

Quick Review: Sunshine Law Requirements for Public Meeting Minutes (August 2023)

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.

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 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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A board has a choice of two formats for minutes: (1) written minutes, or (2) recorded minutes consisting of a recording of the entire meeting accompanied by a written summary. Either way, minutes must provide "a true reflection of the matters discussed at the meeting and the views of the participants." HRS § 92-9(a).

If a board opts for written minutes, those minutes must include:

- The date, time, and place of the meeting;
- The members recorded as either present or absent;
- The substance of all matters proposed, discussed, or decided;
- A record by individual member of votes taken;
- If a recording of the meeting is available online, a link to the recording placed at the beginning of the minutes; and
- Any information that a board member specifically asks at the meeting to be included.

Boards opting for written minutes are not required to create a transcript of or (except for remote meetings) to electronically record a meeting. 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 written minutes to describe, in very general terms, the positions expressed by these other participants.

If a board opts for recorded minutes, those minutes must include an audio or audiovisual recording of the meeting accompanied by a written summary, which must include:

- The date, time, and place of the meeting;
- The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
- A record, by individual members, of motions and votes made by the board; and
- A time stamp or other reference indicating when in the recording the board began discussion of each agenda item and when motions and votes were made by the board.

The written summary requirements will allow the public to quickly find key information about a meeting and skip to the point in the recording where an item of interest was discussed, without having to listen to the entire recording that may be hours long. Although a board does have the choice to record its minutes in either digital (e.g., audio or video computer file) or analog (e.g., a magnetic tape recording) format, OIP recommends that boards record in a digital format to avoid having to convert an analog recording into digital format to be able to place the recording online.

Online meeting platforms typically offer a straightforward option to record a meeting. Thus, 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, though, the board will not violate the law by its failure to do so. For remote meetings held using interactive conference technology (ICT), the Sunshine Law specifically provides:

Boards shall record meetings open to the public, when practicable, 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. Boards are encouraged to keep recordings available on their website.

HRS § 92-3.7(b)(6). 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 create written minutes, a board is allowed to take down and even delete the recording once its written minutes are posted online, but section 92-9(b) requires it to send a copy of the recording to the State Archives before removing it from the website.

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.
- Written 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 . . .”
- Written 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 written 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 written 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. Moreover, there is no right under the Sunshine Law to make a continuous, standing request to be notified when a board's minutes are posted online. The Sunshine Law requirement for minutes to be posted online does not include a specific end point for how long they must remain online, so how long minutes for past years must be kept available on a website ultimately depends on the board and its retention policy. The Sunshine Law does, however, require a board to send a copy of a remote meeting recording to the State Archives before taking the recording off its website, and OIP recommends that a board planning to remove historical minutes from its website should first send copies to the State Archives regardless of whether they are in written or recorded format.
- 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.