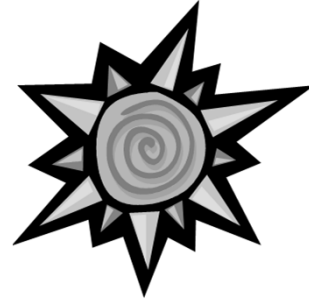


Summary of the Sunshine Law



Hawaii's Open Meetings Law

Part I of Chapter 92, HRS

Presented by the State Office of Information Practices ("OIP")

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Welcome to this training by the State Office of Information Practices, or "OIP," summarizing Hawaii's Sunshine Law, which is the open meetings law found in Part 1 of Chapter 92, Hawaii Revised Statutes. This is a short summary of the Sunshine Law and is intended to provide a quick overview of the law's basic requirements, the remote meeting provisions, and additional Sunshine Law revisions effective as of July 8, 2022. OIP's more comprehensive basic training, which is nearly two and a half hours long, is found on OIP's website at oip.hawaii.gov and is highly recommended for board staff and attorneys who need detailed knowledge of how to comply with the Sunshine Law, including how to prepare agendas and minutes.

What's the purpose?

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



We will start with the law's intent because this is how OIP or the courts must interpret its requirements. For board members and staff, understanding the law's intent will help you to make the right call when Sunshine Law questions come up.

Please note that the Sunshine Law's statutory purpose is almost identical to that of the State's Uniform Information Practices Act, or UIPA, which is Hawaii's open records law found at Chapter 92F, Hawaii Revised Statutes, and is also administered by OIP. Both laws have the same basic purposes of protecting the public's right to know what government is doing and of opening up the 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.”



More specifically, both the Sunshine Law and the UIPA share the same policy: “It is the policy of this State that the formation and conduct of public policy—the discussions, deliberations, decisions and actions of governmental 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.**



Additionally, the law expressly tells us that it is the intent of the Sunshine Law to “protect the people’s right to know” and that “[t]he provisions requiring open meetings shall be liberally construed” and that “the 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**



Let's go over five basic requirements of the Sunshine Law, and then discuss the provisions concerning remote meetings.

The first basic requirement is that all of a board's discussions, decisions, and deliberations concerning board business must be conducted at a meeting open to the public.

Second, all meetings must be open to the public, unless specifically allowed by the Sunshine Law to be closed.

Third, boards must provide advance notice of board meetings, including an agenda, and must also provide access to board packets.

Fourth, boards must accept testimony from any interested person.

And fifth, a board must keep minutes of all of its meetings, including executive meetings that have been closed to the public.

“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.”



The Sunshine Law applies to all board discussions, deliberations, and decisions concerning “board business.” So what is “board business?” HRS section 92-2 defines board business to mean “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.” There are a couple of elements in this definition.

“Board Business” Elements

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



The first element is that board business must be specific matters within the board’s authority. If a matter is something that is purely within the Chair’s prerogative, this is not board business. For example, many boards give their Chair the sole prerogative to set the agenda, which is not decided on by the board as a whole, so members can ask the Chair outside of a meeting to place an item on an upcoming agenda. Similarly, many administrative matters, such as travel arrangements for neighbor island board members, are not matters within the board’s authority. Purely social chit chat is also not considered board business. But if a matter is about a specific issue over which the board has supervision, control, jurisdiction, or advisory power, then it clearly would be within the board’s authority, and board members cannot talk to each other about such matters outside of a meeting.

The second element is that the board matter must be an issue on the current or a reasonably foreseeable future agenda. An issue is no longer board business once the board has finished dealing with it or does not anticipate it coming back before the board. But if it is an issue that can be reasonably expected to be on a current or near future agenda, then it could be board business that should not be discussed outside of a meeting. For example, OIP has issued an opinion involving whether the Hawaii County Council had violated the Sunshine Law by not noticing a meeting where a volcanologist had briefed them about Mauna Loa’s possible eruption. Because there was only a speculative possibility that future emergency funding would be required at some point, OIP held that this was not reasonably foreseeable board business at the time. Of course, in a new factual situation involving an imminent threat, OIP’s opinion could be different.

No discussions, deliberations, or decisions outside a meeting

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



If the matter is about board business, then board members cannot have any discussions, deliberations, or decisions made between themselves outside of a meeting. This means that what you can't do face to face, you also cannot do via other means of communication unless there is a permitted interaction or exception. Thus, board members must avoid talking about board business in a caucus, or by polling other members, or via telephone conversations, texts, or emails, or by sending written memoranda explaining their position on a board matter.

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



In specific situations called “permitted interactions,” the Sunshine Law allows board members to communicate with one another about board business. These permitted interactions are not considered “meetings” to which the Sunshine Law’s normal procedures or restrictions apply, so notice, testimony, and minutes are not required.

The nine permitted interactions are summarized on this slide and will be each discussed, with a focus on the first two, which are the most commonly used.

Permitted Interaction: Two Members Only

Two members only:

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



The first permitted interaction is between only two board members, so long as they do not constitute a quorum of the board, as is the case with the 3-member Public Utilities Commission for example.

While the two members can talk about any board business and may make it clear what their positions are, they cannot seek or make a commitment by each other to vote a particular way on a board matter—in other words, they cannot “horse trade” and say for example, “If you vote this way on this matter, then I’ll vote your way on another issue.”

Also, this 2-member permitted interaction cannot be used serially. Serial communications happen when member A talks to member B about an issue, then member B later goes to member C at some point and talks about the same issue. Although they were not in the same conversation at the same time, you now have three members discussing board business in violation of this **two**-member permitted interaction.

Permitted Interaction: Investigations

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



The second permitted interaction is a way for a board to do fact-finding on a particular issue and is one of the most frequently used by boards but should not be used to replace standing committees. It allows the board to set up a “permitted interaction group,” commonly called a “PIG,” consisting of less than a quorum of board members to investigate and report on a specific matter over the course of three meetings subject to the Sunshine Law.

At the **first meeting**, the board must assign the members of the group and the scope of the investigation.

As the PIG is not a sub-committee or standing committee, the PIG can then go out and do its work without having to follow the Sunshine Law’s usual requirements for notice, public testimony, minutes, etc. The PIG can talk to anyone, except other board members, to do their investigation. Because they are not subject to the Sunshine Law’s requirements as a subcommittee or standing committee would be, the PIG members can only talk to the board members appointed to the PIG, and not the others on the board, and there needs to be two more board meetings before action can be taken on the PIG’s recommendations.

Once the PIG has done its investigation and is ready to report to the board, then the board must hold a **second meeting** for the PIG to present its findings and recommendations to the full board. But the board cannot discuss or deliberate on the PIG’s findings and recommendations yet.

It is not until the board’s **third meeting**, after the public has also had the opportunity to be informed of the PIG’s findings and recommendations and can submit testimony on it, that the board can then discuss, deliberate, and decide on the PIG’s findings and recommendations.

Examples of “Investigation” Permitted Interactions

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



While investigatory PIGs have a lot of flexibility and are not subject to the Sunshine Law’s procedural requirements the way that boards or standing committees are, it can take longer and be more cumbersome to go through all three meetings before the full board can consider the PIG’s recommendations. Nevertheless, PIGs are a popular option for boards, and can be used in different situations.

For example, a PIG could be established to obtain confidential interviews with staff and report on the general feelings of the staff about their boss. Additionally, a PIG may be established to view a confidential prototype of a product, or to receive and evaluate confidential business or financial information.

Sometimes, for purely logistical reasons, a board needs a PIG to do what it cannot do as a board. For example, a group may be sponsoring a series of statewide community meetings with the public that the board wants a PIG to attend, monitor, and report to the full board. So long as the PIG requirements are followed, there are various reasons a board could establish a PIG.

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



Unlike the investigatory PIG, there is no three-meeting requirement for a permitted interaction group established to present, discuss, or negotiate “any position which the board has adopted at a meeting of the board.” At least one meeting, however, is required to define its position and to assign the group’s members, which must be “less than a quorum” of board members. Thereafter, the group is allowed to present, discuss, or negotiate the board’s position outside of a Sunshine Law meeting.

An example of a negotiation PIG would be one established to negotiate a union or employment contract, or the purchase of land or products.

Permitted Interaction - Selection of Board Officers

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



A fourth permitted interaction allows less than a quorum of members to discuss the selection of the board's officers in private and without subsequent reporting.

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



A fifth permitted interaction is allowed when there is less than a quorum of members at a board meeting, which thus requires the cancellation or termination of the meeting as a matter of law. But for the convenience of the members of the public who have shown up at the meeting, this permitted interaction was adopted to allow the remaining board members to receive testimony and presentations on agenda items and to question testifiers. The members present at the terminated or cancelled meeting must create a record of the oral testimony or presentations received at the meeting, just as it would have created minutes had the meeting not been cancelled or terminated by law.

Deliberation and decisionmaking, however, cannot occur until a subsequently held board meeting that is duly noticed, at which time, the board must be provided copies of the testimony and presentations along with a report by the members who were present 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.



A sixth permitted interaction allows less than a quorum of members to attend and participate in discussions at a meeting of another entity relating to the board's official business, such as a legislative hearing, convention, seminar, or community meeting. The other entity's meeting, however, cannot be specifically and exclusively organized for or directed toward the board members. The attending board members must not make or seek any commitment to vote on the board matters discussed, and they must report their attendance and the matters discussed or presented at their next duly noticed board meeting.

Permitted Interaction: Meet with Governor

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



A seventh permitted interaction allows all members of a board to meet with the Governor in private, without any reporting requirement. But the discussion cannot be about a matter over which the board is exercising its adjudicatory function.

Permitted Interaction: Meet with Department Head

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



The eighth permitted interaction allows all members of a board to privately meet with the head of the department to which the board is administratively assigned, regarding administrative matters, such as the board's budget, purchases, space needs, and employment issues.

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) PIG.



The ninth and newest permitted interaction was added to the Sunshine Law effective July 8, 2022. This permitted interaction applies when a legislative deadline is too soon to allow the board to hold a meeting to approve testimony for the Legislature. This permitted interaction would allow any number of board members to circulate draft testimony based on a position previously adopted by the board, so long as all drafts and comments are in writing and are posted within 48 hours on the board's website or an appropriate state or county website.

This testimony permitted interaction, however, may be of limited benefit to boards because it would foreclose the use of other permitted interactions, such as the two-member permitted interaction or the use of a permitted interaction group or "PIG." For example, while any number of members may communicate with each other **in writings posted on a website** under the testimony permitted interaction, they cannot **privately talk** to each other by claiming that they are using the two-member permitted interaction under section 92-2.5(a) or as a negotiating PIG under section 92-2.5(b)(2). OIP has revised its Quick Review explaining "Sunshine Law Options to Address State Legislative Issues and Measures," which provides additional options for Sunshine Law boards to provide testimony.

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
4. Report after return to public session



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We'll move from permitted interactions, which are not meetings, to the second basic Sunshine Law requirement: **All meetings must be open to the public, unless specifically allowed by law to be closed.** One type of meeting that can be closed to the public is the "executive" meeting or session. But certain requirements must first be met.

First, there needs to be a two-thirds vote in favor of going into an executive meeting by all board members who are present and those members must constitute at least a majority of the board's full membership. For example, you have a 10-member board, with a quorum present of 6 members, so 2/3 of 6 equals 4. But 4 votes are not enough. You will need all 6 members to constitute a majority of the full membership of 10 to vote to vote in favor of going into executive session.

Second, this vote must take place during the **public** portion of the meeting and the vote must be recorded and entered into the board's minutes.

Third, during the **public** portion, the board must also announce the reason for going into the executive session.

And fourth, after the board concludes the executive session and returns to the public meeting, **the board must report to the public generally what was discussed and any action taken**, but it is not required to include any information that would frustrate the purpose of the executive session. Thus, **this report will be just the gist of the board's discussion in executive session, and not all of the details.**

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



This slides shows the eight statutory purposes for which the Sunshine Law allows a board to go into an executive meeting closed to the public.

1. To consider and evaluate personal information relating to individuals applying for professional or vocational licenses;
2. To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where matters affecting privacy will be involved; provided that the individual concerned may request an open meeting, in which case an open meeting shall be held;
3. To deliberate the authority of persons designated by the board to conduct labor negotiations or negotiations to acquire public property, or during the conduct of such negotiations;
4. To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
5. To consider proceedings regarding criminal misconduct;
6. To consider sensitive matters related to public safety or security;
7. To consider matters relating to the solicitation and acceptance of private donations; and
8. To deliberate or decide upon a matter that requires the consideration of information that must be kept confidential pursuant to a state or federal law, or a court order.

If the board's reasons for going into an executive meeting do not meet one of these eight statutory purposes, then it cannot close its meeting to the public.

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

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.



Another type of meeting that may not be open to the public is a “limited meeting.” A limited meeting is not being closed to the public to keep something confidential, but as a practical matter, it cannot be fully opened to the public because it’s being held at a dangerous location or where public attendance is impracticable. For example, it can also be used to look at undeveloped private land, secure airport areas, a recycling facility, a private home being considered for historic preservation, or other areas where public attendance is impracticable or a safety risk.

To hold a limited meeting, 2/3 of all members to which the board is entitled must determine, after sufficient public deliberation, that (1) it is necessary to hold the limited meeting, and (2) the location for the limited meeting is dangerous to health or safety, or that public attendance is not practicable.

The board must thereafter obtain the OIP Director’s concurrence. OIP has a form on its website at oip.hawaii.gov/forms to request concurrence.

If the OIP Director concurs, then the board must provide notice of the limited meeting. The board must also videotape the limited meeting, unless this requirement is waived in whole or in part by the OIP Director – for example, a partial waiver might be allowed during a hike on a trail or during bus rides to reach the meeting site. The videotape of the limited meeting must also be made available for public viewing at the next regular board meeting. And no decisions can be made by the board during 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



There is another special type of limited meeting only for county councils, which recognizes that in certain counties, the councilmembers are elected at large and all may want to attend community meetings with their constituents and potential voters. Because the meeting is being held by another group and the councilmembers are attending as guests, there is no restriction on the number of councilmembers who can attend this type of limited meeting. But the meeting must be open to the public, and the following requirements must be met:

1. The council must provide notice of the limited meeting, which indicates the board or community group holding the meeting that the council is attending but need not include an agenda;
2. If the board or community group holding the meeting is subject to the Sunshine Law, then it is responsible for complying with the law's requirements such as notice, agenda, testimony, and minutes;
3. No more than one limited meeting per month can be held by a county council for any one board or community group;
4. No limited meetings shall be held outside the State of Hawaii;
5. Limited meetings shall not be used to circumvent the Sunshine Law's purpose;
6. The council must videotape the meeting, unless this requirement is waived by the OIP Director;
7. The videotape of the limited meeting must be made available at the next regular council meeting;
8. No decisions may be made by the council at the limited meeting; and
9. Each county council shall submit an annual report to the Legislature on the effectiveness and application of the limited meeting provisions.

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



Let's now discuss the Sunshine Law's basic requirement for meeting **notices**.

The notice must be in **writing**. It must be **electronically posted** on the State's or appropriate county's calendar **and mailed or emailed** to the board's mailing list of requesters **at least six calendar days** in advance of the meeting. While the electronic posting on the appropriate calendar is the official notice, a copy must also be posted as appropriate with the Lt. Governor or County Clerk. The notice should also be posted in the board's office and, if feasible, at the meeting site.

The notice must contain the meeting date, time, and place, along with board contact information for submission of testimony and requests for reasonable accommodations for disabled persons.

The notice must include an agenda of all items that the board intends to consider at the meeting, which should be described reasonably well enough so that the general public can decide whether they want to participate in the meeting.

If an executive meeting is anticipated, then the agenda should include the purpose and statutory basis for the closed meeting.

Finally, if a board packet is created, then it must be distributed at least 48 hours before the meeting. Because boards must notify their mailing list when the board packet is available for public inspection in the board's office, boards could consider including a notification in their meeting notice that the board packet for public inspection will be available 48 hours before the 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



Before a meeting, boards will often have a board packet of documents or materials to be discussed at the meeting. Boards are not required to create a board packet, but if they do, then a public version must be made available to the public at the time the packet is distributed to board members but no later than 48 hours before the meeting. Note that with this 48-hour requirement, boards may no longer be able to review in advance the written testimony or presentations that are submitted in the last few days before the meeting and not early enough to be included in the packets. Although not required by law, boards may want to make copies of the documents that did not make it into the distributed board packets available in a supplemental packet for both the board and for public inspection at the board meetings.

The board packet for the public need only include those documents that should be disclosed under the UIPA, or chapter 92F, HRS. A board is not required to disclose executive session minutes, license applications, or other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the packet is distributed to board members.

The Sunshine Law potentially allows withholding of more information from the public board packet than could be withheld in response to a 92F UIPA request, in recognition of the shorter timeframe to prepare the public packet for a Sunshine Law meeting. For instance, a long document with confidential information throughout it could be entirely withheld from the public packet. Or, for a long document with several distinct sections, only some of which are confidential, the public board packet should include only the non-confidential sections. But even if it's a long document, a board should include it in the packet for public inspection if the entire document is clearly disclosable under the UIPA.

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



The public version of the board packet must be made available for public inspection in the board's office, and persons requesting notification of the board's meeting notices must be notified that it is available there at the same time the packet is distributed to board members and no later than 48 hours before the meeting. The board packet itself need not be automatically emailed to people on the board's notification list, but the board must provide "reasonably prompt access" upon request and it must accommodate email or other requests for an electronic copy "as soon as practicable." Many boards simply post the public version of the board packet on their website to provide easy electronic access to it.

The board's packet need not be physically mailed to members of the public.

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



A board should carefully prepare its notice and agenda, because they cannot be posted with less than six days' advance notice and can only be amended at a meeting with heavy restrictions. First, an agenda can be amended at the meeting only with 2/3 vote of all members to which the board is entitled, which includes membership slots that are not currently filled or members who are not at the meeting. If you assume that a board is entitled to 10 members, but only 9 slots are filled and 6 members are present, this means that 6 members constitute a quorum and 2/3 of the 9 filled slots; but the board still doesn't have 2/3 of the 10 members to which it is entitled and it would need at least 7 members to vote to amend the agenda.

Second, even if the board had enough votes to amend an agenda, an item cannot be added if it is of reasonably major importance and will affect a significant number of people. Essentially, only minor things can be added to an agenda.

OIP has extensive materials on its website that provide additional details about notice and agenda requirements, including a notice checklist and samples of "bad" and "good" agendas.

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



Let's move on to the fourth basic requirement of the Sunshine Law: that boards must accept testimony on agenda items from all interested persons at its meetings.

Sunshine Law boards must accept testimony from any interested person, which can be written or oral testimony. But the testimony must be on agenda items, and a board is not required to accept testimony on issues that are not on the agenda unless it sets aside a general open forum for people to talk about whatever issues they want to. The board, however, is not required to hold an open forum.

A board may set reasonable limits on testimony, such as time limits, that are fairly applied to all testifiers. The board's limits should be set by its written policy, and the Sunshine Law does not require it to be established under HRS chapter 91 rulemaking procedures.

Oral testimony, however, cannot be limited to only the beginning of the meeting or agenda. For the convenience of people who can't or don't want to stay for the entire meeting, boards may still accept testimony at the beginning of the meeting. But they must also permit people who haven't testified to provide oral testimony before each agenda item or grouping of agenda items.

Boards can also remove people who wilfully disrupt a 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



And finally, the fifth basic Sunshine Law requirement is that boards must keep and post minutes of their meetings.

Boards have the option to do either written minutes as they've always done, or an audio or video recording of the meeting accompanied by a written summary.

The board's minutes, whether in draft or final form, must be posted online within 40 calendar days after the meeting.

The minutes can be posted either on the board's own website, or on a general state or county website. The board is not required to have its own website – a county or state department could post the minutes for attached boards on the department's website.

Although boards are required to take minutes of executive meetings that are closed to the public, those minutes need not be posted and can be withheld from the public for as long as their publication would defeat the lawful purpose of the executive 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



All of the Sunshine Law’s basic requirements apply to “remote” meetings created by Act 220 of the 2021 legislative session, and effective January 1, 2022. Instead of having the board and the public gather in-person at a physical location as has been the traditional method of holding a meeting, the remote meeting is held online over the internet using “interactive conference technology” (“ICT”), such as Zoom or WebEx. Members of the board and the public can participate online from their homes, offices, or other private locations, and they're not required to disclose the private location from which they are attending a remote meeting.

In recognition of the possibility that not all people have the skills, equipment, desire, or reliable internet connection to be able to participate online, the board must still provide at least one public physical location where people can participate in the remote meeting. Members of the board are not required to show up at this physical location, and they can 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 and recording sent to State Archives 

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Remote meetings have additional requirements not applicable to traditional in-person meetings:

1. The “interactive conference technology” (“ICT”) used to host remote meetings must allow audio-visual interaction between board members and the public.
2. A quorum of board members must be visible and audible to other members and the public during the meeting, but no other participants need to be visible. Members of the public, for example, need not be visible. And so long as a **quorum** of board members are visible, then additional members could participate via telephone and not be visible. This allows board members without reliable internet connection or the appropriate technical skills or equipment to participate remotely. Also, during executive meetings, the board members need not be visible and can participate via telephone.
3. At the start of the meeting, the presiding officer must announce the names of all participating board members, whether they are visible or not.
4. All votes must be conducted by roll call, unless unanimous.
5. And finally, “when practicable,” boards must record meetings open to the public and make the recording electronically available to the public as soon as practicable after the meeting, and until the meeting minutes are electronically posted on the board’s website. Since meetings held via Zoom, WebEx and other meeting platforms can generally be easily recorded, boards should post this recording on their websites for the public to view until the minutes are posted within 40 days after the meeting. **With a written summary**, the recording can then serve as the board’s minutes. **Or** the recording may be replaced with **written minutes** if the board prefers. **The law encourages boards to keep recordings online, but allows taking one down after written minutes are posted so long as the board first sends a copy of the recording to the State Archives.**

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



In addition to the usual Sunshine Law requirements for notice, including an agenda, the notice for a remote meeting must also inform the public how to contemporaneously view the video and audio of the meeting through internet streaming or other means – in essence, by giving the link to join the remote meeting. The notice must also inform the public how to provide oral testimony that the board and other meeting participants can hear, whether through an internet link, a telephone conference, or other means.

In most cases, the board will just provide one link for everyone to use to participate in, testify at, or just watch the meeting. But sometimes, a board may want to separate those functions to protect against potential disruption, or to have more control when a large number of participants are expected, or to allow multiple ways for the public to participate. In that case, the board might have two different links: one to an audio-visual link for the public to just watch the meeting, and another for the public to actively participate and testify, which might be a different audio-visual link or a telephone number.

The notice for a remote meeting must also list at least one **physical** meeting location that is open to the public where the board has set up audiovisual equipment that is **guaranteed to be connected** to the online meeting.

Besides this one required physical location, the board has the option to list on the notice “additional locations” that are physical locations open to the public, but which are **not guaranteed** to remain connected to the online meeting. Additional locations are a way for the board to provide more physical locations for the benefit of the public, but without having to increase the board’s risk of having to recess or terminate the entire meeting due to technical problems at those locations. The meeting notice must, however, specify in the event an additional location loses its audiovisual connection to the remote meeting, whether the remote meeting will continue without the additional location or will be automatically recessed to restore communication.

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)



If audiovisual connection for a remote meeting cannot be maintained by a board with all participating members, the required physical meeting location, or the remote public broadcast identified in the meeting notice such as YouTube, then the remote meeting must be immediately recessed for up to 30 minutes to restore communication. For example, if the public can watch the meeting on YouTube or at the public physical meeting site, but the connection to YouTube or the site cannot be maintained, then the meeting would have to recess and the board has up to 30 minutes to restore communication.

Again, the loss of connection to an “additional location” does not require the remote meeting to be recessed or terminated, so long as the notice stated that the meeting would continue without that location in the event the audiovisual connection was lost.

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



The remote meeting may reconvene within 30 minutes, but only if the board has provided reasonable notice to the public as to how to access the reconvened meeting after an interruption to communication. If reconvening is not possible within 30 minutes after an interruption to service, the board could “continue” the meeting to an alternative date and time. By continuing the meeting, the board would not have to provide a new notice and agenda with six days’ advance notice for a new meeting, and it could instead continue the same meeting at a different date, time, place and link, with reasonable notice to the participants. As a practical tip, the meeting notice itself could have instructions on what to do if the audiovisual connection is interrupted and provide one or more links as to how to rejoin the meeting, as well as an alternative date, time, place, and links if the same meeting is to be continued. Or, at the start of the meeting, the board could orally instruct participants and leave in the chat box instructions as to how rejoin the meeting or attend the continued meeting if the audiovisual connection is lost.

The meeting may be reconvened if audiovisual communication is restored, or if that is not possible, when audio-only communication is restored. If it continues as an audio-only meeting, then speakers must announce who they are before they speak. Within 15 minutes after audio-only communication is established, 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 to all meeting participants, either by posting them on the internet or by other means. If visual aids are not available for all participants, including those participating remotely, then the board cannot act on any agenda items relating to those visual aids. As a practical tip to avert this situation, the meeting notice could inform the public that the nonconfidential visual aids can be found in the public board packet posted on the board’s website and will be made available for inspection at the physical meeting location.

If the meeting cannot be properly restored within 30 minutes, then it is automatically terminated by law.

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



During executive meetings, board members need not be visible and need only be audible to each other, so they can participate by telephone. But to preserve the executive nature of the meeting, the presiding officer must first **publicly** state the names and titles of all authorized participants. Upon convening the executive session, all participants must confirm that no unauthorized person is present or able to hear them at their remote locations or via another audio or audiovisual connection. The person organizing the interactive conference technology—for example, the technician running the Zoom or WebEx meeting—must confirm that no unauthorized person has access to the executive meeting as indicated on the control panel of the interactive conference technology being used.

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



A “multi-site meeting” is a regular **in-person** meeting that is being held across multiple sites rather than one single location. This is not a remote meeting where people can attend and participate from home or private locations. Board members and the public **must attend in person** at one of multiple meeting sites and at least audio connection must be maintained between all meeting sites.

The notice must list every meeting site where board members will be and the public can attend. The law has a special provision, however, for disabled board members, who can attend from their home, hospital bed, or other private location without disclosing the address or allowing public access to their private location.

The notice may also list “additional locations” as a courtesy to increase public access, but **no** board member can participate from those locations. If the connection to an additional location is lost, the notice must specify whether the multi-site meeting will continue without that site or will be automatically recessed to restore communication.

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)



As with a remote meeting, if the connection between the official sites of a multi-site meeting is lost, then the meeting is automatically recessed for up to 30 minutes to restore the connection. But because multi-site meetings require only **audio** interaction, then the loss of visual connection during an audiovisual interaction would not require a recess as the multi-site meeting could continue with audio-only connection. If the audio connection is lost and cannot be restored within 30 minutes and the board has not provided reasonable notice of how the meeting will be continued, then the meeting is automatically terminated.

The same practical tips described earlier for remote meeting notices apply to multi-site meetings.

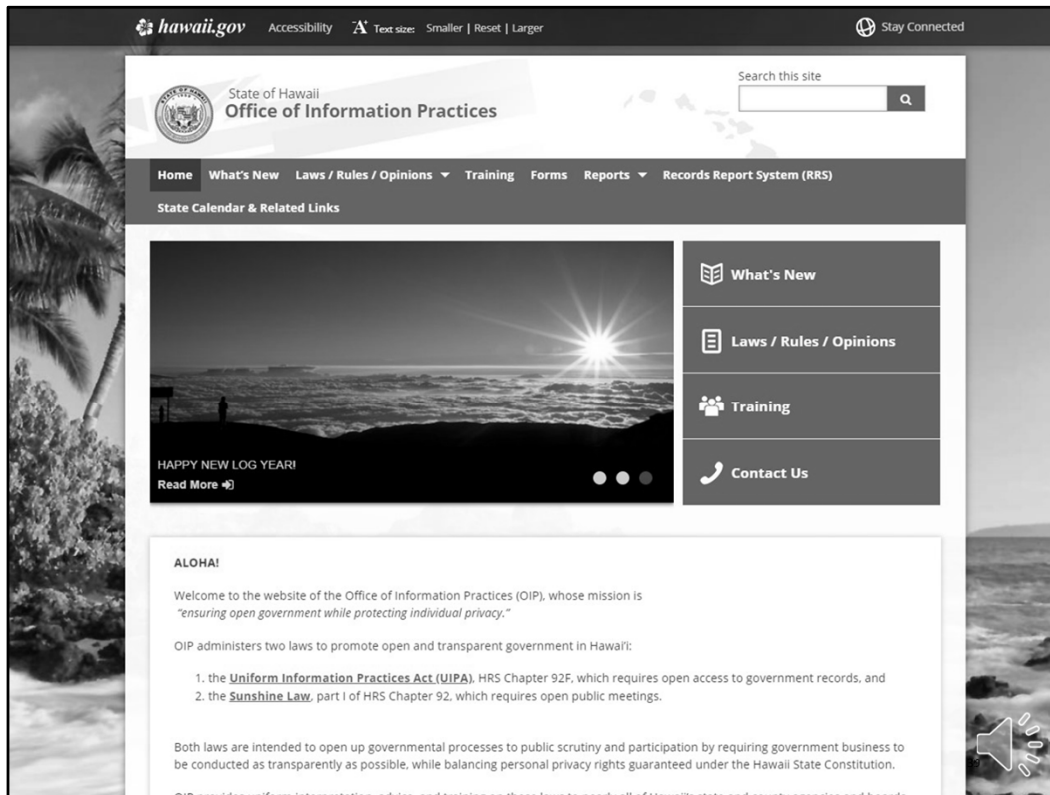
Emergency Meetings

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



Finally, the last type of meeting is an emergency meeting, which is essentially a meeting that is conducted with less than six days' advance notice. An emergency meeting can be held when there is an imminent peril to public health, safety, or welfare. Or, an emergency meeting may be required due to an unanticipated event requiring board action on a matter over which it has supervision, control, jurisdiction, or advisory power, such as last-minute court or legislative hearing requiring board action.

A board needs the Attorney General's approval to hold an emergency meeting and there are many other hoops that it needs to jump through, so it's best to call the board's attorney or OIP for help if the need arises for an emergency meeting.



This brings us to the end of our summary of the Sunshine Law. If you want more detailed training or information about the Sunshine Law, or the UIPA, please go to our website at oip.hawaii.gov. There, we have copies of the laws that OIP administers, the Sunshine Law and the UIPA; OIP's administrative rules; opinions; forms; guidance; training materials for boards, agencies, and the general public; and other useful material.

Need Help?

- AOD: (808) 586-1400
- Email: **oiip@hawaii.gov**
- OIP Website: **oiip.hawaii.gov**



We also have our Attorney of the Day, or “AOD,” service. Every day, one of the staff attorneys is assigned as Attorney of the Day to answer general questions and provide quick guidance. You can reach the AOD either by phone at 808-586-1400 or better yet, by email at oiip@hawaii.gov. And again, our website is oiip.hawaii.gov.

Thank you again for your interest in the Sunshine Law.