members outside of a properly noticed meeting, with certain statutory exceptions. While the Sunshine Law authorizes interactions between board members outside of a meeting in specified circumstances, the statute expressly cautions that such interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

In practical terms, this means that board members cannot “caucus” or meet privately before, during, or after a meeting to discuss business that is before the board or that is reasonably likely to come before the board in the foreseeable future.

The statute, however, does not prohibit discussion between board members outside of a properly noticed meeting about matters over which the board does not have supervision, control, jurisdiction, or advisory power. For instance, where the chair of a board has the sole discretion to set the agenda, the board has no “power” over that decision and, therefore, board members may request the addition of possible agenda items outside of a properly noticed meeting, so long as they do not discuss the substance of items. Similarly, logistical issues, such as when members are available to meet, are typically not “board business” and thus may be discussed in an email sent to all board members.

Does the Sunshine Law also prohibit board members from communicating between themselves about board business by telephone, memo, fax, or email outside of a meeting?

Yes. Board members cannot discuss board business between themselves outside of a properly noticed meeting by way of the telephone or by memoranda, fax, email, or social media, such as Facebook. As a general rule, if the statute prohibits board members from discussing board business face-to-face, board members cannot have that same discussion through other media.

Can board members discuss board business with non-board members outside of a meeting?

Generally, yes. The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. Because the Sunshine Law does not apply to **non**-board members, a board member may discuss board business with **non**-board members outside of a meeting.

Board members should not discuss with non-board members any matters discussed during a closed executive meeting, or the members could risk waiving the board's ability to keep the matters confidential.

SOCIAL EVENTS

What about social and ceremonial events attended by board members?

The Sunshine Law does not apply to social or ceremonial gatherings at which board business is not discussed. Therefore, board members can attend functions such as Christmas parties, dinners, inaugurations, orientations, and ceremonial events without posting notice or allowing public participation, so long as they do not discuss official business that is pending or that is reasonably likely to come before the board in the foreseeable future.

If I am a board member, what should I do if another board member starts talking about board business at a social event?

The Sunshine Law is, for the most part, self-policing. It is heavily dependent upon board members understanding what they can and cannot do under the law. In the situation where a board member raises board business with other board members outside of a meeting, board members should remind each other that such discussion can only occur at a duly noticed meeting. If a board member persists in discussing the matter, the other board members should not participate in the discussion and should physically remove themselves from the discussion.

PERMITTED INTERACTIONS

What are “permitted interactions”?

Over the years, the Sunshine Law has been revised to recognize eight “permitted interactions,” which are designed to address instances and occasions when members of a board may discuss certain board matters outside of a meeting and without the procedural requirements, such as notice, that would otherwise be necessary. The statute specifically states that the “[c]ommunications, interactions, discussions, investigations, and presentations described in [the permitted interaction] section are not meetings for purposes of [the Sunshine Law].” These permitted interactions are summarized below.

What are the types of “permitted interactions” allowed by the Sunshine Law?

- ***Two Board Members.*** Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought. Nevertheless, it would be a serial communication contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings.
- ***Investigations.*** A board can designate two or more board members, but less than the number of members that would constitute a quorum of the board, to investigate matters concerning board business. The board members designated by the board are required to report their resulting findings and recommendations to the entire board at a properly noticed meeting. This permitted interaction can be used by a board to allow some of its members (numbering less than a quorum) to participate in, for instance, a site inspection outside of a meeting or to gather information relevant to a matter before the board.
- ***Presentations/Negotiations/Discussion.*** The board can assign two or more of its members, but less than the number of members that would constitute a quorum of the board, to present, discuss, or negotiate any position that the board has adopted.

- ***Selection of Board Officers.*** Two or more board members, but less than the number of members that would constitute a quorum of the board, can discuss between themselves the selection of the board's officers.

- ***Acceptance of Testimony at Cancelled Meetings.*** If a board meeting must be cancelled due to lack of quorum or conference technology problems, the board members present may still receive testimony and presentations on agenda items from members of the public and may question them, so long as there is no deliberation or decision-making at the cancelled meeting. The members present must create a record of the oral testimony or presentations. At the next duly noticed meeting of the board, the members who were present at the cancelled meeting must provide the record and copies of the testimony or presentations received at the cancelled meeting. Deliberation and decision-making on any item, for which testimony or presentation were received at the cancelled meeting, can only occur at a subsequent duly noticed meeting of the board.

- ***Discussions with the Governor.*** Discussions between one or more board members and the Governor are authorized to be conducted in private, provided that the discussion does not cover a matter over which a board is exercising its adjudicatory function.

- ***Administrative Matters.*** Certain routine administrative matters, such as board budget or employment matters, can be discussed between two or more members of a board and the head of a department to which the board is administratively assigned.

- ***Attendance at Informational Meetings or Presentations.*** The Sunshine Law allows two or more members of a board, but less than a quorum, to attend an informational meeting. The board members may participate in discussions, even among themselves, so long as the discussions occur as part of the informational meeting or presentation and no commitment relating to a vote on the matter is made or sought. At the next duly noticed meeting of the board, the members who attended the informational meeting or presentation must report their attendance and the matters presented and discussed that related to official board business.

This informational meeting provision thus allows less than a quorum of board members to attend, for example, neighborhood board meetings, legislative hearings, and seminars, at which official board business is

discussed, so long as no commitment to vote is made and the subsequent reporting requirements are met. The law is intended to improve communication between the public and board members and to enable board members to gain a fuller understanding of the issues and various perspectives. As with the rest of the law, this permitted interaction will be interpreted to prevent circumvention of the spirit of the Sunshine Law and its open meeting requirements.

For a more detailed discussion, please see OIP's three-part "Quick Review: Who Board Members Can Talk to and When," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

BOARD DISCUSSION OF LEGISLATIVE ISSUES

How can a Sunshine Law board keep up with the fast-paced legislative calendar and submit timely testimony on legislative issues?

When dealing with legislative matters, one major hurdle that boards face is the Sunshine Law's six-day notice requirement prior to conducting a meeting to discuss a legislative measure, even though legislative committees often give less than six days' notice of their hearings. Since most boards typically meet on a monthly or less frequent basis, their meeting schedule together with the notice requirement leave them with limited options to timely notice a meeting and discuss the adoption of its legislative testimony or position prior to the legislative hearing.

The Sunshine Law, however, allows board members to discuss board business outside a meeting in limited circumstances, as set forth in the "permitted interactions" section of the law, as discussed above. The permitted interactions that are most useful in developing or adopting positions on legislative measures are (1) the one allowing two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought; (2) the one allowing a board to assign less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting; and (3) the one allowing less than a quorum of board members to attend a legislative hearing (or other "informational meeting") and report their attendance at the next board meeting.

Besides permitted interactions, other options for a board to address legislative matters are through emergency or limited meetings or delegation to staff.

The various options or practical approaches that a board could take to discuss and submit timely testimony on legislative issues or measures are discussed in more detail in OIP's "Quick Review: Sunshine Law Options to Address State Legislative Issues and Measures," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

DISCUSSIONS BETWEEN MULTIPLE BOARDS

When members of multiple Sunshine Law boards hold a joint meeting, roundtable discussion or similar event, how can they do so without violating the Sunshine Law?

When planning an event that will bring together members of multiple Sunshine Law boards, every attendee who is a member of a Sunshine Law board must be able to justify his or her presence under the Sunshine Law with respect to his or her own board. The justification could be that no one else from that particular board was present, so there was no discussion of board business among that board's members; or it could be that one of the Sunshine Law's permitted interactions applied to the particular board's members who attended; or it could be that the event was noticed as a meeting of the members' own board (or a joint meeting of multiple boards including theirs). The justification does not have to be the same for all the boards with members attending, but all members of each board should have a Sunshine Law justification before attending and participating in the discussion of their board's business during the roundtable meeting.

For a more detailed discussion, please see OIP's "Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law," which is posted on OIP's [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

3

EXECUTIVE MEETINGS

What is an executive meeting?

An executive meeting (also called an executive session) is a meeting of the board that is closed to the public. Because an executive meeting is a narrowly construed exception to the Sunshine Law's presumption that all government board meetings will be open to the public, board members are advised to carefully weigh the interests at stake before voting to exercise their discretion to close a meeting. Because the "final action" taken by the board in an executive meeting may be voided by the courts if the board has violated the procedural requirements for going into such a closed meeting, boards must be careful to follow all requirements.

Must a board give notice that it intends to convene an executive meeting?

Yes, if the executive meeting is anticipated in advance.

What must the agenda contain when the board anticipates convening an executive meeting?

In addition to listing the topic the board will be considering (as is required for all items the board will consider whether in public or executive session), the agenda for the open meeting generally must indicate that an executive meeting is anticipated and the statutory authority for convening the anticipated executive meeting. For an executive meeting, the listing of the topic should describe the subject of the executive meeting with as much detail as possible without compromising the closed meeting's purpose. For instance, if the board is to consider a proposed settlement of a lawsuit in an executive meeting, the agenda would note that the purpose of the executive session was consulting with the board's attorney on questions or issues regarding the board's powers, duties, privileges, immunities, and liabilities, and cite section 92-5(a)(4), HRS. The agenda in such a case should also describe the topic of the meeting as, at a minimum, the lawsuit identified by case name and civil number, and unless such description would compromise the purpose of closing the meeting from the public, that the board would consider a proposed settlement.

Can a board convene an executive meeting when it is not anticipated in advance?

With significant restrictions, the Sunshine Law allows the board to convene an executive meeting when the need for excluding the general public from the meeting was not anticipated in advance. If, for example, during the discussion of an open meeting agenda item, the board determines that there are legal issues that need to be addressed by its attorney, the board may announce and vote to immediately convene an executive meeting to discuss those matters pursuant to section 92-5(a)(4), HRS.

The board, however, cannot convene an executive meeting to discuss an item that is not already on its meeting agenda without first amending the agenda to add the item in accordance with the Sunshine Law's requirements. No item can be added to an agenda if it is of reasonably major importance and the board's action will affect a significant number of persons. At least two-thirds of the board's total members (present or absent) must vote in favor of amending the agenda.

How does a board convene an executive meeting?

To convene an executive meeting, a board must vote to do so in an open meeting and must publicly announce the purpose of the executive meeting. The minutes of the open meeting must reflect the vote of each board member on the question of closing the meeting to the public. Two-thirds of the board members present must vote in favor of holding the executive meeting, and the members voting in favor must also make up a majority of all board members, including members not present at the meeting or membership slots not currently filled. Note that the 2/3 vote of all members present that is required to convene an executive meeting is different from the 2/3 vote of a board's total membership (including vacant slots) that is required to amend an agenda.

What are the eight purposes for which an executive meeting can be convened?

Section 92-5(a), HRS, of the Sunshine Law gives the board the discretion to go into an executive meeting only for the following eight specific reasons:

(1) Licensee Information. A board is authorized to meet in an executive meeting to evaluate personal information of applicants for professional and vocational licenses.

(2) Personnel Decisions. A board may hold a meeting closed to the public to “consider the hire, evaluation, dismissal or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved.” However, if the person who is the subject of the board’s meeting requests that the board conduct its business about him or her in an open meeting, the request must be granted and an open meeting must be held.

(3) Labor Negotiations/Public Property Acquisition. A board is allowed to deliberate in an executive meeting concerning the authority of people designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations.

(4) Consult with Board’s Attorney. A board is authorized to consult in an executive meeting with its attorneys concerning the board’s powers, duties, immunities, privileges, and liabilities.

(5) Investigate Criminal Misconduct. A board with the power to investigate criminal misconduct is authorized to do so in an executive meeting.

(6) Public Safety/Security. A board may hold an executive meeting to consider sensitive matters related to public safety or security.

(7) Private Donations. A board may consider matters relating to the solicitation and acceptance of private donations in executive meetings.

(8) State/Federal Law or Court Order. A board may hold an executive meeting to consider information that a State or federal law or a court order requires be kept confidential.

**Does “embarrassing” or “highly personal” information
allow a board to hold an executive meeting?**

A board may not hold such discussions in an executive meeting unless the discussion falls within one of the eight circumstances listed in the statute for which an executive meeting is allowed.

**Can confidential or proprietary information be considered
in a closed-door meeting?**

Again, unless there is an exception that permits the board to convene in

an executive meeting, no matter how sensitive the information may be, a board cannot consider such information in a closed meeting. In such a case, a board may be better off using an applicable permitted interaction in section 92-2.5, HRS, to allow less than a quorum of board members to take a close look at the sensitive information so that it can be discussed in more general terms at the board's meeting.

Does the Sunshine Law require a closed meeting when one of the eight purposes is applicable?

No. A board may, but is not required to, enter an executive meeting closed to the public when one of the eight purposes listed above is applicable.

Is a board subject to the Sunshine Law's criminal penalties for holding an open meeting, even if one of the eight purposes is applicable?

No. Although section 92-13, HRS, provides for the criminal prosecution of board members who willfully violate the Sunshine Law, the Hawaii Supreme Court has held that holding an open meeting does not violate the Sunshine Law. Consequently, board members are not subject to criminal prosecution under section 92-13, HRS, for holding an open meeting.

When personnel matters concerning an individual will be discussed, can an open meeting be held only upon the subject employee's request?

No. Section 92-5(a)(2), HRS, gives the subject employee the right to request an open meeting, but does not require the employee's consent to hold an open meeting. Because the Sunshine Law presumptively requires open meetings, the board may choose to discuss personnel matters in the open. Meetings related to personnel matters are not required to be closed to the public.

Must all personnel matters be discussed in a closed executive meeting?

No. Certain personnel matters must be discussed in an open meeting. Under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), certain types of government employment information must be disclosed upon request, such as employee names, job titles, and salary information. HRS § 92F-12(a)(4). Consequently, government employees do not have a legitimate expectation of privacy

in such information, and the board cannot justify closing a meeting simply to discuss those types of personnel matters. Additionally, if the discussion is about personnel policies, and not about an individual, then there is no legitimate expectation of privacy at stake, so the meeting cannot be closed to discuss such policies. To the extent possible, policy-making must be conducted in public meetings.

The personnel matters that may be discussed in a closed meeting under section 92-5(a)(2), HRS, must relate to “the hire, evaluation, dismissal or discipline” of an individual officer or employee, or to “charges brought against” such an individual, and also requires a showing that “consideration of matters affecting privacy will be involved.” Just because a matter involves an employee’s personnel status does not necessarily mean that a legitimate privacy interest will be impacted. If no legitimate privacy interest will be involved in the board’s discussion, then the board cannot properly close the meeting to the public.

How do you determine if there is a legitimate privacy interest under the personnel exception allowing closed executive meetings?

Unlike the test balancing private interests against the public interest that is set forth in the UIPA at section 92F-14(a), HRS, to determine if disclosure of a record would constitute a clearly unwarranted invasion of personal privacy, the Sunshine Law requires a case-by-case analysis of the specific person and information at issue to see whether the person being discussed has a legitimate expectation of privacy. Only people, not companies or entities, can have an expectation of privacy. There is a legitimate expectation of privacy in ‘highly personal and intimate’ information, which may include medical, financial, education, or employment records. Some circumstances, however, may reduce or entirely defeat the legitimacy of a person’s expectation of privacy, as in the case of government officials with high levels of discretionary and fiscal authority, like the University’s president or a head coach. Moreover, if the information must be disclosed by law, rule or regulation, or if it has already been disclosed, then there is no legitimate expectation of privacy that would warrant holding a closed executive meeting to discuss such information.

Can non-board members participate in an executive meeting?

The board is entitled to invite into an executive meeting any non-board member whose presence is either necessary or helpful to the board in its discussion, deliberation, and decision-making regarding the topic of the

executive meeting. Once the non-board member's presence is no longer needed, however, the non-board member must be excused from the executive meeting. Because the meeting is closed to the general public, the board should allow the non-board members to be present during the executive meeting only for the portions of the meeting for which their presence is necessary or helpful, such as when a board staff member is there to address a particular issue.

May a board vote in an executive meeting?

Generally, no. In most instances, the board must vote in an open meeting on the matters considered in an executive meeting. In rare instances, the Sunshine Law allows the board to vote in the executive meeting when the vote, if conducted in an open meeting, would defeat the purpose of the executive meeting, such as by revealing the matter for which confidentiality may be needed.

For additional discussion of executive session issues, see OIP's **Quick Review: Executive Meetings Closed to the Public.**

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OTHER TYPES OF MEETINGS

EMERGENCY MEETINGS

Where public health, safety, or welfare requires a board to take action on a matter, can a board convene a meeting with less than six days' notice?

A board may hold an emergency meeting with less notice than required by the statute or, in certain circumstances, no notice when there is “an imminent peril to the public health, safety, or welfare.” When the board finds that an emergency meeting is appropriate, (1) the board must state its reasons in writing; (2) two-thirds of all members to which the board is entitled must agree that an emergency exists; (3) the board must electronically file an emergency agenda and the board’s reasons in the same way it would file its regular notice and agenda, except for the usual six-days’ advance notice deadline; and (4) persons requesting notification on a regular basis must be contacted by postal or electronic mail or telephone as soon as practicable.

UNANTICIPATED EVENTS

When an unanticipated event requires a board to take immediate action — can a board convene a meeting with less than six days' notice?

A board may convene a special meeting with less than six calendar days’ notice because of an unanticipated event when a board must take action on a matter over which it has supervision, control, jurisdiction, or advisory power. The law defines an unanticipated event to mean (1) an event that the board did not have sufficient advance knowledge of or reasonably could not have known about; (2) a deadline beyond the board’s control established by a legislative body, a court, or an agency; and (3) the consequence of an event for which the board could not have reasonably taken all necessary action.

The usual rule is that a State or county board may deliberate and decide whether and how to respond to the unanticipated event as long as (1) the board states, in writing, its reasons for finding that an unanticipated

event has occurred and that an emergency meeting is necessary; (2) the attorney general and two-thirds of all members to which the board is entitled concur with the board's finding; (3) the board's findings and the agenda for the emergency meeting are electronically filed in the same way it would file its regular notice and agenda, except for the usual six-days' advance notice deadline; and (4) persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable. At an emergency meeting, the board can only take those actions that need to be immediately taken.

LIMITED MEETINGS

If a board finds it necessary to inspect a location that is dangerous or impracticable for public attendance, may the board hold a meeting that is not open to the public?

Yes. A board may hold a "limited meeting" that is not open to the public when it determines it is necessary to inspect a location that is dangerous or that is impracticable for public attendance, and the OIP Director concurs in that determination. The board must deliberate on the need for the limited meeting at a prior open meeting of the board, and two-thirds of all members to which the board is entitled must agree that it is necessary to hold the limited meeting at the specified location.

Public notice of a limited meeting must still be provided, and a videotape of the meeting must be made available at the next regular board meeting, unless the OIP Director waives the videotape requirement. No decision-making can occur during the limited meeting.

See the forms section of this Guide for a checklist to use when requesting the OIP Director's concurrence for a limited meeting or to request a waiver of the videotaping requirement.

Can county councils have limited meetings to attend other boards' or community groups' meetings, such as candidate forums?

Yes. County councils have a special limited meeting provision that allows an unlimited number of councilmembers to be the guests of a board or community group holding its own meeting, such as for candidate forums or neighborhood board meetings. To qualify for this

“guest meeting,” the council must follow the requirements to hold a limited meeting, as described above. But unlike the regular limited meetings described above, the guest meeting must be open to the public. The council need not file an agenda. However, if the host organization itself is a board which must follow the Sunshine Law requirements, then that board must file an agenda. The council can have no more than one guest meeting per month for any one board or community group, and no guest meetings can be held outside of Hawaii.

See the forms section of this Guide for a checklist to use when requesting the OIP Director’s concurrence for a council to attend a meeting as guests of another board or community group meeting or to request a waiver of the videotaping requirement.

5

PROCEDURAL REQUIREMENTS

NOTICE AND AGENDA

What are the Sunshine Law's requirements for giving notice of meetings?

With the exception of emergency meetings, **a board must give at least six calendar days' advance notice** of any regular, special, or rescheduled meeting or any anticipated executive meeting. 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.

Sunshine Law meeting notices must be posted on State and county electronic calendars as the official notice of the meeting. If there is a dispute as to whether an agenda was electronically filed at least six calendar days prior to the meeting, a printout of the electronic time-stamped agenda is conclusive evidence of the posting date.

A board must also file the notice with the Lt. Governor's office or the county clerk's office, which must continue to post the notices in a central location in a public building in paper form or in electronic format, such as via a monitor linked to the electronic calendar. This enables the public to still inspect courtesy copies of the meeting notices posted outside of the Auditorium at the State Capitol or at county buildings. The board must also retain proof of filing the notice with the Lt. Governor's or county clerk's office. The electronic calendar, however, will provide the official notice required by the Sunshine Law. Therefore, the failure to file timely copies of notices with the Lt. Governor's office or county clerks does not require cancellation of the meeting. Moreover, the Lt. Governor or county clerks have the discretion to determine whether they want paper documents to be provided to them, or if

electronic copies can be faxed to them or emailed to an email address designated by them.

The notice must also be posted at the meeting site, whenever feasible. Newspaper publication is not required for Sunshine Law meeting notices.

In addition to the date, time, and place of the meeting, the meeting notice must include an agenda, which lists all of the items to be considered at the forthcoming meeting. (The “guest meeting” form of limited meeting, discussed above, is an exception to this requirement.) The Agenda requirements are discussed later herein. If an executive meeting is anticipated, the notice must also state the purpose of the executive meeting. The notice also must provide instructions on how to request an auxiliary aid or service or an accommodation due to a disability, which may include a reasonable deadline. Sample language is provided on page 35 of this Guide.

Does a board have to notify individual members of the public of every meeting?

The Sunshine Law requires the board to maintain a list of names and addresses of those persons who have requested notification of meetings and to mail or email a copy of the notice to those persons at the time that the notice is filed. A meeting must be cancelled if the board fails to send notice at least six days’ advance notice via postal mail (as determined by postmark date) or email to people on the notification list.

What happens if a board files its notice less than six days before the date of the meeting?

The State electronic calendar will not allow a board to file a regular meeting notice with less than six days’ notice. If a board files its notice less than six calendar days before the meeting, the meeting is cancelled as a matter of law and no meeting can be held. The board chair or the director of the department within which the board is established must ensure that a notice is posted at the meeting site to inform the public of the cancellation of the meeting.

What happens if there is a joint meeting of two boards that are both subject to the Sunshine Law?

If there is a 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 timely mailed or emailed to persons on their own notification 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 would have been a joint meeting with the first board.

Do you have any practice tips for boards to help them comply with the notice requirements?

- Be careful to keep accurate records of postal and email addresses of persons on the notification list, and any changes to those addresses, so that notices will be timely and properly sent to them, as the board's errors in an address that made a notice non-deliverable could potentially require the cancellation of a meeting.
- Reduce opportunities for clerical errors by board employees, particularly with email addresses. If possible, have requesters directly enter their own email or mailing addresses online to be added to the board's notification list, and keep a record of the addresses entered by the requesters so that any mistakes will be attributed to the correct source. Consider emailing an acknowledgement after requesters register for email notification, to ensure that the correct email address has been entered onto the board's email notification list.
- If mail is not deliverable, check the address to make sure that it was sent to the correct postal or email address. Keep a record of postal and email addresses that are returned as undeliverable and dates that they were sent to provide proof that the notification was timely sent to the address provided by the requester.
- Consider filing agendas well before the six-day requirement, so that any potential errors in postal or email addresses can be corrected and timely notices can be sent to people on the notification list.
- Use technology to automate the notification process, reduce duplicative requests to the boards themselves, and eliminate potential clerical errors by the board in entering email addresses. Check to see whether the State or county electronic calendars will automatically notify those persons who subscribe to certain meeting notices.

- Keep a time-stamped copy of the agenda to provide conclusive evidence of the date when the notice was filed. The State electronic calendar shows the date and time that a meeting notice was posted or last updated. If a county calendar does not have this feature, then the board could print out and time-stamp a copy of the electronically filed meeting notice to keep in its files as evidence of the date that the meeting notice was posted.

What must the agenda contain?

The agenda must list all of the business to be considered by the board at the meeting. It must be sufficiently detailed so as to provide the public with adequate notice of the matters that the board will consider so that the public can choose whether to participate.

For anticipated executive meetings, as noted above, the agenda must be as descriptive as possible without compromising the purpose of closing the meeting to the public and must identify the statutory basis that allows the board to convene an executive meeting regarding the particular matter.

To meet the Sunshine Law's requirement to include instructions on how to request an auxiliary aid or accommodation, the Disability and Communication Access Board recommends that boards include the following language on its agendas: "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 a more detailed discussion, please see OIP's "Agenda Guidance for Sunshine Law Boards," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

Are general descriptions such as "Unfinished Business" or "Old Business" allowed?

No. The practice of listing general descriptions on agendas such as "Unfinished Business" or "Old Business" without any further description is insufficient and does not satisfy the agenda requirements.

Can a board amend its meeting agenda once it has been filed?

Adding an item to the agenda is **not** permitted if (1) the item to be added

is **of reasonably major importance** and (2) action on the item by the board **will affect a significant number of persons**. Determination of whether a specific matter may be added to an agenda must be done on a case-by-case basis.

If the requirements above are met, boards may amend an agenda during a meeting to add items for consideration, but only after the affirmative vote of two-thirds of **all** board members to which the board is entitled, which **includes members not present at the meeting or membership slots not currently filled**. For example, if a board is entitled to 9 members, but only 5 are appointed and present, then it does not have the 6 votes needed to meet the 2/3 requirement to amend an agenda during the meeting.

Note that the voting requirement for amending an agenda **is not the same** as, and is typically harder to obtain than, the vote of two-thirds of members present and a majority of the total membership slots that is needed to go into an executive meeting.

MINUTES

Is a board required to keep minutes of its meetings?

Yes. Boards must either keep written minutes, or recorded minutes with a written summary. If boards chose to keep written minutes, they must include the date, time, and place of the meeting; the members recorded as either present or absent; the substance of all matters proposed, discussed, or decided; a record by individual member of votes taken; and any information that a board member specifically asks at the meeting to be included.

Boards are not required to create a transcript of the meeting or to electronically record the meeting. But they may choose to keep a recording of the entire meeting instead of doing written minutes. For this new option, a board must keep its minutes in a digital or analog recording format (e.g., via a cell phone, video, or tape recorder) and provide a written summary, which is required to include:

- The date, time, and place of the meeting;
- The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;

- A record, by individual members, of motions and votes made by the board; and
- 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 will 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. Although a board does have the choice to record its minutes in either digital (audio or video computer file) or analog (e.g., a magnetic tape recording) format, OIP recommends that boards record in a digital format in the first place to avoid having to convert an analog recording into digital format to be able to place the recording online.

The option to create recorded minutes does not impose any requirement to record meetings for boards that prefer using written minutes. Moreover, if a board is recording a meeting solely to help it prepare written minutes and plans to delete or record over the recording once those minutes are prepared, the temporary recording need not be posted online and typically need not be retained once the board no longer needs it.

For a more detailed discussion of what must be included in minutes, please see OIP's "Quick Review: Sunshine Law Requirements for Public Meeting Minutes," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

Must the minutes of a board's meeting be posted online?

Yes. The Sunshine Law requires all boards to post their written or recorded minutes online within 40 days after the meeting. If the board chooses to post a recording of its meeting, it still needs to also post a written summary within 40 days after its meeting, because the written summary is part of the recorded minutes.

A board that is preparing written minutes does not need to post a recording, even if it has one – for instance, temporary recordings

intended to be used for note-taking to prepare written minutes do not need to be posted online, since the written minutes will be posted online instead.

Must draft minutes be posted online within 40 days after a meeting, even if they have not yet been approved by the board?

Yes. The Sunshine Law does not require boards to approve minutes. If a board does approve its minutes as a usual practice but has not had the opportunity to approve minutes for a meeting, minutes that satisfy the Sunshine Law's requirements must nevertheless be posted online within 40 days after the meeting, because there is no exception to the posting requirement when a board has not approved its minutes. The board can post its draft minutes online, marked as a "draft," and replace them with the board-approved minutes when those are ready, so long as it has something that satisfies the Sunshine Law's requirements posted within the required 40 days.

If the board does not have its own website, where must its minutes be posted?

A board that has its own website will most likely prefer to post its minutes there, but a board that does not have its own website may post its minutes on an appropriate State or county website instead, such as the website for the department to which the board is administratively attached.

To provide additional time that may be needed for an IT office or website administrator to post minutes online after they have been prepared by the board, the new law added ten days to the time for disclosure, so that the deadline for posting is now 40 days after a meeting. But since public access to a board's minutes will no longer depend upon persons requesting to inspect or obtain a copy of the minutes, the public now has easier, and probably faster, access to minutes.

Must executive meeting minutes be posted online?

No. Minutes of an executive meeting closed to the public need not be posted online if the disclosure would defeat the purpose of going into executive meeting.

Keep in mind, however, that the Sunshine Law is different from the UIPA. The Sunshine Law permits boards to delay publication of executive meeting minutes for so long as publication would defeat the lawful purpose of the executive meeting. At some point in the future, the minutes may have to be disclosed in response to a UIPA request, when disclosure would no longer compromise the purpose for going into the meeting. For example, minutes of an executive meeting to discuss a property's acquisition should be disclosed after the property has been acquired. Thus, boards must review the minutes to determine if the need for confidentiality has passed, and it may be required to disclose all or part of the executive meeting minutes in response to a UIPA request for the minutes.

RECORDINGS BY THE PUBLIC

Must a board allow a member of the public to record the meeting?

The board must allow the public to tape record any portion or all of an open meeting, as long as the recording does not actively interfere with the meeting. The statute does not address newer technologies, such as videotaping or live streaming. Given the intent of the law, however, if recording activities do not unduly interfere with a board's ability to do its business, OIP suggests that a board should allow them.

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SUIT TO VOID BOARD ACTION

Can a member of the public file a lawsuit for an alleged Sunshine Law violation?

Yes. When the open meetings and the notice provisions of the Sunshine Law are not complied with, any person may file a lawsuit to void the board's action within 90 days of the allegedly improper board action. An OIP determination of wrongdoing is not necessary for a lawsuit to be filed. Enforcement is in circuit court of the circuit in which the prohibited act occurred.

Under certain circumstances, the judge may grant an injunction, but the filing of a lawsuit challenging a board's action does not stay enforcement of the action. Attorneys' fees and costs may be awarded to the prevailing party.

What is the penalty for an intentional violation of the statute?

A willful violation of the Sunshine Law is a misdemeanor and, upon conviction, may result in the person being removed from the board. The Attorney General and the county prosecutor have the power to enforce any violations of the statute.

Can a board appeal an OIP decision regarding the Sunshine Law?

Yes, a board may appeal an OIP decision to the courts in accordance with section 92F-43, HRS. For more information, see OIP's Guide to Appeals to the Office of Information Practices, available on the [Training page at OIP's website at oip.hawaii.gov](#).

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OFFICE OF INFORMATION PRACTICES

If I have additional questions about the Sunshine Law, where can I go?

For general information on the Sunshine Law or alleged violations by State and county boards, please visit OIP's website at oip.hawaii.gov, call OIP at (808) 586-1400, or email oip@hawaii.gov. The full text of the Sunshine Law, as well as OIP's opinions relating to various open meeting issues, are posted on the website.

Office of Information Practices
(July 2019)

Sunshine Law:
PUBLIC MEETING NOTICE CHECKLIST

1. Notice Includes:

- ☐ Date
(If including day of the week,
make sure it is correct)
- ☐ Place
- ☐ Time
- ☐ Instructions on how to request an auxiliary aid or service or an accommodation due to a disability. If there is a deadline to make such a request, it must be stated in the notice and must be reasonable.
- ☐ Agenda - describing with reasonable specificity all matters to be considered
- ☐ If an executive meeting is anticipated, agenda describes the purpose and statutory authority in HRS § 92-5(a) or other laws applicable to your board that allow the executive meeting. Use as much detail as possible without compromising the executive meeting's purpose.

2. Filing Notice:

- ☐ 6 calendar days prior to meeting:
- Electronically post on:
- ☐ State Calendar: <http://calendar.hawaii.gov/calendar/html/event> (State only)
- ☐ County Calendar (counties only)
- ☐ Board's website (unlike the above, this is not a legal requirement)
- Physically post for public inspection in:
- ☐ Board's Office
- ☐ Site of meeting (when feasible or if meeting is canceled)
- File (and keep proof of filing) with:
- ☐ Lieutenant Governor's Office (State)
- ☐ County Clerk (counties)

Mail or email to persons who requested notification of meetings (MUST be postmarked/emailed no later than 6 calendar days before the meeting):

- ☐ Postal mailing list
- ☐ Email list

3. Meeting Canceled for Late Filing of Notice:

It is suggested but not required that the board post a notice canceling the meeting at:

- ☐ Meeting site
- ☐ State Calendar: <http://calendar.ehawaii.gov/calendar/html/event> (State only)
- ☐ County Calendar (counties only)
- ☐ Anywhere else notice was previously posted, mailed, or filed such as county or board website (not a legal requirement)

4. Special Instructions for Emergency Meetings

(held less than 6 calendar days prior to meeting):

- Board must first decide to hold emergency meeting by vote of two-thirds of members to which board is entitled (include authorized but vacant positions)
- Must meet criteria in HRS § 92-8, either:
 - when “imminent peril to the public health, safety, or welfare,” or
 - because of an “unanticipated event” and board must take action.
 - For an unanticipated event, the Attorney General must concur (even for county boards).
- ☐ File board’s findings justifying emergency meeting with emergency agenda as set forth in section 2 above (but without the 6-day notice requirement).

5. Special Instructions for Limited Meetings

- Limited meetings not open to the public may be held when a board determines it necessary to inspect a location that is dangerous or that is impracticable for public attendance.
- Must obtain concurrence from OIP’s Director.

See OIP's *Request for the Office of Information Practices' Concurrence for a Limited Meeting* form at www.oip.hawaii.gov/forms/.

- For county councils only: See OIP's *Checklist and County Council's Request to Waive Videotaping of a Meeting as Guests of a Board or Community Group* form at www.oip.hawaii.gov/forms/.
- Notice must be filed 6 days before limited meeting.

☐ File board's limited meeting agenda as set forth in section 2 above.

6. Special Instructions for Meetings Held by Interactive Conference Technology (ICT)

- In addition to the requirements in section 1 above, notice for ICT meetings must indicate all locations where board members will be physically present, and must provide that the public can attend the meeting at any of those locations.
- A "board member with a disability that limits or impairs the member's ability to physically attend the meeting" may attend via a connection by **audio and video** means from a private location (e.g., home or hospital room). The specific address of the private location need not be listed on the notice, but a board member with a disability attending from a private location must generally identify the location (e.g., home; hospital) and all persons present with the member.
- See OIP's *Quick Review: Audio- or Videoconferenced Meetings* on OIP's [Training Page at oip.hawaii.gov](http://oip.hawaii.gov).

7. Other Considerations

There are matters outside of OIP's jurisdiction that you may wish to consider when preparing a meeting notice, such as:

- Although the Sunshine Law now requires a notice to include instructions for requesting a reasonable accommodation language for disabled persons (for example, provision of sign language interpreters for individuals who are deaf or hard of hearing), OIP does not have authority to advise as to what constitutes a reasonable accommodation. If you have questions about what accommodations or auxiliary aids must be provided in response to a request

you may wish to contact your board's attorney or the Disability and Communication Access Board: (808) 586-8121 (Voice or TTY) or email: dcab@doh.hawaii.gov for assistance.

- Applicable statutes or administrative rules related to your board.
- For county boards, your County's applicable charter, ordinances, or other provisions.
- Your board's own procedural rules or policies; or instructions for the public regarding, among other things, your board's preferred method for submission of written testimony and opportunity to provide oral testimony at the meeting.
- Whether the public can find and get in to the meeting site. For example, is the meeting site large enough that someone might have trouble finding the right room? Are there improper barriers to public access such as a security checkpoint requiring attendees to show identification?

**Request for the Office of Information Practices' Concurrence
for a Limited Meeting**
(HRS § 92-3.1)

Date: _____

Name of Board: _____
Contact Person: _____ Tel: _____
Fax: _____ Email: _____
Board's Attorney: _____ Tel: _____
Fax: _____ Email: _____
Date of Proposed Limited Meeting: _____
Place/Location of Proposed Limited Meeting: _____

1. Type of Limited Meeting:

- ☐ location is dangerous to health or safety of the public
- ☐ public attendance is impracticable

2. Board has, after sufficient public deliberation at a prior regular meeting, determined by vote of two-thirds of all voting members that:

- ☐ the limited meeting is necessary and the location would be dangerous to the health or safety of the attending public
- ☐ the on-site inspection is necessary and public attendance is impracticable

Board has made this determination based upon the following:

3. Notice of the Limited Meeting under HRS § 92-7 (attach agenda):

- ☐ was filed on _____
- ☐ will be filed by _____

4. Required Videotape of the Limited Meeting:

- ☐ will be made
- ☐ Board requests a waiver of this requirement because:

OIP 5 (11/11)

CONCURRENCE

The Director of the Office of Information Practices has reviewed the request made for a Limited Meeting and:

- ☐ concurs
- ☐ does not concur
- ☐ waives the videotape requirement

If concurrence is granted above, the Board must:

1. provide notice in accordance with HRS § 92-7;
2. make no decisions at the Limited Meeting;
3. comply with all requirements of HRS § 92-9; and
4. videotape the meeting and make it available at its next regular meeting, unless this requirement is waived above.

Cheryl Kakazu Park
Director

BOARD:

ADDRESS:

WEBSITE:

E-MAIL:

TELEPHONE:

FAX:

NOTICE OF CONTINUANCE OF MEETING

ORIGINALLY CONVENED ON _____, 20__, AT _____ .M.
See attached agenda for original meeting

TO BE CONTINUED TO:

DATE: _____

TIME: _____ .M.

PLACE: _____

___ Public testimony will be allowed in the manner described and on the items shown on the attached agenda as being continued.

___ Public testimony has concluded and no further testimony will be allowed on the items described in the attached agenda. The board will discuss, deliberate, decide, and/or act upon the items described in the attached agenda.

This notice has been physically posted at the following location(s):

___ Board Office

___ Meeting Site

(Optional) This notice has been electronically posted at _____

(This notice is not subject to the filing requirements of HRS Sec. 92-7.)

Chapter 92, Hawaii Revised Statutes
PUBLIC AGENCY MEETINGS AND RECORDS

The following is an unofficial copy of part I of chapter 92, Hawaii Revised Statutes, which is current through the 2019 legislative session. For amendments made to the Sunshine Law after publication of this manual, please visit OIP's website at oip.hawaii.gov and look under Laws/Rules/Opinions.

PART I. -- MEETINGS

Section

- 92-1 Declaration of Policy and Intent**
- 92-1.5 Administration of This Part**
- 92-2 Definitions**
- 92-2.5 Permitted Interactions of Members**
- 92-3 Open Meetings**
- 92-3.1 Limited Meetings**
- 92-3.5 Meeting by Interactive Conference Technology;
Notice; Quorum**
- 92-4 Executive Meetings**
- 92-5 Exceptions**
- 92-6 Judicial Branch, Quasi-Judicial Boards and Investigatory
Functions; Applicability**
- 92-7 Notice**
- 92-7.5 Board Packet; Filing; Public Inspection; Notice**
- 92-8 Emergency Meetings**
- 92-9 Minutes**
- 92-10 Legislative Branch; Applicability**
- 92-11 Voidability**
- 92-12 Enforcements**
- 92-13 Penalties**

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed;
and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

§92-1.5 Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

§92-2 Definitions. As used in this part:

“Board” means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

“Chance meeting” means a social or informal assemblage of two or more members at which matters relating to official business are not discussed.

“Interactive conference technology” means any form of audio or audio and visual conference technology, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

“Meeting” means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1]

§92-2.5 Permitted interactions of members.

- (a) Two members of a board may discuss between themselves matters relating to official board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.
- (b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:
 - (1) Investigate a matter relating to the official business of their board; provided that:
 - (A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;
 - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
 - (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or
 - (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is

- made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion, or negotiation.
- (c) Discussions between two or more members of a board, but less than the number of members which would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.
 - (d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:
 - (1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;
 - (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
 - (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:
 - (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
 - (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.
 - (e) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to official board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; and provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to official board business at the informational meeting or presentation.
 - (f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.
 - (g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.

- (h) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of § 1; am L 1985, c 278, §1]

§92-3.1 Limited meetings.

- (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
- (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
 - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
 - (3) Notice of the limited meeting is provided in accordance with section 92-7.
- (b) A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:
- (1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;
 - (2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;
 - (3) No more than one limited meeting per month shall be held by a county council for any one board or community group;
 - (4) No limited meetings shall be held outside the State; and
 - (5) Limited meetings shall not be used to circumvent the purpose of part

I, chapter 92.

- (c) At all limited meetings, the board shall:
 - (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
 - (2) Make the videotape available at the next regular meeting; and
 - (3) Make no decisions at the meeting.
- (d) Each county council shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the effectiveness and application of limited meeting procedures provided in subsection (b), including any recommendations or proposed legislation. [L 1995, c 212, §1; am L 2008, c20, §1; am L 2014, c 221, §2; am L 2016, c 56, §1, 2]

§92-3.5 Meeting by interactive conference technology; notice; quorum.

- (a) A board may hold a meeting by interactive conference technology; provided that the interactive conference technology used by the board allows 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.
- (b) 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.
- (c) A meeting held by interactive conference technology shall be terminated when audio communication cannot be maintained with all locations where the meeting by interactive 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 fifteen minutes after audio-only communication is used, those agenda items for which visual aids are not available for all participants at all meeting locations cannot be acted upon at the meeting.
- (d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2]

§92-4 Executive meetings. A board may hold an executive meeting closed to the

public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting closed to the public shall be recorded, and entered into the minutes of the meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2]

§92-5 Exceptions.

- (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:
 - (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
 - (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
 - (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
 - (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
 - (5) To investigate proceedings regarding criminal misconduct;
 - (6) To consider sensitive matters related to public safety or security;
 - (7) To consider matters relating to the solicitation and acceptance of private donations; and
 - (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.
- (b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No chance meeting, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.

- (a) This part shall not apply:
 - (1) To the judicial branch.
 - (2) To adjudicatory functions exercised by a board and governed by

sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:

- (A) Hawaii labor relations board, chapters 89 and 377;
 - (B) Labor and industrial relations appeals board, chapter 371;
 - (C) Hawaii paroling authority, chapter 353;
 - (D) Civil service commission, chapter 26;
 - (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
 - (F) Crime victim compensation commission, chapter 351; and
 - (G) State ethics commission, chapter 84.
- (b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11; am L 1998, c 240, §6]

§92-7 Notice.

- (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; 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.
- (b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall timely post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.
- (c) If the written public notice is electronically posted on an electronic calendar

less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.

- (d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.
- (e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2; am L 2012, c 177, §2; am L 2014, c 68, §1; am L 2017, c 64, §2; am L 2018, c 63, §1; am L 2019, c 244, §2]

[§92-7.5] Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, the board shall also make the board packet available for public inspection in the board's office. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the public inspection required by this section. [L 2017, c 64, §1]

§92-8 Emergency meetings.

- (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
 - (1) The board states in writing the reasons for its findings;
 - (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;

- (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.
- (b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, with less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:
 - (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
 - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
 - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and
 - (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- (c) For purposes of this part, an "unanticipated event" means:
 - (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
 - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
 - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64 §3; am L 2019, c 244 §3]

§92-9 Minutes.

- (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Written minutes shall include, but need not be limited to:

- (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.
- (b) The minutes shall be made available to the public by posting on the board's website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:
- (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.
- (c) All or any part of a meeting, of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1; am L 2017, c 64, §4]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

§92-12 Enforcement.

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.

- (c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.
- (d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.
- (e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:
 - (1) There is likelihood that the party bringing the action will prevail on the merits;
 - (2) Irreparable damage will result if a stay is not ordered;
 - (3) No irreparable damage to the public will result from the stay order; and
 - (4) Public interest will be served by the stay order. [L 1975, c 166, pt of § 1; am L 1985, c 278, § 5; am L 2012, c 176, § 3]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of § 1]