.B. NO.\_\_\_

OIP DRAFT: October 22, 2020

A BILLFOR 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.

Based on boards' experiences with virtual meetings during the COVID-19 pandemic, 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, and travel costs for board members and participants, especially those from the neighbor islands. During the COVID-19 pandemic, virtual meetings helped to prevent the spread of disease, and even when there is not an ongoing pandemic, the legislature finds that virtual meetings can be a way to protect the health and safety of 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, which requires permanent amendments to the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes. For virtual meetings not held during times of emergency, the legislature recognizes the need for boards to also provide for an in-person meeting location where members of the public can come to 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 purposes of this Act are to expand and enhance public participation in public meetings, to lower the costs of holding meetings, to protect public health and safety, to promote voluntary participation on boards, and to avoid unnecessary and possibly burdensome travel by 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[~~the~~]:

(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) Except as provided in subsection (b), 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[~~.~~];

(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, the presiding officer shall publicly state the names and titles of all authorized participants, and upon convening the executive session all participants shall confirm to the presiding officer that no unauthorized person is present or able to hear them at their remote locations or via another audio or audio-visual connection 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 open to the public and make the recording of any such meeting 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.

[~~(c)~~] (b)  A meeting held by interactive conference technology shall be [~~terminated~~] automatically recessed for up to one hour to restore communication when audio-visual communication cannot be maintained with [~~all~~] a quorum of members or with the public 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.~~] or with the remote public broadcast identified in the board’s notice. This section shall not apply based on the inability of a member of the public to maintain an audio-visual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audio-visual link to the meeting. The meeting may reconvene when either audio-visual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audio-visual communication, but only if the board has provided reasonable notice to the public as to how to access the reconvened meeting after an interruption to communication. If audio-only communication is established, 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 made available to all meeting participants[~~, at all locations where audio-only interactive conference technology is being used,~~] including those participating remotely within fifteen minutes after audio-only communication is used, either by posting on the internet or by other means, those agenda items for which visual aids are not available for all participants [~~at all meeting locations~~] cannot be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this section within one hour after an interruption to communication, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, the meeting shall be automatically terminated at that time.

 [~~(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 state 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 contemporaneously:

1. Remotely view the video and audio of the meeting through internet streaming or other means; and
2. 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 solely for the purpose of contact tracing, which information shall not be disclosed or used for any other purpose and shall not be maintained any longer than necessary; 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. Section 92-7, Hawaii Revised Statutes, is amended by amending subsection (a) 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 electronic and postal contact information for submission of testimony before 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."

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

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

INTRODUCED BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BY REQUEST

**Report Title:**

Sunshine Law; Interactive Conference Technology; Virtual Meetings

**Description:**

Expands board and public participation by allowing, in conjunction with in-person meetings, the use of interactive conference technology to virtually conduct public meetings under the Sunshine Law, whether or not an emergency has been declared by government authorities. 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 for a maximum prescribed period, 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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