

OIP's Tips for Holding a Virtual Public Meeting

April 16, 2020

During this unprecedented COVID-19 emergency when the Sunshine Law has been partially suspended and people have been ordered to shelter at home, several boards have used technology to hold virtual public meetings so that they can continue to do their important work with public participation while keeping everyone safe from infection. We don't know when this emergency will end, or a new one will arise, so OIP has collected tips and best practices from boards that have held virtual meetings. In addition to OIP's previously posted [What's New article on March 23, 2020](#), here is guidance for boards and agencies contemplating the use of virtual meetings during this COVID-19 emergency. OIP thanks the boards that shared their experiences with us, especially the Board of Education (BOE) and the UH Board of Regents (BOR).

The Sunshine Law has specific requirements for public meetings using interactive conference technology (ICT) in section 92-3.5, HRS. Given the emergency order suspending the law, however, it may not be reasonable or feasible for boards to meet the exact requirements of the law, such as allowing members of the public to join board members in their homes from where they are participating by ICT in a virtual meeting during the stay-at-home order, or prohibiting action from being taken at an audio-only meeting on agenda items for which visual aids have not been made available to all meeting participants. Nevertheless, boards should do their best to follow the Sunshine Law's usual ICT and other requirements for public notices and meeting agendas, publicly available meeting materials, open access for public observation, public testimony, and meeting minutes (or recordings).

Boards have different resources and capacities and there are varying levels of public interest in each board. During this time, each board will need to find its own balance between providing public access and transparency and being able to successfully meet and conduct business as a practical matter. Even if a board is unable to provide the same level of access or transparency as it ordinarily would for some of the law's requirements, it should try to maintain a relatively high standard of access and transparency through the other requirements that may be less affected by this situation.

Because the purpose of the Governor's suspension of the Sunshine Law is to allow boards to meet and conduct business while complying with stay-at-home orders and implementing social distancing measures, any interactions between board members outside of a board meeting should still adhere to the Sunshine Law provisions governing permitted interactions under HRS section 92-2.5.

What follows are some tips and best practices on how to conduct virtual meetings during this COVID-19 emergency. For questions about the Sunshine Law itself, OIP's Attorney of the Day can be best reached by emailing ojp@hawaii.gov.

Stay safe and healthy, everyone!

Tips on Interactive Conference Technology (ICT) Requirements

- Be sure to work with your IT department to find ICT that is appropriate for your board and provides proper security. For example, free Zoom applications have been “zombombbed” with pornography and other unwanted content because the proper security settings have not been used. Government Zoom accounts set up by your IT department can protect against these unwanted breaches. The Office of Enterprise Services (ETS) has been working to establish Microsoft Office 365 Teams accounts for state government agencies. There are other ICTs, such as WebEx, Adobe Connect, Google Hangouts, AWS Chime, and GoToMeeting. For state boards and agencies, the ETS help line is 586-1900.
 - The State Procurement Office has used Adobe Connect and has the following information on its website as to how to use this ICT:
<http://spo.hawaii.gov/procurement-policy-board/virtual-participation-in-procurement-policy-board-meeting/>
- There are various levels of service offered by different ICTs, which may include both audio and video presentations that serve varying numbers of participants. In selecting your ICT, you may also want to consider the bandwidth that will be required to hold your virtual meeting without degradation in service and while still being accessible by most people. Although a virtual meeting conducted through both audio and video is preferable, your particular ICT may not be able to handle a large number of participants in a videoconference or your participants may not have the proper equipment, so your board might have to utilize an audio connection only. On the other hand, if you are heavily relying upon visual presentations during your virtual meeting, then videoconferencing may be necessary for board members and members of the public to be able to effectively participate.
- Be aware of potential problems with the ICT you will use. For example, one board disallowed chatting by attendees or showing attendee names because of past bad experiences where profanity was used in chat and even in posted names.
- Consider the equipment required by the board staff, board members, and members of the public to access the virtual meeting from home, such as a computer, keyboard, microphone, camera, phone, router, or cables to connect a router to a computer without wireless connectivity.
- Consider using ICT with the ability to record your virtual meeting so that you can post the recording on your board’s website at least until written minutes can be posted.

General Tips

- Establishing a set of ground rules for virtual meetings helps board members and the public know how the board will conduct its meetings, including any consistencies with and differences from the Sunshine Law. Understanding the capabilities of the ICT the board will use for its virtual meeting can help inform the ground rules. As an example, here is a link to the BOE's temporary rules for virtual meetings:
<http://boe.hawaii.gov/Documents/Temporary%20Rules%20of%20Operation%20%2804-02-2020%29.pdf>.
- A basic ground rule would be to have board members identify themselves and any other persons in the room from where they are participating in the virtual meeting. Board members should also announce whenever they leave the virtual meeting.
- Roll call votes should be taken or otherwise conducted in a manner that can be recorded to identify how each board member voted (e.g., “unanimously”).
- If there are connectivity problems, then the board should establish how long it will wait to restore connectivity, whether the loss of connectivity affects the board's quorum requirements, and whether a meeting will either be terminated or be continued to a predetermined date, time, and updated internet address to be posted on the board's website.
- The board should establish whether the board Chair, a facilitator, or some other person will recognize persons wanting to speak. In order to streamline the meeting and avoid having members talk over each other, the board may wish to establish a protocol for routine motions (such as approval of minutes) to be made by a particular member, with a second by another designated member.
- If the board is limiting the time allowed for each person to orally testify, it should be stated in the rules and on the agenda. There should also be a means for the Chair or facilitator to be able to unmute and identify each testifier, or to organize and summarize chat messages from the public.
- The deadline for submission of written testimony should be provided in the rules and on the agenda, although the board should strive to consider all testimony to the extent possible.
- If the board has support staff, it is critical to identify their roles and how they will assist in managing the meeting behind the scenes, such as communicating with board members and the public in the event of technical difficulties, resolving any connectivity issues board members may experience, and managing virtual oral testimony. This is particularly

important if each of the support staff is also participating remotely and is not in the same room. If the board does not have support staff, it may need to assign specific roles related to meeting management to individual board members.

- Before the actual meeting, test the ICT that the board will use for its virtual meeting many times and with each board member to identify and solve issues with equipment, connectivity, and virtual meeting procedures. If the board has support staff, they should test the ICT together, prior to testing with individual board members. Support staff will need to consider software, hardware, and internet connections when doing this testing. The quality of the internet connection of each board member will impact the ability of each board member to connect successfully and the quality of their video and/or audio connection.
- Provide detailed instructions to board members on how to access the ICT and highlight differences between participating via technology as opposed to an in-person meeting. Make sure that they know how to utilize basic features, particularly things like mute and chat.
- Meetings conducted virtually impact how board members interact with each other and with presenters. Board members that are comfortable with the ICT may participate more than usual, and conversely, board members that may not be comfortable will participate minimally or not at all. Even with video, board members will not have the same level of body language feedback that they usually have when sitting in a room together and that may impact discussions.
- Remind board members, especially the Chair, that there can sometimes be a delay and to allow a few seconds of extra time when asking if people have questions or comments. Also be sure that the Chair or meeting facilitator recognizes people by name so that the public and other participants are aware of who made what comments, who made and seconded motions, etc.
- Conduct a mock meeting or a “dress rehearsal” with all board members and support staff prior to the actual meeting, during which the board will not actually discuss the issues on its agenda but will practice connecting and speaking over the ICT to allow them to get familiar with the ICT, ground rules, and virtual meeting procedures and to identify any questions or potential problems. Consider preparing a script of an annotated agenda for the Chair or facilitator to conduct the meeting.

Tips for Public Notices and Meeting Agendas

- Boards should be able to follow all Sunshine Law requirements for public notice, with a few exceptions caused by the stay-at-home order or people’s lack of access to the proper equipment or technology. Some of the following tips go beyond the usual

requirements of the Sunshine Law, but are intended to provide the public with as much notice as possible, given the digital divide and extraordinary circumstances.

- Prepare a sufficiently detailed agenda.
 - When formulating the meeting agenda, consider limiting it to only essential business that the board needs to address during the emergency order. Public participation in meetings takes time and effort on the part of the public, and boards may not be able to fully comply with the Sunshine Law during this period. With the community already under tremendous stress, public meetings should not unnecessarily add to stress levels or be a means for boards to take advantage of the Sunshine Law's partial suspension to circumvent public participation.
 - In lieu of providing a physical location on the agenda, include the information to connect virtually. This can be a hyperlink, phone number, or other information.
 - Provide a telephone number and email address for people to contact the board for information on how they may be accommodated if they are disabled or do not have electronic access to the virtual meeting.
 - Consider adding links on the agenda to the public version of the board packet materials for the virtual meeting. If the board's physical office is closed so that the public cannot physically view those board packet materials, consider mailing them to people on the postal mailing list or asking those people to contact the board office if they want the materials mailed to their physical address if it is practicable to do so.
- Provide at least six calendar days' advance notice of the meeting.
 - Post the agenda on the relevant State or County electronic calendar and on your board's website.
 - If a fax machine or faxing software is unavailable, email a copy of your agenda to malcolm.hall@hawaii.gov in the Lieutenant Governor's office in lieu of faxing the agenda to the office.
 - Email meeting notices and agendas to the people on the board's email list.
 - Send meeting notices and agendas to the people on the board's postal mailing list, unless it is not feasible to do so while complying with the stay-at-home order.

- For emergency meetings when six days' advance notice is not feasible, follow the requirements of section 92-8, HRS, to the extent possible and obtain the Attorney General's concurrence to hold the emergency meeting.

Tips for Publicly Available Meeting Materials (Board Packets)

- Produce detailed materials for each substantive item on the agenda. This is a good practice in ordinary times, as providing more information in advance of a meeting gives board members as well as the public more time to consider the matter and encourages the public to provide more informed testimony, preferably in writing.
- As described in the agenda section above, consider making any publicly disclosable board packet materials electronically available to the public on the board's website and through hyperlinks on the meeting agenda. Consider whether any accommodations can or should be made for people on the postal mailing list, such as by mailing board packets to physical addresses. Advanced planning may be required, and whoever is responsible for developing meeting materials should know when the materials are due to the board for review and publication.

Tips for Open Access for Public Observation

- During the stay-at-home order, it will not be possible to have a physical meeting location open to the public. Once the order is lifted, then the board can consider other means to accommodate members of the public who are unable to participate in virtual meetings while still maintaining social distancing and safety precautions.
- A live audio stream is the most basic and achievable method for allowing the public to observe the virtual meeting and is a service any virtual board meeting should strive to provide.
- A live video stream of board members provides an additional layer of verification of the board members present and participating, but it adds complexity to the technical logistics, increasing the odds of technical difficulties, especially for boards with more members or a large number of public attendees. Moreover, not all members of the public will be able to access a live video stream on a computer and may need to call in instead, using a phone to participate. People that call in with a phone will be at a disadvantage if the meeting is conducted with the assumption that everyone can see each other via the live video stream.
- Showing a video feed from every attendee may be inadvisable (if even available), especially if the board expects a large number of members of the public to attend. The focus of attention in a virtual meeting is on the board members' discussion, so video

feeds showing attendees who are neither board members or presenters are mostly superfluous and consume valuable bandwidth. Further, such video feeds have potential for abuse and inappropriate behavior. Thus, a board may find it more practicable to show video only of the board members, possibly with the addition of any presenters, and allowing members of the public to view those video feeds but to participate themselves only via audio or, if bandwidth limitations require it, perhaps only via chat.

- If the board decides to provide a live stream of the virtual meeting, detailed instructions are needed to inform members of the public how to access the virtual meeting (e.g., screenshots, step-by-step instructions, etc.). Post these instructions on any relevant webpages on the board's website and include them on the notice to the board's mailing list.
- If the board is unable to provide a live stream, record at least the audio of the meeting and post the recording to the board's website immediately following the meeting for public inspection, if possible.
- Even if the board does provide a live stream, consider recording the meeting. Recording the meeting and posting the recording on the board's website shortly after the meeting concludes provides more access to the public, especially if some attendees experienced connectivity issues. Once the board approves the minutes of the meeting, the recording can be deleted, as an official record of the meeting will then exist (unless the recording serves as the official record).
- Institute roll call voting to ensure the public knows how each board member voted.

Tips for Public Testimony

- For meaningful testimony, give the public enough time to consider the items on the agenda and relevant meeting materials.
- At a minimum, allow the public to submit written testimony through email, which can be preserved for the board's record of the meeting.
- Before allowing live, oral virtual testimony, understand the limitations of the ICT being used for the virtual meeting. Allowing remote public testimony is not as simple as using ICT in a similar manner as organizations do for internal virtual meetings. For example, a virtual meeting with 400+ attendees who can unmute themselves at will creates a high probability for disruption. Understanding the various features, such as whether unmuting attendees is done by a meeting host or at the will of the attendees themselves, will help the board and its staff determine the best way to administer oral testimony, if at all. The capabilities and settings of the ICT can make administering oral testimony relatively simple or challenging with a risk for potential abuse or inappropriate behavior.

- Finding a way to allow live, oral virtual testimony becomes more important if the board is unable to provide the public with notice *and* access to any meeting materials at least six days prior to the board's meeting, because the lack of prior access to the notice and meeting materials reduces the public's time to consider the items on the agenda and formulate written testimony.
- If the board posts public testimony on its website, try to continue to post testimony as close to the start of the meeting as possible, even if deadlines have passed. This allows board members to see written testimony submitted before the meeting. For example, even if there is a deadline of 24 hours before a meeting, continue to post testimony up until an hour before the meeting if possible.
- Similar to the online testimony form used by the Legislature, the BOR created an online testimony submittal form to provide an easy way for public testifiers to submit testimony from the BOR's website, without having to send a separate email. See the screen shots below.

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Meeting Agenda, Minutes and Materials

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| Meeting Date | Meeting Type | Agenda | Minutes/Documents |
|--------------|------------------------------|------------------------|--|
| April 16 | Board of Regents | Agenda | + Materials |
| March 19 | Career & Technical Education | Agenda | + Materials |
| | Board of Regents | Agenda | Minutes + Materials |
| March 05 | Budget and Finance | Agenda | |

Public Testimony Form - University of Hawaii Board of Regents

Please provide your testimony on this form for the next University of Hawaii Board of Regents meeting. Make sure you include all the requested information so that the Board of Regents is able to clearly understand the testimony provided.

Your Name (required) *

Your Organization (optional)

Your e-mail address (in case we need to reach you) *

Board of Regents Agenda Item (required) *

Your Position (required) *

Support

Oppose

Comments Only

Your Testimony/Comments

Sans Serif Normal B I G U A [list] [list] [list]

Your Testimony (pdf or word)

PDF OR .DOC OR .DOCX

Tips for Meeting Minutes (or Recordings)

- Post written minutes (or a written summary with an official, archived digital recording) of the meeting on the board’s website as soon as possible, and not later than 40 days after the meeting, to give the public access to an official public record of the meeting. Section 92-9, HRS, sets forth the requirements for posting minutes, either written or a digital recording of the meeting.
- For greater transparency, a recording of the meeting could be placed on the board’s website until draft or board-approved written minutes are posted.