

## In-Depth Sunshine Law Requirements for Multi-site and Remote Meetings

(August 2022)

Act 220, Session Laws of Hawaii 2021, amended the Sunshine Law to allow public meetings to be remotely conducted online, effective January 1, 2022. This summary of the new multi-site and remote meeting provisions explains the reasons why the Sunshine Law was amended to allow for remote meetings and describes the different meeting options now available under the Sunshine Law.

Before the COVID-19 pandemic, the Sunshine Law allowed boards to use interactive conference technology (ICT) to connect multiple public meeting sites where board members would be physically present. ICT was defined in section 92-2, Hawaii Revised Statutes (HRS), as “any form of audio or audio and visual conference technology, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.” While meetings could be conducted using ICT, including an audio-only connection, board members were still required to be present in person at one of the noticed public meeting sites, with a limited exception for disabled members.

The pandemic, however, forced the implementation of emergency measures that suspended the requirement for board members to meet in person at public meeting sites. These measures allowed meetings using ICT in which board members and the public could participate remotely online from their private homes, businesses, or other locations (remote meetings) and thus enabled boards to conduct necessary business while protecting participants’ health and safety and expanding public access to meetings throughout the State. Recognizing that remote meetings had proved viable and popular for Sunshine Law boards, the 2021 Legislature passed Senate Bill 1034, S.D. 1, H.D. 2, C.D. 1, which was enacted as [Act 220](#) and can be found on [OIP’s Legislation page](#).

Act 220 slightly amended the ICT definition<sup>1</sup> and created a new section in the Sunshine Law that allows boards to hold remote meetings for which board members are not required to attend at an in-person meeting site, although the board must still provide an in-person site for members of the public who have no desire or ability to participate using ICT. Act 220 also established new requirements for remote meetings and a new notice requirement for all meetings subject to the Sunshine Law.

As amended, the Sunshine Law’s requirements for holding meetings using ICT are summarized below.

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<sup>1</sup> As amended by Act 220, Section 92-2, HRS, defines ICT as “any form of 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.” The effect is to generally require some level of board member visibility for remote meetings.

## I. Three Options to Hold Public Meetings

The Sunshine Law now provides boards with **three distinct options to conduct public meetings**:

- (1) a meeting **in person at one site**, which is the traditional method;
- (2) a meeting **in person at multiple sites connected via ICT**, without any requirement to provide remote access, as previously allowed; or
- (3) a **“remote” meeting using ICT** where board members and the public may participate either remotely, or from an in-person site listed on the notice.

In recognition of the digital divide, which may affect members of boards and the general public, **all three options require at least one in-person meeting site.**

**Option one is how Sunshine Law meetings have traditionally been held, at one physical location where all members of the board and the public attend in person.** Boards without the staffing, equipment, or technical ability to conduct remote meetings can continue to use this in-person meeting option, since there is no requirement for boards to provide ICT connectivity.

**Option two was also an available Sunshine Law meeting option before the amendments effective January 1, 2022, were passed, under which a public meeting may be held at multiple in-person meeting sites connected by ICT.** Members of the board and the public can choose to attend any of the in-person public meeting sites listed on the meeting notice. The sites are connected to each other by ICT, thus allowing people from various islands or parts thereof to simultaneously participate in the same in-person meeting being held at multiple meeting sites. Option two continues to allow what has been the preferred meeting practice of some boards to connect members or constituents on different islands (e.g., Maui County Council, to connect Maui, Molokai, and Lanai), or widely separated locations on the same island (e.g., Hawaii County Council, to connect Hilo and Kona). **Option two does not require a board to provide a way for the public to attend and testify remotely from a private location of the public’s choice** (e.g., their own homes or businesses), although it also would not prevent a board from accepting telephone testimony or something similar. Option two does require all board members to attend in person at one of the meeting sites, unless they are disabled and are thus allowed to participate remotely.

**Option three allows “remote” online meetings**, similar to what boards did during the COVID-19 pandemic as authorized by the Governor’s emergency orders, but with enforceable public access standards appropriate for remote meetings held in normal, non-emergency circumstances. **For a remote meeting, all board members as well as the public can participate via ICT from their private homes, offices, or other locations.** They also have the option to attend from the in-person public meeting site connected to the remote meeting that the board must provide, which accommodates any member of the public or the board who prefer to attend at a physical location rather than using their own remote connection.

Options two and three both rely on an ICT connection to connect members and the public who are not all in the same physical location. **The primary difference between these options is that option two is an entirely in-person meeting, even though it has more than one meeting site**, and therefore this option does not require the board to also provide a way for the public to remotely view and testify at the meeting. Under **option two, board members and the public must go to one of the in-person meeting sites** listed on the notice to attend (although the board is allowed, but not required, to offer unofficial “additional” sites or accept telephone testimony to accommodate members of the public). **Only under option three would members of the board and the public have the right to remotely participate** in a meeting from private locations.

Under both options two and three, the ICT being used must allow for interaction among all members of the board and the public who are participating in the meeting. If the ICT connection is interrupted between the multiple in-person meeting sites under option two, or during a remote meeting held under option three, the meeting may have to be terminated under Act 220’s provisions, to be further discussed below. In contrast, if the ICT connection is interrupted or lost only to “additional locations” described below, the meeting can still continue.

## **II. Additional Unofficial Meeting Locations (formerly known as “courtesy” sites)**

Besides the official in-person meeting sites that could be set up under option one or two, and the required physical location connected to the remote meeting under option three, the Sunshine Law allows boards to set up additional unofficial in-person sites. Prior to the amendments adding the remote meeting option, the Sunshine Law did not explicitly recognize that option. However, OIP interpreted the former language of section 92-3.5, HRS, including its requirement that a meeting terminate if connection is lost to one site, to only apply to sites that are noticed as official meeting sites where board members may be present and not to additional sites made available to the public with the understanding that no board member would be present. OIP previously referred to these unofficial additional sites as “courtesy” sites. **OIP’s interpretation is now codified in the Sunshine Law’s amendment to expressly** allow boards the option to set up unofficial “additional locations” for the public’s convenience, where board members will not be present and there is no requirement that the formal meeting be recessed or terminated if the ICT connection fails to these additional locations.

It must be emphasized that **providing an additional location does not change the board’s obligation** under any of the three options **to provide at least one in-person meeting site** open to the public that must stay connected to the meeting. Additional locations can be used to help members of the public watch or testify at a meeting without having to either use their own connection to a remote meeting or travel to the nearest official meeting site, without increasing the boards’ risk of having to terminate meetings early due to connectivity problems. **When a board provides an**

**additional location for a meeting, its notice must inform the public that attendees at that site might miss out on part of the meeting in the event of a lost connection.** Despite the risk of ICT connection to the official meeting being lost, for some members of the public that risk is offset by the benefits and convenience of being able to participate from an additional location nearer to their home or work.

Note that a **board is not required to provide additional locations**, and the fact that a board previously has had additional locations, or has used a particular place as an additional location, does not create any obligation for the board to include those locations for future meetings.

### **III. Requirements to Hold Remote Meetings**

#### **A. Notice requirements**

The notice of a remote meeting **must tell the public how to watch and hear the live remote meeting**, typically via a link to a remote meeting platform, and **how to provide remote oral testimony** through an internet link, a telephone conference, or other means. The notice must also **list at least one physical location connected to the remote meeting**, where members of the public can go in person to participate. A board holding a remote meeting under option three is not required to allow members of the public to join board members in person at nonpublic locations where board members are physically present, such as their homes or private offices, so **there is no requirement for the notice to identify the nonpublic locations where board members will be.**

The notice **may also list additional locations** open for public participation and if so, must **specify whether the meeting will continue without the additional location if the ICT connection is lost or if the meeting will be automatically recessed to restore communication** to the additional location.

#### **B. Board member visibility and quorum requirements**

As a general rule, the remote meeting platforms must allow audiovisual interaction among board members and members of the public attending the meeting, but there are some exceptions to this general rule. To accommodate the challenges some board members may have in remaining on-camera throughout an online meeting, the law only **requires a quorum of board members to be visible to the public during the public portion of remote meetings. All board members present at the meeting must have at least an audio connection.** In contrast to the visibility requirement for board members, there is no requirement for the public or other non-board participants to be visible during online meetings, though the board must allow the public to provide oral testimony during the meeting, either through the same meeting platform being used by the board members or some other means such as a telephone line or a more limited online connection controlled by the meeting host.

Just as a board member's brief absence from the room during a meeting, such as to take a five-minute restroom break, does not immediately require a board to terminate a meeting due to loss of quorum, a member's brief disappearance from camera view does not immediately trigger the requirement to suspend the remote meeting due to not having a quorum of members visible. If, however, a board member who is needed to meet the quorum requirement will be off-camera for an extended period of time or during a vote, the board should call for a recess until a quorum of members are present and visible.

Note that the visibility requirement for board members applies only to the public portion of a meeting. **During an executive session closed to the public, board members can participate via telephone or audio only without being visible online.** Because participants may not be visible during an online executive session, and to preserve the executive nature of any portion of a meeting closed to the public, the presiding officer must **publicly state the names and titles of all authorized participants, who in turn must confirm that no unauthorized person can hear them** either in person or via another audio or audiovisual connection. Additionally, if the remote meeting platform allows doing so, **the meeting host must confirm that no unauthorized person has access to the executive meeting.** "Authorized participants" would be anyone properly included in the closed portion of the meeting, which generally means board members, staff members necessary to run the meeting (e.g., technical or production staff), and in some cases, third parties whose presence is necessary to the closed meeting (e.g., applicant, witness, or attorney).

### **C. Procedures for the public portion of remote meetings**

At the start of a remote meeting, **the presiding officer must announce the names of the participating members** and each board member participating from a nonpublic location must **state who else** is with the member. Minors under age 18 need not be identified, unless they have a personal business, property or financial, interest in any matter before the board.

**Votes must generally be taken by roll call**, so that it is clear how each member voted, but when the vote is unanimous the board is not required to take a roll call vote. Thus, a board can first ask if any members object or wish to abstain from voting, and only proceed to call the roll if there is at least one objection or abstention.

**A board is generally required to record a remote meeting** and make the recording electronically available to the public as soon as practicable after the meeting. This requirement **only applies "when practicable,"** and the recording is only required to be kept online until the meeting minutes are posted on the board's website. Because it is usually easy to record an online meeting and post it on a board's website, the general requirement to do so gives people who were unable to attend the meeting the ability to watch at a more convenient time, but still permits a board to skip recording an online meeting when doing so presents a more significant challenge. A board could also **take advantage of the recording by using it as its recorded minutes in combination**

**with the written summary** required for recorded minutes. If a board opts for traditional written minutes instead, it can remove and even delete the recording once its written minutes are posted. For further guidance on minutes, see OIP’s [“Quick Review: Sunshine Law Requirements for Public Meeting Minutes”](#) on our [Training page](#) at oip.hawaii.gov.

#### **IV. Requirements for Both Remote and Multi-Site Meetings Using ICT**

##### **A. Procedures if ICT connection is interrupted or lost**

**If the board’s audio-visual connection is lost** during the public portion of a remote meeting or during a multi-site meeting, **the Sunshine Law requires the meeting to automatically recess for up to 30 minutes** while the board attempts to restore the connection. This requirement applies for all official meeting sites and the remote connection(s) provided as part of a remote meeting, but it does not apply when the remote connection is working properly and a member of the public has lost internet connectivity or is otherwise unable to access the remote connection due to issues on that person’s end. **The board may reconvene with audio-only communication** if the visual link cannot be restored, **provided that the board has provided reasonable notice** to the public as to how to access the reconvened meeting after an interruption. For remote meetings only, the law specifically requires **speakers to state their names before speaking, if the meeting has been reconvened with audio-only communication.**

Within 15 minutes of establishing audio-only communication, copies of nonconfidential visual aids that are required by or brought to the meeting by board members or as part of a scheduled presentation must be made available by posting on the internet or other means to all meeting participants (including those participating remotely). If these requirements are not met, agenda items with unavailable visual aids cannot be acted upon at the reconvened meeting. **If the meeting cannot be reconvened within thirty minutes** after interruption to communication, and reasonable notice has not been provided to the public of how the meeting will be continued to another date or time, the **meeting is automatically terminated.**

OIP recommends that boards prepare in advance for the possibility of technical difficulties and has provided tips in the next section.

##### **B. Continuation of a Meeting if ICT Connection is Not Timely Restored**

When an interruption to the ICT connection that could not be restored ends a meeting early, the board may continue the meeting at a later time if it has “provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time.” Without reasonable notice of continuation, the meeting is automatically terminated. **OIP’s tips for providing reasonable notice to continue any Sunshine Law meeting** – whether in person or connected by ICT – are:

1. The board's notice of the meeting may contain a contingency provision stating that if the board loses online connection, then people should check the board's website (give address) for reconnection information. Alternatively, the notice could provide that if the connection is lost for more than 30 minutes, the meeting will be continued to a specified date and time, with the new link for the continued meeting either on the agenda itself or to be provided on the board's website.
2. At the start of the online meeting, the board could announce that if online connection is lost, information on reconvening or continuing the meeting will be posted on its website and give the website address.
3. If the audio and video have gone down but there is still a chat function or similar means of communication available, the board should also post a visual notice of the continuation of a meeting through the chat function.
4. If visual connection has been lost during a meeting using ICT, the board could audibly announce that the meeting will be continued and direct people to its website where the relevant information has been posted.
5. If time permits, the board can email people on its email list with a notice of continuation of the meeting. See the training or [forms page](#) on OIP's website for a form of the notice of continuation.

## V. Additional Requirements

### A. Notice

The notice for a **multi-site meeting** must list **all the locations where board members will be attending** as public meeting sites (except that disabled board members have the ability to attend from an undisclosed private site, as explained below). The public meeting locations are set at the time the notice is filed. **Board members may attend from any of the public meeting locations listed on the filed notice.** The notice is not required to specify which board members will attend from which location. **The noticed locations cannot be cancelled or shut down early while the meeting goes on at another public meeting location listed on the filed notice.** A board can eliminate one of the noticed public meeting locations when the meeting is still more than 6 calendar days away by cancelling the entire meeting and then filing a new notice with only the desired locations. Just as with an in-person meeting at a single site, however, if the meeting is less than 6 days away, the board has insufficient time to file a new agenda and so it must either convene the meeting with the originally noticed locations, or cancel the meeting.

If a board chooses to provide any **additional locations**, the notice must state that **no board members will be attending from an additional location** and that, if the connection between the additional location and the meeting site(s) is lost, **whether the meeting will continue without the additional location or will be automatically recessed** to restore communication.

#### **B. Procedures to prevent meeting disruptions**

**The Sunshine Law continues to allow boards to remove persons who willfully disrupt a meeting.** HRS § 92-3. Therefore, a board holding a remote meeting could disconnect a person creating an online disruption or could take reasonable action to prevent disruption. For example, obscene images through “zoombombing” can be avoided if the board’s meeting is conducted as a one-way live stream, while public oral testimony is presented audibly over a telephone line rather than as an interactive video feed.

#### **C. Disability requirements**

A board member with a disability that limits or impairs the member’s ability to physically attend a noticed meeting may participate in a multi-site meeting from a private, non-noticed location, so long as the member is connected by audio and video and identifies where he or she is and who else is present. Thus, for example, a disabled board member may participate from a private residence or hospital, so long as the other requirements are met. **The Office of Information Practices does not administer or have jurisdiction over disability issues**, which are governed by federal law such as the Americans with Disabilities Act (ADA) or other state laws. Boards are, however, required to modify policies and procedures to accommodate individuals with disabilities under the Americans with Disabilities Act (ADA), and should consult with their own attorneys regarding compliance with the ADA, or with the State Disability and Access Communication Board whose website is <https://health.hawaii.gov/dcab>.