

JAN 22 2021

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# A BILL FOR AN ACT

RELATING TO BOARD MEETINGS.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. The legislature finds that the coronavirus  
2 disease 2019 (COVID-19) pandemic forced the implementation of  
3 emergency measures suspending certain requirements of the  
4 State's sunshine law in order to allow boards to continue  
5 meeting and conducting necessary business while protecting  
6 participants' health and safety and expanding public access to  
7 meetings throughout the State. During the emergency stay-at-  
8 home orders and travel restrictions, board members, staff, or  
9 members of the public could not attend public meetings in  
10 person. In lieu of traditional in-person meetings, remote  
11 meetings connected people in different physical locations  
12 through the use of interactive conference technology and thus  
13 enabled and enhanced board and public participation. Remote  
14 meetings, popularly referred to as "virtual meetings", could be  
15 safely held and allow more people from different islands or  
16 parts of islands to effectively participate, often during times  
17 when they would not otherwise be physically able or authorized



1 to leave their work, homes, or schools to participate in an in-  
2 person meeting.

3       Based on boards' experiences with remote meetings during  
4 the COVID-19 pandemic, the legislature finds that the increased  
5 costs of staffing, technological equipment, and resources needed  
6 to conduct remote meetings are offset by the savings in time,  
7 convenience, and travel costs for board members and  
8 participants, especially those from the neighbor islands.  
9 During the COVID-19 pandemic, remote meetings helped to prevent  
10 the spread of disease, and even when there is not an ongoing  
11 pandemic, the legislature finds that remote meetings can be a  
12 way to protect the health and safety of participants. This is  
13 particularly true for those who have disabilities or medical  
14 conditions that would place them at greater risks during travel  
15 or attendance at in-person public meetings.

16       The legislature additionally finds that allowing board  
17 members to participate in remote meetings from their homes or  
18 private offices, while protecting their privacy by not requiring  
19 them to allow members of the public into private sites, may  
20 increase the number of volunteers willing to serve on government  
21 boards. This may especially be the case when they live on an



1 island different from where the boards' offices are located.  
2 Additionally, allowing boards to conduct remote meetings within  
3 reasonable restrictions to ensure board transparency and public  
4 access would help to increase public participation in the  
5 formation and conduct of public policy.

6 The legislature also finds that the benefits of remote  
7 meetings should continue in non-emergency times, which requires  
8 permanent amendments to the sunshine law. For remote meetings  
9 not held during times of emergency, the legislature recognizes  
10 the need for boards to also provide for an in-person meeting  
11 location where members of the public can come to observe the  
12 remote meeting or testify in person using interactive conference  
13 technology equipment provided by the board, without requiring  
14 board members to be at the in-person location. This allows  
15 members of the public who do not have the equipment, internet  
16 connection, desire, or ability to readily access an online  
17 meeting to view the meeting and testify in person, as has  
18 traditionally been the method of conducting meetings, even if  
19 the board members themselves are not physically in the same  
20 room.



1           The legislature further finds that remote meetings could  
2 also take advantage of the relative ease of recording a meeting  
3 using interactive technology via many remote meeting platforms,  
4 and thus this proposal would require, when practicable, a board  
5 conducting a remote public meeting to also record the meeting  
6 and provide public access to the recording until such time as  
7 the actual meeting minutes have been posted online. This would  
8 benefit the public by allowing even those members of the public  
9 who were not able to attend the meeting itself to still find out  
10 what happened via the recording, without requiring the board to  
11 record a remote meeting or provide access to the recording when  
12 it determines that doing so is not practicable.

13           Recognizing that not all boards are equipped with adequate  
14 staffing or technological equipment and resources to conduct  
15 remote meetings in a manner that ensures public access as  
16 outlined in this Act, the legislature finds that these  
17 amendments should permit, but not require, boards to conduct  
18 remote meetings. These amendments would also continue to  
19 provide boards an alternative option to conduct an in-person  
20 meeting with board members and other participants physically  
21 present at multiple public meeting sites connected using



1 interactive conference technology, as the sunshine law currently  
2 allows. Retaining this option will continue to allow for  
3 greater public participation between islands or parts thereof in  
4 those circumstances when a board may not have sufficient  
5 internet bandwidth, staffing, or resources to effectively  
6 administer an online meeting or to accommodate a potentially  
7 large, worldwide audience that could possibly disrupt or  
8 overwhelm an online meeting and drown out the voices of  
9 residents in Hawaii's communities.

10 The legislature additionally finds that boards should have  
11 various options in how they could conduct public meetings:

- 12 (1) The traditional manner with all participants in person  
13 at a single site;
- 14 (2) An in-person meeting with board members and other  
15 participants physically present at multiple meeting  
16 sites connected using interactive conference  
17 technology; or
- 18 (3) A remote meeting using interactive conference  
19 technology to connect board members and other  
20 participants from non-public physical locations, with  
21 at least one public meeting site where people can



1 attend in person to testify or view the remote meeting  
2 using the equipment provided by the board.

3 The legislature also recognizes that boards should be able to  
4 list on their agendas additional locations open for public  
5 participation where the loss of audiovisual connection to the  
6 public meeting shall not necessarily result in termination of  
7 the public meeting.

8 While all public meeting options require at least one  
9 physical location where participants can attend in person, this  
10 Act does not affect the governor's emergency powers to suspend  
11 in-person meetings or other sunshine law requirements that are  
12 not feasible if the COVID-19 pandemic continues or another  
13 emergency arises.

14 Accordingly, the purpose of this Act is to expand and  
15 enhance public participation in public meetings, to lower the  
16 costs of holding meetings, to protect public health and safety,  
17 to promote voluntary participation on boards, and to avoid  
18 unnecessary and possibly burdensome travel by board members,  
19 staff, testifiers, observers, other participants, and the  
20 general public, by allowing boards the option to use interactive  
21 conference technology to conduct remote meetings under the



1 sunshine law, while still retaining the option to conduct  
2 traditional in-person meetings at a single meeting site or at  
3 multiple meeting sites connected by interactive conference  
4 technology.

5 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended  
6 by adding two new sections to part I to be appropriately  
7 designated and to read as follows:

8 "§92- Remote meeting by interactive conference  
9 technology; notice; quorum. (a) A board may hold a remote  
10 meeting by interactive conference technology. A board holding a  
11 remote meeting pursuant to this section shall not be required to  
12 allow members of the public to join board members in person at  
13 nonpublic locations where board members are physically present  
14 or to identify those locations in the notice required by section  
15 92-7; provided that at the meeting, each board member shall  
16 state who, if anyone, is present at the nonpublic location with  
17 the member. The notice required by section 92-7 shall:

18 (1) List at least one meeting location that is open to the  
19 public; and

20 (2) Inform members of the public how to contemporaneously:



- 1           (A) Remotely view the video and audio of the meeting  
2           through internet streaming or other means; and  
3           (B) Provide remote oral testimony in a manner that  
4           allows board members and other meeting  
5           participants to hear the testimony, whether  
6           through an internet link, a telephone conference,  
7           or other means.

8   The notice required by section 92-7 may also list additional  
9   locations open for public participation and shall specify  
10 whether, in the event an additional location loses its audio-  
11 visual connection to the remote meeting, the meeting will  
12 continue without that location or will be automatically recessed  
13 to restore communication as provided in subsection (c).

14       (b) For a remote meeting held by interactive conference  
15 technology pursuant to this section:

16       (1) The interactive conference technology used by the  
17       board shall allow interaction among all members of the  
18       board participating in the meeting and all members of  
19       the public attending the meeting;

20       (2) Except as provided in subsections (c) and (d), a  
21       quorum of board members shall be visible and audible





1           to other members and the public during the meeting;  
2           provided that so long as a quorum of board members is  
3           visible, no other meeting participants shall be  
4           required to be visible during the meeting;

5       (3) Any board member participating in a meeting by  
6           interactive conference technology shall be considered  
7           present at the meeting for the purpose of determining  
8           compliance with the quorum and voting requirements of  
9           the board;

10       (4) At the start of the meeting the presiding officer  
11           shall announce the names of the participating members;

12       (5) Unless unanimous, votes shall be conducted by roll  
13           call so that it is clear how each board member voted;  
14           and

15       (6) When practicable, boards shall record meetings open to  
16           the public and make the recording of the meeting  
17           electronically available to the public as soon as  
18           practicable after a meeting and until the minutes  
19           required by section 92-9 are electronically posted on  
20           the board's website.



1        (c) A meeting held by interactive conference technology  
2 shall be automatically recessed for up to one hour to restore  
3 communication when audiovisual communication cannot be  
4 maintained with a quorum of members or with the public location  
5 identified in the board's notice pursuant to subsection (a)(1)  
6 or with the remote public broadcast identified in the board's  
7 notice pursuant to subsection (a)(2)(A). This subsection shall  
8 not apply based on the inability of a member of the public to  
9 maintain an audiovisual connection to the remote public  
10 broadcast, unless the remote public broadcast itself is not  
11 transmitting an audiovisual link to the meeting. The meeting  
12 may reconvene when either audiovisual communication is restored,  
13 or audio-only communication is established after an unsuccessful  
14 attempt to restore audiovisual communication; provided that the  
15 board has provided reasonable notice to the public as to how to  
16 access the reconvened meeting after an interruption to  
17 communication. If audio-only communication is established, then  
18 each speaker shall be required to state their name prior to  
19 making their remarks. Within fifteen minutes after audio-only  
20 communication is established, copies of nonconfidential visual  
21 aids, which are required by or brought to the meeting by board



1 members or as part of a scheduled presentation, shall be made  
2 available either by posting on the internet or by other means to  
3 all meeting participants, including those participating  
4 remotely, and those agenda items for which visual aids are not  
5 available for all participants shall not be acted upon at the  
6 meeting. If it is not possible to reconvene the meeting as  
7 provided in this section within one hour after an interruption  
8 to communication, and the board has not provided reasonable  
9 notice to the public as to how the meeting will be continued at  
10 an alternative date and time, then the meeting shall be  
11 automatically terminated.

12 (d) During executive meetings from which the public has  
13 been excluded, board members shall be audible to other  
14 authorized participants and are not required to be visible. To  
15 preserve the executive nature of any portion of a meeting closed  
16 to the public, the presiding officer shall publicly state the  
17 names and titles of all authorized participants, and upon  
18 convening the executive session all participants shall confirm  
19 to the presiding officer that no unauthorized person is present  
20 or able to hear them at their remote locations or via another  
21 audio or audio-visual connection. The person organizing the



1 interactive conference technology shall confirm that no  
2 unauthorized person has access to the executive meeting as  
3 indicated on the control panels of the interactive conference  
4 technology being used for the meeting, if applicable.

5 §92- Contact tracing. Notwithstanding section 92-3, a  
6 board may require members of the public attending a meeting in  
7 person to:

8 (1) Provide their names and contact information solely for  
9 the purpose of contact tracing; provided that the  
10 information shall not be disclosed or used for any  
11 other purpose and shall not be maintained any longer  
12 than necessary; and

13 (2) Abide by the board's requirements for facial  
14 coverings, physical distancing, or other safety  
15 measures,

16 when the governor has previously declared a state of emergency  
17 for a contagious illness and, without regard to whether the  
18 state of emergency is still in effect, a board reasonably  
19 believes that such requirements are necessary because of the  
20 continuing prevalence of the contagious illness for which the  
21 state of emergency was declared."



1 SECTION 3. Section 92-2, Hawaii Revised Statutes, is  
2 amended by amending the definition of "interactive conference  
3 technology" to read as follows:

4 "Interactive conference technology" means any form of  
5 ~~[audio or]~~ audio and visual conference technology, or audio  
6 conference technology where permitted under this part, including  
7 teleconference, videoconference, and voice over internet  
8 protocol, that facilitates interaction between the public and  
9 board members."

10 SECTION 4. Section 92-3.5, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "§92-3.5 ~~[Meeting]~~ In-person meeting at multiple sites by  
13 interactive conference technology; notice; quorum. (a) A board  
14 may hold [a] an in-person meeting at multiple meeting sites  
15 connected by interactive conference technology; provided that  
16 the interactive conference technology used by the board allows  
17 audio or audiovisual interaction among all members of the board  
18 participating in the meeting and all members of the public  
19 attending the meeting, and the notice required by section 92-7  
20 identifies all of the locations where participating board  
21 members will be physically present and indicates that members of



1 the public may join board members at any of the identified  
2 locations. The notice may list additional locations open for  
3 public participation but where no participating board members  
4 will be physically present, and the notice shall specify whether  
5 the meeting will continue without that location or will be  
6 automatically recessed to restore communication as provided in  
7 subsection (c), in the event one of those additional locations  
8 loses its audio connection to the remote meeting.

9 (b) Any board member participating in a meeting by  
10 interactive conference technology under this section shall be  
11 considered present at the meeting for the purpose of determining  
12 compliance with the quorum and voting requirements of the board.

13 (c) A meeting held by interactive conference technology  
14 under this section shall be ~~terminated~~ automatically recessed  
15 for up to one hour to restore communication when audio  
16 communication cannot be maintained with all locations where the  
17 meeting by interactive conference technology is being held, even  
18 if a quorum of the board is physically present in one location.  
19 ~~[If copies of visual aids required by, or brought to the meeting~~  
20 ~~by board members or members of the public, are not available to~~  
21 ~~all meeting participants, at all locations where audio only~~



1 ~~interactive conference technology is being used, within]~~ The  
2 meeting may reconvene when either audio or audio-visual  
3 communication is restored. Within fifteen minutes after audio-  
4 only communication is [used,] established, copies of  
5 nonconfidential visual aids, which are required by or brought to  
6 the meeting by board members or as part of a scheduled  
7 presentation, shall be made available either by posting on the  
8 internet or by other means to all meeting participants,  
9 including those participating remotely, and those agenda items  
10 for which visual aids are not available for all participants at  
11 all meeting locations [cannot] shall not be acted upon at the  
12 meeting. If it is not possible to reconvene the meeting as  
13 provided in this section within one hour after an interruption  
14 to communication, and the board has not provided reasonable  
15 notice to the public as to how the meeting will be continued at  
16 an alternative date and time, then the meeting shall be  
17 automatically terminated.

18 (d) Notwithstanding the other provisions of this section  
19 to the contrary, a board member with a disability that limits or  
20 impairs the member's ability to physically attend the meeting  
21 may participate in a board meeting from a location not



1 accessible to the public; provided that the member with a  
2 disability is connected to other members of the board and the  
3 public by both visual and audio means, and the member identifies  
4 where the member is located and who, if anyone, is present at  
5 that location with the member."

6 SECTION 5. Section 92-7, Hawaii Revised Statutes, is  
7 amended by amending subsection (a) to read as follows:

8 "(a) The board shall give written public notice of any  
9 regular, special, emergency, or rescheduled meeting, or any  
10 executive meeting when anticipated in advance. The notice shall  
11 include an agenda that lists all of the items to be considered  
12 at the forthcoming meeting; the date, time, and place of the  
13 meeting; the board's electronic and postal contact information  
14 for submission of testimony before the meeting; instructions on  
15 how to request an auxiliary aid or service or an accommodation  
16 due to a disability, including a response deadline, if one is  
17 provided, that is reasonable; and in the case of an executive  
18 meeting, the purpose shall be stated. If an item to be  
19 considered is the proposed adoption, amendment, or repeal of  
20 administrative rules, an agenda meets the requirements for  
21 public notice pursuant to this section if it contains a





# S.B. NO. 661

1 statement on the topic of the proposed rules or a general  
2 description of the subjects involved, as described in section  
3 91-3(a)(1)(A), and a statement of when and where the proposed  
4 rules may be viewed in person and on the Internet as provided in  
5 section 91-2.6. The means specified by this section shall be  
6 the only means required for giving notice under this part  
7 notwithstanding any law to the contrary."

8 SECTION 6. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 7. This Act shall take effect upon its approval.

11

INTRODUCED BY:

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# S.B. NO. 661

**Report Title:**

Sunshine Law; Interactive Conference Technology; Remote Meetings

**Description:**

Allows boards to use interactive conference technology to remotely conduct public meetings under the Sunshine Law in conjunction with in-person meetings, even when no emergency has been declared by government authorities. Authorizes boards to exclude the public from nonpublic locations, such as homes, where board members are physically present when remote board meetings are held by interactive conference technology. Establishes requirements for the conduct of remote meetings. Establishes a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail. Amends existing option to hold in-person meetings at multiple public meeting sites connected by interactive conference technology to require termination of meeting only if audio communication is lost and cannot be reestablished within an hour and the board had not provided reasonable notice of how the meeting would be continued. Allows for additional courtesy sites open to the public for both remote and in-person meetings held by interactive conference technology. Allows for contact tracing and social distancing during states of emergency caused by contagious diseases.

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