.B. NO.\_\_\_

REVISED: November 20, 2020

1ST Draft Date: August 31, 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 continue meeting and conducting necessary business, 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, board members, staff, or members of the public could not attend public meetings in person. In lieu of traditional in-person meetings, remote meetings connected people in different physical locations through the use of interactive conference technology and thus enabled and enhanced board and public participation. Remote meetings, popularly referred to as "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 or authorized to leave their work, homes, or schools to participate in an in-person meeting.

Based on boards' experiences with remote meetings during the COVID-19 pandemic, the legislature finds that the increased costs of staffing, technological equipment and resources needed to conduct remote 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, remote meetings helped to prevent the spread of disease, and even when there is not an ongoing pandemic, the legislature finds that remote 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 remote meetings from their homes or private offices, while protecting their privacy by not requiring them to allow members of the public into private sites, 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. Additionally, allowing boards to conduct remote meetings within reasonable restrictions to ensure board transparency and public access, would help to increase public participation in the formation and conduct of public policy.

The legislature further finds that the benefits of remote meetings should continue in non-emergency times, which requires permanent amendments to the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes. For remote 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 remote meeting or testify in person using interactive conference technology equipment provided by the board, without requiring board members to be at the in-person location. This allows members of the public who do not have the equipment, internet connection, desire, or ability to readily access an online meeting a way to view the meeting and testify in person, as has traditionally been the method of conducting meetings, even if the board members themselves are not physically in the same room.

Remote meetings could also take advantage of the relative ease of recording a meeting using interactive technology via many remote meeting platforms, and thus this proposal would require, when practicable, a board conducting a remote public meeting to also record the meeting and provide public access to the recording until such time as the actual meeting minutes have been posted online. This would benefit the public by allowing even those members of the public who were not able to attend the meeting itself to still find out what happened via the recording, without requiring the board to record a remote meeting or provide access to the recording when it determines that doing so is not practicable.

Recognizing that not all boards are equipped with adequate staffing or technological equipment and resources to conduct remote meetings in a manner that ensures public access as outlined in this bill, the legislature finds that these amendments should permit, but not require, boards to conduct remote meetings. These amendments would also continue to provide boards an alternative option to conduct an in-person meeting with board members and other participants physically present at multiple public meeting sites connected using interactive conference technology, as the Sunshine Law currently allows. Retaining this option will continue to allow for greater public participation between islands or parts thereof in those circumstances when a board may not have sufficient internet bandwidth, staffing, or resources to effectively administer an online meeting or to accommodate a potentially large, world-wide audience that could possibly disrupt or overwhelm an online meeting and drown out the voices of residents in Hawaii's communities.

Thus, this bill gives boards various options in how they could conduct public meetings: (1) in the traditional manner with all participants in person at a single site; (2) in an in-person meeting with board members and other participants physically present at multiple meeting sites connected using interactive conference technology; or (3) in a remote meeting using interactive conference technology to connect board members and other participants from non-public physical locations, with at least one public meeting site where people can attend in person to testify or view the remote meeting using the equipment provided by the board. To supplement the public meeting sites, the bill also recognizes that boards may list on their agendas additional locations open for public participation where the loss of audiovisual connection to the public meeting shall not necessarily result in termination of the public meeting. While all public meeting options require at least one physical location where participants can attend in person, this bill does not affect the Governor's emergency powers to suspend in-person meetings or other Sunshine Law requirements that are not feasible if the COVID-19 pandemic continues or another emergency arises.

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 the option to use interactive conference technology to conduct remote meetings under the Sunshine Law, while still retaining the option to conduct traditional in-person meetings at a single meeting site or at multiple meeting sites connected by interactive conference technology.

PART II

SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"**§92- Remote meeting by interactive conference technology; notice; quorum.**  (a)  A board may hold a remote meeting by interactive conference technology. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person 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. The notice required by section 92-7 shall:

(1)  List at least one meeting location that is open to the public;

(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 remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.

The notice required by section 92-7 may also list additional locations open for public participation and shall specify whether, in the event an additional location loses its audio-visual connection to the remote meeting, the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) For a remote meeting held by interactive conference technology pursuant to this section:

(1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;

(2) Except as provided in subsections (c) and (d), a quorum of board members shall be visible and audible to other members and the public during the meeting; provided that so long as a quorum of board members is visible, no other meeting participants shall be required to be visible during the meeting;

(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; and

(6) 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)  A meeting held by interactive conference technology shall be automatically recessed for up to one hour to restore communication when audio-visual communication cannot be maintained with a quorum of members or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). 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.  Within fifteen minutes after audio-only communication is established, copies of nonconfidential visual aids, which are required by or brought to the meeting by board members or as part of a scheduled presentation, shall be made available either by posting on the internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not 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, then the meeting shall be automatically terminated.

(d) 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. 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. 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."

SECTION 3. Chapter 92, Hawaii Revised Statutes, is amended by adding a new section to part I to be appropriately designated and to read as follows:

"**§92- Contact tracing.** 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 4.  Section 92-3.5, Hawaii Revised Statutes, is amended by amending the definition of "interactive conference technology" to read as follows:

""Interactive conference technology" means any form of [~~audio or~~] audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members."

SECTION 5. Section 92-3.5, Hawaii Revised Statutes, is amended to read as follows:

"**§92-3.5 [~~Meeting~~] In-person meeting at multiple sites by interactive conference technology; notice; quorum.** (a) A board may hold an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audio-visual 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. The notice may list additional locations open for public participation but where no participating board members will be physically present, and in the event one of those additional locations loses its audio connection to the remote meeting, the notice shall specify whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

(b) Any board member participating in a meeting by interactive conference technology under this section 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 under this section shall be [~~terminated~~] automatically recessed for up to one hour to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held, even if a quorum of the board is physically present in one location. The meeting may reconvene when either audio or audio-visual communication is restored. [~~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~~] Within fifteen minutes after audio-only communication is [~~used,~~] established, copies of nonconfidential visual aids, which are required by or brought to the meeting by board members or as part of a scheduled presentation, shall be made available either by posting on the internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants at all meeting locations [~~cannot~~] shall not 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, then the meeting shall be automatically terminated.

(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."

SECTION 6. 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 7.  Statutory material to be repealed is bracketed and stricken.  New statutory material is underscored.

     SECTION 8.  This Act, upon its approval, shall take effect on July 1, 2021.

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

BY REQUEST

**Report Title:**

Sunshine Law; Interactive Conference Technology; Remote Meetings

**Description:**

Expands board and public participation by giving boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings under the Sunshine Law, even when no 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 when remote board meetings are held by interactive conference technology, with members of the public given the option to participate either remotely or at an in-person public location. Establishes requirements for the conduct of remote meetings. Requires remote meetings held by interactive conference technology to recess for a maximum prescribed period when audio-visual communication cannot be maintained by the board (not due to a member of the public's inability to maintain such communication) and allows the meeting to be reconvened even if only audio communication can be 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 remote meeting agendas.  Amends existing option to hold in-person meetings at multiple public meeting sites connected by interactive conference technology to require termination of meeting only if audio communication is lost and cannot be reestablished within an hour and the board had not provided reasonable notice of how the meeting would be continued. Allows for additional courtesy sites open to the public for both remote and in-person meetings held by interactive conference technology.

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