

## Quick Review: Sunshine Law Meeting Notice Requirements (October 2021)

For boards subject to the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), here is a quick review of the Sunshine Law's notice requirements for public meetings, which includes amendments allowing boards to conduct remote meetings effective January 1, 2022.

All Hawaii State and county boards that are subject to the Sunshine Law **must provide timely notice of all regular, special, or rescheduled meetings, and of executive meetings that are anticipated in advance**, in accordance with section 92-7, HRS. Please note that remote meetings (new section 92-\_\_, HRS), in-person **meetings held at multiple sites by interactive conference technology** (section 92-3.5, HRS), and **limited meetings** (section 92-3.1, HRS) are subject to the following provisions on notice as well as other conditions set forth in the applicable sections of the Sunshine Law. **Emergency meetings** (section 92-8, HRS) must also be noticed, but notice may be filed within a shorter time period than the normal six days, and there are additional conditions.

**Contents:** The notice **must** include the following:

- Date of the meeting;
- Time of the meeting;
- Location(s) of the meeting, including all sites where board members will be physically present for an in-person meeting and the required physical meeting site for a remote meeting;
- Board's electronic and postal contact information for testimony;
- Instructions on how to request a disability accommodation;
- Agenda listing all items to be considered at the meeting;
- If applicable, the purpose of an executive meeting; and
- For a remote meeting using interactive conference technology (ICT), online connection information for the public to attend and testify.

The notice **may** include:

- **Additional locations** provided for the public's convenience, but must state whether the meeting will continue without the additional location or be automatically recessed to restore communication if the ICT connection between the additional location and the public meeting site(s) is lost. For an in-person meeting, the notice must also state that no board members will be attending from an additional location.
- If a meeting is being connected **remotely or between multiple in-person sites using ICT**, the notice may include arrangements in the event of an ICT connection interruption during the meeting, such as **reconnection information, information on how to access visual aids**, or an alternative date, time, and

place for **continuation** of the meeting if the ICT connection is lost for longer than 30 minutes.

**File/post/mail/email:** At least **six calendar days before** non-emergency meetings, the notice **must** be:

- Electronically posted on the State Calendar (State agencies) or the appropriate county calendar (county agencies), which is the official filing;
- Filed with the Office of the Lt. Governor (State boards), or the county clerk's office (county boards) for physical posting by those offices in a central location in a public building (e.g., State Capitol or county buildings), and a proof of filing retained (but a failure to meet this requirement doesn't require cancellation of the meeting);
- Physically posted at the board's office for public inspection;
- Physically posted at the meeting site (when feasible); and
- Provided to persons requesting notification by postal or electronic mail.

**Practice tips:**

- Newspaper publication under section 1-28.5, HRS, is not required for Sunshine Law notices.
- The Sunshine Law requires that boards maintain a list of persons who wish to receive the notice by **postal or electronic** mail. For persons **who requested to be on a board's email or postal mailing list, the emails should be sent out and the meeting notices should be postmarked for delivery by regular U.S. Postal Service mail at least six calendar days before the meeting, or OIP will routinely advise the board to cancel the meeting.**
- If the agenda electronically posted on the county calendar does not reflect the date of the actual posting, then county boards should print and time-stamp a copy of the posted agenda to retain as proof of the date that the agenda was posted. The State Calendar provides this information, so State boards can just print out and keep a copy of the posted agenda in its files.
- Boards are not required by the Sunshine Law to file a notice when **cancelling a meeting**. A board's mere failure to be present at a noticed meeting automatically cancels the meeting. However, as a courtesy to the public, OIP recommends taking down the electronic calendar notice, posting notification of the cancelled meeting at the board's office and at the meeting location, and informing those people who asked to receive notice by email.
- Boards wishing to **change the date or time of a meeting** should cancel the original meeting and **file a new notice** at least six days in advance of the new date and time.

- If a board must **change the physical location** of a meeting on the day of the meeting (for example, the room loses power or air conditioning), it should call the meeting to order at the noticed location, and then announce that the meeting will be recessed and continued shortly thereafter in the new location, in accordance with section 92-7(d), HRS. A written notification of the new meeting location should be posted at the originally noticed location.
- If a board needs to change or correct the link to a remote meeting, it should cancel the original meeting and **file a timely new notice with the correct link.**
- When a board is unable to complete an agenda, the Sunshine Law allows the board to **continue a meeting** by announcing a reasonable date and time for the continued meeting to those in attendance at the meeting. At the continued meeting, the discussion may only be a continuation from the original meeting, allowing discussions of agenda items where the board left off. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting. Boards need not file notices for continued meetings, but if practicable, a board should complete and attach OIP's "Notice of Continuance of a Meeting" form to the agenda that was filed for the original meeting, post it at the board's office and electronically on the State calendar (State agencies) or the appropriate county calendar (county agencies), and send it to the board's email list. A board should not place the items continued from a previous meeting together with new items on the agenda for a new meeting unless it is prepared to hear testimony again on the continued agenda items, as they would then effectively be agenda items to be considered at the new meeting rather than agenda items still under consideration as part of a continued meeting. For more detailed information, see OIP's "Quick Review: Continuance of a Meeting Under the Sunshine Law," which is posted, along with the Notice form, on the [Training page at oip.hawaii.gov](#).
- If there is a non-emergency **joint meeting** with two or more boards, then each board is responsible for meeting the Sunshine Law's requirements, but they can coordinate to avoid duplicative actions. **All boards must ensure that notices are mailed to persons on their own postal and email mailing lists;** but if a person is on more than one mailing list, the Sunshine Law's notice requirement is met as long as one of the boards sends the notice to that person. If one board meets all Sunshine Law requirements, but the other board in a joint meeting fails to do so, then the first board can proceed with the meeting without the second board. The second board must cancel its meeting and cannot have a quorum or more of its members in attendance at what was originally planned as a joint meeting with the first board. For additional information about joint meetings, see OIP's "Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law," which is posted on the [Training page at oip.hawaii.gov](#).
- When a board member will attend an in-person meeting via an **audio and video** connection from a private location (e.g., home or hospital room) due to a

disability limiting the member's ability to attend in-person, the specific address of the private location need not be listed on the notice.

- To meet the Sunshine Law's requirement to include instructions on how to request an auxiliary aid or accommodation, the State Disability and Communication Access Board (DCAB) recommends the following language for a board's agenda: "If you require an auxiliary aid or accommodation due to a disability, please contact (808) \_\_\_\_\_ (voice/tty) or email [the board] at \_\_\_\_\_ by [date]." For more information, contact DCAB at (808) 586-8121. OIP has no jurisdiction over federal and state laws relating to the rights of the disabled, so boards should seek the advice of DCAB or their own attorneys.

**Failure to follow the Sunshine Law's notice requirements may necessitate cancellation of the meeting.** If the meeting nevertheless proceeds, a court may void any final action taken in violation of the Sunshine Law's notice requirements. A suit to void any final action must be commenced within 90 days of the action.

For guidance and examples on how to write an agenda, please consult related materials on [OIP's Training page at oip.hawaii.gov](https://oip.hawaii.gov), which include Agenda Guidance for Sunshine Law Boards, a Public Meeting Notice Checklist, a Notice of Continuance form and a Quick Review on Meeting Continuances. For additional assistance, please contact OIP's Attorney of the Day by calling (808) 586-1400 or emailing [oip@hawaii.gov](mailto:oip@hawaii.gov).