

Quick Review: Sunshine Law Requirements for Public Meeting Minutes (December 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 minutes requirements for public meetings. The previous Quick Review from July 2018 was updated to include amendments effective January 1, 2022.

All Hawaii State and county boards that are subject to the Sunshine Law must keep minutes of all meetings, including executive sessions. Minutes of a public meeting must be available to the public, upon request, within 40 days after the date of the meeting. HRS § 92-9(b).

This automatic disclosure requirement, however, does not apply to the minutes of executive meetings that are properly closed to the public. Executive meeting minutes may be withheld to the extent that their disclosure would defeat the purpose of closing the meeting to the public in the first place. HRS § 92-9(b).

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Minutes must provide "a true reflection of the matters discussed at the meeting and the views of the participants." HRS § 92-9(a). The primary purpose for minutes is to record what the decision-makers (the board members) did and discussed during the meeting, so that the public can scrutinize their actions. While the law also requires the minutes to reflect the views of participants in the meeting who are not board members, it is sufficient for the minutes to describe, in very general terms, the positions expressed by these other participants.

A board is not required to keep a transcript of a meeting, although a transcript can serve as minutes if the board prefers. Paraphrasing the discussions and testimony taking place at the meeting is fine, so long as readers can tell what was discussed and what the various participants' views were.

Minutes are required to include the following specific information:

- (1) The date, time and place of the meeting;
- (2) The members of the board recorded as either present or absent;
- (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken; and
- (4) Any other information that any member of the board requests be included or reflected in the minutes. HRS § 92-9(a).

For remote meetings held using interactive conference technology (ICT), Act 220, SLH 2021, amended the Sunshine Law, effective January 1, 2022, to provide:

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

OIP interprets this provision to generally require boards to record a remote meeting and place the recording online until the meeting minutes are posted, but only when doing so is practicable. Online meeting platforms typically offer a straightforward option to record a meeting. Boards using such platforms are required to use that option and make the recorded meeting available for public viewers who may not have been able to watch the live meeting. In situations where recording and posting are not practicable, the board will not violate the law by its failure to do so. A board may choose to use the recording, with the addition of a written summary, as its recorded minutes under section 92-9, HRS. Alternatively, if it prefers to keep written minutes, a board can delete the recording once its written minutes are posted online.

Practice tips:

- The Sunshine Law does not require board approval of meeting minutes. Although many boards choose to approve their minutes at a subsequent meeting, the Sunshine Law still requires that minutes be made available within 40 days after a meeting, even if the board has not yet approved the minutes. If a board receives a request for minutes of a meeting held 40 or more days ago and the minutes have not been finalized, the board should provide a record of the meeting in whatever form it then exists, even if it is in draft form or in the form of notes. The board can stamp the minutes as a "DRAFT" and let the requester know that a final version will be forthcoming later, but if 40 or more days have elapsed since the meeting, the board must provide minutes of some sort upon request.
- Draft minutes are often circulated to board members to review and make corrections in advance of the meeting at which the minutes will be approved. To avoid potential problems with serial communications and discussions outside of a properly noticed meeting, however, board members' comments and revisions should not be circulated to other board members. Changes could instead be directed to and incorporated into a revised draft by staff for distribution to board members, without identifying the board members who suggested the revisions.

- Minutes should reflect who spoke and the gist of what was said. Instead of simply stating that “Discussion was had,” minutes should summarize or paraphrase the board members’ discussion, such as, “Member A asked whether . . .” and “Member B stated that . . .”
- Minutes should reflect a participant’s testimony that was presented, but it is sufficient for the minutes to reflect it in a minimal form, such as, “Kimo Doe testified against the proposal to”
- A board member’s right to request that specific information be included in the minutes only applies while the meeting is still taking place. During a meeting, a board member can make a request such as, “Please let the minutes reflect that I own property adjacent to the parcel discussed in agenda item 5,” or “I would like these written remarks included in the minutes verbatim,” and the board must honor the request. The board member cannot wait until after the meeting, however, to insist that the minutes be amended to include specific information.
- Even after voting to approve a particular set of minutes, a board may choose to amend the minutes at some later time. So long as the minutes continue to provide a true reflection of what happened at the meeting and include the information required by law, there is no Sunshine Law violation when amending old minutes. Since the Sunshine Law does not have procedures for amending minutes that have already been adopted, OIP recommends that boards follow their own procedures or consult with their attorneys regarding such amendments.
- There is no requirement in the Sunshine Law that boards maintain a list of persons who wish to receive minutes, or that boards post minutes online. How long minutes are kept available on a website, if at all, depends on the board and its retention policy, if any, and is not covered by the Sunshine Law. Moreover, there is no right under the Sunshine Law to make a continuous, standing request for copies of a board’s minutes.
- Once disclosure of executive meeting minutes, or relevant portions thereof, would no longer defeat the purpose of closing the meeting to the public, they should be made available to the public, if requested. For example, minutes of an executive meeting to discuss a proposed land purchase could generally be disclosed once the deal was completed. On the other hand, if an executive meeting was held to protect the privacy of an employee being evaluated, the purpose for the executive session generally could continue to apply indefinitely.

For additional assistance, please check out OIP's training materials, including the Sunshine Law Guide, at oip.hawaii.gov. For general advice, you may contact OIP's attorney of the day by calling (808) 586-1400 or emailing oip@hawaii.gov.