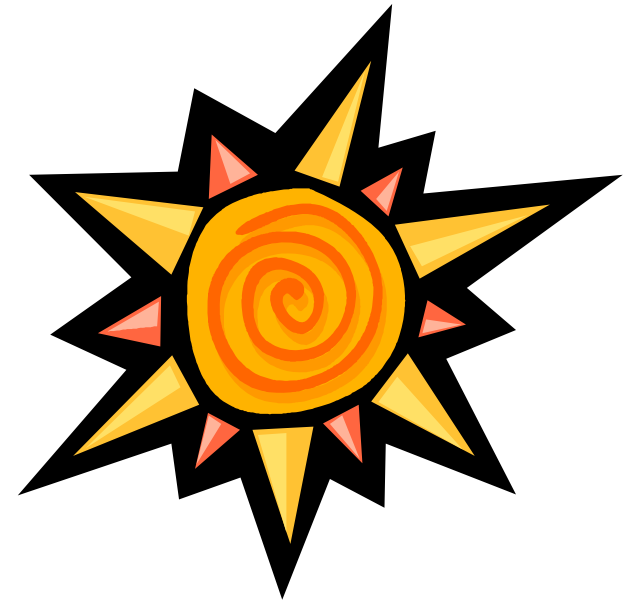


# Summary of the Sunshine Law



## Hawaii's Open Meetings Law

Part I of Chapter 92, HRS

Presented by the State Office of Information Practices (“OIP”)

More comprehensive training at  
[www.oip.hawaii.gov](http://www.oip.hawaii.gov)



# What's the purpose?

- Protect public's right to know
- Open governmental process to public scrutiny and public participation



# Common Policy of Both the Sunshine Law and the UIPA

“[I]t is the policy of this State that the formation and conduct of public policy -- the discussions, deliberations, decisions and actions of government[al] agencies -- shall be conducted as openly as possible.”



# Sunshine Law's Intent

## Sec. 92-1, HRS

- Protect the **people's right to know**;
- Provisions requiring open meetings shall be **liberally** construed; and
- Provisions providing for exceptions to the open meetings requirements shall be **strictly construed against closed meetings**.



# Sunshine Law's Basic Requirements

1. **All discussions, deliberations and decisions** regarding **board business** must be conducted at a meeting
2. Every meeting must be **open**, unless specifically allowed to be closed by law
3. Boards must provide **notice** and access to **board packet**
4. Boards must accept **testimony**
5. Boards must keep **minutes**



# “Board Business” Defined

“Specific matters over which a board has supervision, control, jurisdiction, or advisory power, that are actually pending before the board, or that can be reasonably anticipated to arise before the board in the foreseeable future.”



# “Board Business” Elements

- Specific matters within the board’s authority
- On current or future agenda



# No discussions, deliberations, or decisions outside a meeting

- No caucuses
- No polling
- No telephone discussions
- No texts
- No e-mails
- No memos





# Permitted Interactions

1. Two members only
2. Investigation
3. Present, discuss or negotiate
4. Selection of officers
5. Testimony when no quorum
6. Other entity's meeting
7. Meet with Governor
8. Meet with Department Head
9. Legislative testimony



# Permitted Interaction: Two Members Only

Two members only:

- Not a quorum
- No horse trading
- No serial communications with others



# Permitted Interaction: Investigations

- Less than a quorum
- Scope of investigation defined at a meeting
- Findings and recommendations presented at a 2<sup>nd</sup> meeting
- Deliberation and decision-making at a 3<sup>rd</sup> meeting



# Examples of “Investigation” Permitted Interactions

- Confidential interviews
- Site inspections
- Confidential product demonstration
- Receipt and consideration of confidential information
- Logistical reasons



# Permitted Interaction: Present, Discuss, Negotiate Board's Position

- Less than a quorum
- Only for “any position which the board has adopted at a meeting of the board”
- Members assigned and authority is defined at a prior board meeting



# Permitted Interaction - Selection of Board Officers

- Less than a quorum
- OK to discuss in private the selection of board officers



# Permitted Interaction: No Quorum

- Less than a quorum, therefore board meeting is cancelled or terminated as a matter of law
- But members at cancelled/terminated meeting can receive testimony and ask questions; must create a record; but cannot deliberate and decide
- At subsequent board meeting, must provide copies of testimony and report on testimony received at the cancelled or terminated meeting



# Permitted Interaction: Meeting of Other Entities

- Less than a quorum
- Attending another entity's meeting or presentation that is not specifically and exclusively organized for or directed toward the board members—e.g., legislative hearing, convention, seminar, community meeting
- Board members may participate in discussions of board business, provided no commitment to vote is made or sought
- At the next duly noticed board meeting, attendees shall report their attendance and the board matters presented or discussed at the other entities' meeting.





# Permitted Interaction: Meet with Governor

- All members ok to attend
- No discussion of a matter over which board is exercising its adjudicatory function

# Permitted Interaction: Meet with Department Head

- All members ok to attend
- Can discuss with department head administrative matters



# Permitted Interaction: Legislative Testimony

- Applies when legislative deadline is less than 6 days, so not enough time to notice a Sunshine Law meeting
- **Any number** of board members may circulate for approval draft legislative testimony based on a position previously adopted by the board
- All drafts and communications by board members must be **in writing and posted** on the board's website, or an appropriate state or county website
- Cannot be used to circumvent conflicting requirements, such as two-member limitation of sec. 92-2.5(a), or to engage in oral communications as a sec. 92-2.5(b) FIG.



# Executive Meetings

Before closing a meeting to the public and going into an executive meeting, need:

1. 2/3 vote of board members present and a majority of the board's full membership
2. Vote recorded and entered into minutes
3. Announce reason for closed meeting



# Executive Meeting Purposes

## (HRS Section 92-5)

1. Professional or vocational license applicants
2. Personnel matters
3. Authority of labor negotiator or negotiator to acquire public property
4. Legal matters with board's attorney
5. Criminal misconduct
6. Sensitive matters relating to public safety
7. Private donations
8. Matters confidential by law or court order



# Limited Meeting

2/3 of all members to which the board is entitled must first adopt determinations that:

- It is necessary to hold limited meeting, and
- Meeting location is dangerous to health/safety, or that on-site inspection is necessary and public attendance is impracticable

Board obtains OIP Director's concurrence – go to [oip.hawaii.gov/forms](http://oip.hawaii.gov/forms)

Board must:

- Provide notice of limited meeting
- Videotape limited meeting (unless waived by OIP);
- Makes videotape available at next regular board meeting; and
- Make no decisions at the limited meeting.



# Limited Meeting - County Councils as Guests of Other Groups

No min./max. number of councilmembers or oral testimony when attending a limited meeting open to the public, as **guests** of another board or community group, provided:

1. Board's notice indicates what other board or community group is sponsoring the meeting; no agenda is required
2. If the other board/group is subject to the Sunshine Law, they must follow requirements
3. No more than one limited meeting per month per group
4. No limited meetings outside Hawaii
5. No circumvention of Sunshine Law's purpose
6. Videotape limited meeting
7. Make videotape available at next Council meeting
8. No decisions made at limited meeting
9. Council to submit annual report to Legislature



# Notice Requirements

- written notice
- posted/mailed at least 6 calendar days in advance
- date, time and place
- contact info for testimony & ADA instructions
- include agenda
- for executive meeting, must state purpose and cite statutory basis
- board packet, if any, must be distributed at least 48 hours before a meeting





# Board Packet – Contents

- Documents compiled by board & distributed to board members at least 48 hours before meeting
  - Only what's public under UIPA, Chapter 92F, HRS
  - Nothing the board can't reasonably redact in time



# Board Packet – Public Inspection/Distribution

- Available in board's office
- Notify mailing list when packet is distributed to board members, no later than 48 hours before the meeting
- Provide reasonably prompt access upon request
- Accommodate electronic requests “as soon as practicable”
- Not required to mail via postal mail



# Amending the Agenda at a Meeting

- Only with 2/3 vote of all members
- Cannot add item if:
  - of reasonably major importance, and
  - will affect a significant number of people



# Testimony Requirement

- All interested persons may submit
- Written or oral testimony
- On any agenda item
- Oral testimony cannot be limited to only the beginning of the meeting

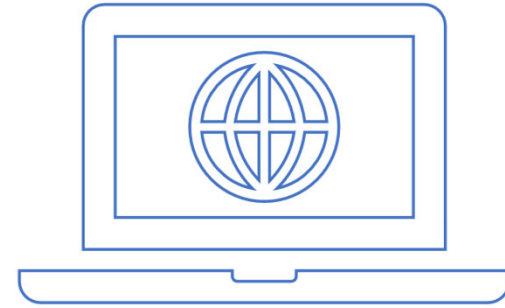


# Minutes

- Written or recorded format
- Posted in draft or final form online within 40 calendar days
- Executive meeting minutes may be withheld for so long as publication would defeat lawful purpose of meeting



# Remote Meetings



- Held over internet using “interactive conference technology” (ICT), such as Zoom or WebEx
- Members of the board or public can participate online from their own homes, offices, or other private locations and need not show up at a physical location
- But board must offer at least one public physical location for people without the skills, equipment, internet service, or desire to participate online



# Remote Meeting: Requirements

1. ICT must allow audio-visual interaction between members and public
2. Quorum of board must be visible and audible during meeting
3. Announce names of all participating board members at start of meeting
4. All votes by roll call, unless unanimous
5. Record meeting “when practicable” and post recording online until minutes are posted



# Remote Meetings: Notice

- Notice gives audio-visual link to join remote meeting
- Notice also gives link and/or phone number to orally testify, if separate from link above
- Notice must list at least one physical location, guaranteed to be connected to the remote meeting
- Notice may list “additional locations” and state if they are not guaranteed to stay connected





# Remote Meetings: Dropped Connection

Dropped connection - recess up to 30 minutes to restore

Applies to

- Hosting platform (e.g. Zoom, WebEx)
- Public broadcast (e.g., YouTube,
- Public physical site
- NOT to additional locations (if notice says so)



# Remote Meetings: Restore Connection or Continue Meeting

- 30-minute time limit to restore, or meeting is automatically **terminated**
- Must notify the public how to **rejoin** or how meeting will be **continued**
- If cannot restore audio-video, can continue audio-only with conditions
- **Practical tips** to include in notice



# Remote Meetings: Executive Meetings

- Audible-only is okay during executive meeting
- But first, publicly state names and titles of all authorized participants
- To preserve executive nature of the meeting, all participants must confirm no unauthorized person is present or connected to the executive meeting



# Multi-site Meetings

- **In-person** meetings at multiple sites connected by ICT
- At minimum, **audio** interaction
- Notice lists all locations where nondisabled board members will be
- May also list “**additional locations**” - no board members there; must specify that connection could be lost



# Multi-site Meetings: Restore Connection

- Meeting recessed to restore connection if audio interaction not maintained at all official locations
- As with remote meetings, 30-minute time limit to restore
- If no restoration, terminate (or continue at another time if notice given)



# Emergency Meetings

- Imminent peril to public health, safety or welfare, or
- Unanticipated event
- Requires meeting in less than 6 calendar days





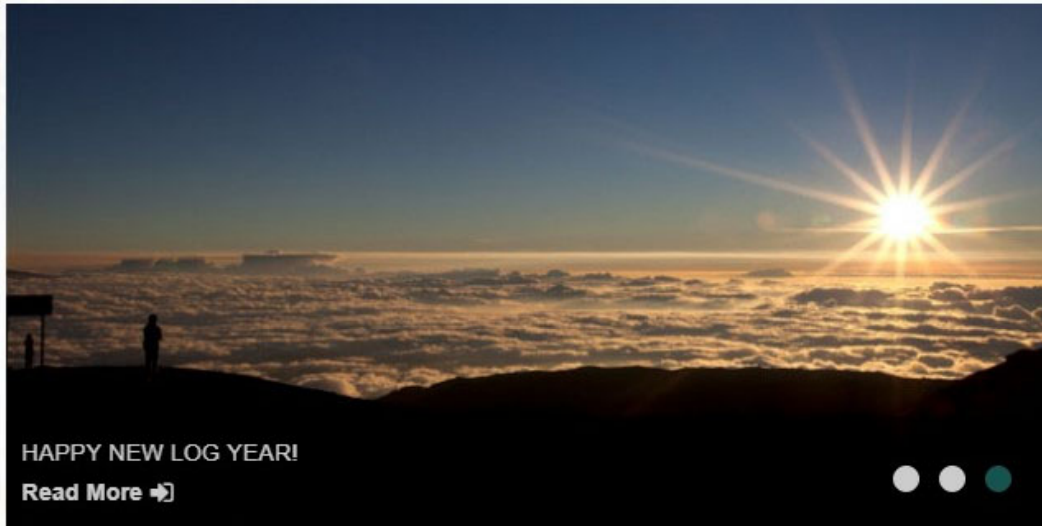
State of Hawaii  
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**ALOHA!**

Welcome to the website of the Office of Information Practices (OIP), whose mission is *"ensuring open government while protecting individual privacy."*

OIP administers two laws to promote open and transparent government in Hawai'i:

1. the [Uniform Information Practices Act \(UIPA\)](#), HRS Chapter 92F, which requires open access to government records, and
2. the [Sunshine Law](#), part I of HRS Chapter 92, which requires open public meetings.

Both laws are intended to open up governmental processes to public scrutiny and participation by requiring government business to be conducted as transparently as possible, while balancing personal privacy rights guaranteed under the Hawaii State Constitution.

OIP provides uniform interpretation, advice, and training on these laws to nearly all of Hawaii's state and county agencies and boards



# Need Help?

- AOD: (808) 586-1400
- Email: [ois@hawaii.gov](mailto:ois@hawaii.gov)
- OIP Website: [ois.hawaii.gov](http://ois.hawaii.gov)

