

# A BILL FOR AN ACT

RELATING TO SUNSHINE LAW BOARDS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

## PART I

SECTION 1. The legislature finds that the COVID-19 pandemic forced the implementation of emergency measures suspending certain requirements of the state's Sunshine Law in order to allow boards to virtually meet and conduct necessary business through the use of interactive conference technology, while protecting participants' health and safety and expanding public access to meetings throughout our island state. During the emergency stay-at-home orders and travel restrictions, it was not possible for board members, staff, or members of the public to attend public meetings in person. Through the use of interactive conference technology, however, virtual meetings enabled and enhanced board and public participation. Virtual meetings could be safely held and allowed more people from different islands or parts of islands to effectively participate, often during times when they would not otherwise be physically able to leave their work, homes, or schools to participate in an in-person meeting.

The legislature finds that the increased costs of staffing and technological equipment and resources needed to conduct virtual meetings are offset by the savings in time, convenience, travel costs for board members and participants, especially those from the neighbor islands. Importantly, virtual meetings help to prevent the spread of disease and protect the health and safety of all participants, particularly those who have disabilities or medical conditions that would place them at greater risks during travel or attendance at in-person public meetings. The legislature also finds that allowing board members to participate in virtual meetings from their homes or private offices, while protecting their privacy and not requiring them to allow members of the public into their homes or private offices, may increase the number of volunteers willing to serve on government boards, particularly when they live on an island different from where the boards' offices are located.

The legislature further finds that the benefits of virtual meetings should continue in non-emergency times and that permanent amendments are needed to the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes. Except for times of emergency, the legislature recognizes the need for boards conducting virtual meetings to also provide for an in-person meeting location where members of the public can observe the

virtual meeting or testify in person using interactive conference technology provided by the board, without requiring board members to be at the in-person location. Finally, recognizing that not all boards are equipped with adequate staffing or technological equipment and resources to conduct virtual meetings, the legislature finds that these amendments should permit, but not require, boards to conduct virtual meetings.

Therefore, the purpose of this Act is to expand and enhance public participation in public meetings, while protecting the health and safety of board members, staff, testifiers, observers, other participants, and the general public, by allowing boards to use interactive conference technology to conduct virtual meetings under the Sunshine Law.

## PART II

SECTION 2. Section 92-3.5, Hawaii Revised Statutes, is amended to read as follows:

**"§92-3.5 Meeting by interactive conference technology; notice; quorum.** (a) A board may hold a meeting by interactive conference technology; provided that:

(1) ~~[¶]~~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.]~~

(2) Board members shall be visible and audible to other members and the public during the public meetings; provided that during executive meetings from which the public has been excluded, board members shall be audible to other authorized participants and are not required to be visible;

~~[(b)]~~ (3) 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.] board;

(4) At the start of the meeting the presiding officer shall announce the names of the participating members;

(5) Unless unanimous, votes shall be conducted by roll call so that it is clear how each board member voted;

(6) To preserve the executive nature of any portion of a meeting closed to the public, all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations, and the person organizing the interactive conference technology shall confirm that no unauthorized person has access to the executive meeting

as indicated on the control panels of the interactive conference technology being used for the meeting, if applicable; and

(7) When practicable, boards shall record meetings and make the recording of any meeting open to the public electronically available to the public as soon as practicable after a meeting and until such time as the minutes required by section 92-9 are electronically posted on the board's website.

~~[(e)]~~ (b) A meeting held by interactive conference technology shall be ~~[terminated]~~ recessed for up to one hour when audio communication cannot be maintained with a quorum of members or with the public ~~[at]~~ location[s] where the meeting by interactive conference technology is being ~~[held,~~ even if a quorum of the board is physically present in one location.] held; provided that the meeting may reconvene when only audio communication is reestablished. If audio-only communication is reestablished, then each speaker shall be required to state their name prior to making their remarks. 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.]~~

[e](c) A board holding a meeting by interactive conference technology pursuant to this section shall not be required to allow members of the public to join board members at non-public locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall identify who, if anyone, is present at the non-public location with the member; and provided further that the notice required by section 92-7 shall:

- (1) List at least one meeting location that is open to the public; and
- (2) Inform members of the public how to:

- (A) Remotely view the video and audio of the meeting through internet streaming or other means; and
- (B) Provide oral testimony through an internet link, telephone conference, or other means.

[~~f~~](d) Notwithstanding section 92-3, a board may require members of the public attending a meeting in person to:

- (1) Provide their names and contact information for the purpose of contact tracing; and
- (2) Abide by the board's requirements for facial coverings, physical distancing, or other safety measures;

when the governor has previously declared a state of emergency for a contagious illness and, without regard to whether the state of emergency is still in effect, a board reasonably believes that such requirements are necessary because of the continuing prevalence of the contagious illness for which the state of emergency was declared."

SECTION 3. Subsection (a) of section 92-7, Hawaii Revised Statutes, is amended to read as follows:

"(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; the board's contact information for submission of written testimony by electronic mail and postal mail; 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."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon on July 1, 2021.

**Report Title:**

Sunshine Law; Interactive Conference Technology; Virtual Meetings

**Description:**

Authorizes the use of interactive conference technology to virtually conduct public meetings under the Sunshine Law. Authorizes boards to exclude the public from non-public locations, such as homes, where board members are physically present if the board meetings are held by interactive conference technology and members of the public are allowed to participate in the meeting at an in-person public location. Establishes requirements for the conduct of virtual meetings. Requires meetings held by interactive conference technology to recess, rather than terminate, when audio communication cannot be maintained and may reconvene when audio-only communication is reestablished. Establishes a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail, which also applies to virtual meeting agendas.

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