

## Sunshine Law Amendments Allowing Remote Meetings

July 8, 2021

Governor David Ige signed into law landmark legislation allowing Sunshine Law boards to remotely conduct public meetings, effective January 1, 2022. Act 220, Session Laws of Hawaii 2021, enacts [Senate Bill 1034](#), [Senate Draft 1](#), [House Draft 2](#), [Conference Draft 1](#), which adds a new option to the Sunshine Law that will allow boards to hold remote meetings via interactive conference technology (ICT), such as online meeting platforms like Zoom or WebEx, teleconferences, videoconference, and voice over internet protocol. The new law also amends the existing option for boards to hold a public meeting at two or more physical locations connected by ICT, requires all meeting notices to list the board's contact information for submitting testimony, and requires the Office of Information Practices (OIP) to report on the implementation of remote meetings before the 2023 session. The bill's various drafts, committee reports, testimony have been posted on OIP's legislation page under the [Sunshine Law's legislative materials as Act 220, SLH 2021](#).

### **New Meeting Option: Remote Meeting**

As the Legislature and boards have been doing during the COVID-19 pandemic, boards will be given the option under the Sunshine Law to hold remote meetings so that members of the board and the public may participate from their homes, workplaces, or other locations without having to show up in person at a physical meeting site. While the bill thus expands public and board participation and access throughout our island state by allowing for remote meetings, it also recognizes that there is a digital divide that could affect members of the public or board who do not have the equipment, reliable internet connection, skills, or desire to participate online. Therefore, a board must also provide at least one physical location, with guaranteed connection via ICT to the remote meeting, where board members and the public can go to participate in person if they so desire. Although a board is not required to provide more than one physical location, it may choose to provide for the public's convenience additional physical locations with ICT connectivity to the remote meeting, but without being required to terminate the meeting if connectivity is interrupted or lost to those courtesy sites.

If the board's ICT connection for the remote meeting and mandated physical location are lost, however, the meeting must recess until the connection is restored. In the event the board is only able to re-establish an audio connection, the meeting can continue as audio-only, assuming the notice adequately explained how to access the reconvened meeting, but the board cannot act on items involving visual aids unless those are shared with all participants, and all speakers must state their name when making remarks. If the connection cannot be restored within 30 minutes, the board must either continue the meeting to a reasonable date and time as previously set out in the notice, or terminate the meeting. For transparency, board members who are participating remotely from their homes or other private locations must announce who is at the private location with them. The board must also announce the names of participating members at the beginning of the meeting, and voting must be by roll call except where a vote is unanimous. A quorum of board members must be visible online, except when full visibility cannot be restored after a connection problem, or during executive sessions closed to

the public when board members need only be audible. To ensure confidentiality for the executive session, the names of authorized participants must be announced and the participants must confirm that no unauthorized person is present, and if the online meeting platform is one that shows who is connected, the person running the meeting must confirm that only the authorized participants are connected.

Note that if the bill had required “all” board members to be visible at all times, boards may have been unable to conduct remote meetings if they had any member who was disabled, travelling or located on another island and lacked the online connectivity, equipment, or skills to be able to participate online or in person and could do so only by teleconference or voice over internet protocol. Moreover, the visibility requirement does not apply to members of the public, who can now participate more conveniently online from their homes, schools, workplaces, or other locations on any island. Finally, to take advantage of the recording ability offered by many online meeting platforms, a board must record a remote meeting “when practicable,” and make the recording available to the public after the meeting until such time as the meeting minutes have been posted online.

### **Current Meeting Option as Revised: Multi-Site Meeting**

The bill retains the Sunshine Law’s existing option for a board to hold a multi-site meeting, in which the meeting is held across two or more physical locations connected by ICT. For this option, all meeting locations must be open to the public and listed on the notice, and board members can participate only from the noticed locations. Only a member hampered from in-person attendance by a disability can participate remotely from a private location after announcing who else is present with the member. A substantive change this bill makes for multi-site meetings is that boards will not have to automatically terminate a meeting if ICT connectivity is lost between the official meeting sites. Boards will have 30 minutes to restore connectivity between the official meeting sites before having to either terminate or, with adequate notice, continue the meeting to a reasonable time and place. These requirements, however, do not apply to the “additional locations” where no board members will be present and which OIP formerly referred to as “courtesy” sites. Boards may choose to expand convenient public access by setting up additional locations where, with advance notice to the public, an interruption in connectivity will not cause the termination or continuance of the official meeting.

### **New Requirement for Meeting Notice**

For all types of meetings, a board’s notice must now include its electronic and postal contact information for the public to submit testimony before the meeting.

### **Report on Remote Meeting Implementation**

Finally, this bill requires OIP, in consultation with the Disability and Communication Access Board and the Office of Enterprise Technology Services, to assess and report on the implementation of remote meetings, including participation by members of the public who need an accommodation due to a disability, before the 2023 legislative session. Therefore, OIP hopes that the boards and the public will share their experiences with OIP next year when the new law goes into effect.