

S.B. NO. 1034

JAN 27 2021

A BILL FOR AN ACT

RELATING TO SUNSHINE LAW BOARDS.

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

1 PART I

2 SECTION 1. The COVID-19 pandemic forced the implementation
3 of 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 our island state. During the emergency
8 stay-at-home orders and travel restrictions, board members,
9 staff, or members of the public could not attend public meetings
10 in 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 allowed more people from different islands or
16 parts of islands to effectively participate, often during times

1 when they would not otherwise be physically able or authorized
2 to leave their work, homes, or schools to participate in an in-
3 person meeting.

4 Based on boards' experiences with remote meetings during
5 the COVID-19 pandemic, the increased costs of staffing,
6 technological equipment and resources needed to conduct remote
7 meetings are offset by the savings in time, convenience, and
8 travel costs for board members and participants, especially
9 those from the neighbor islands. During the COVID-19 pandemic,
10 remote meetings helped to prevent the spread of disease, and
11 even when there is not an ongoing pandemic, remote meetings can
12 be a way to protect the health and safety of participants,
13 particularly those who have disabilities or medical conditions
14 that would place them at greater risks during travel or
15 attendance at in-person public meetings. Allowing board members
16 to participate in remote meetings from their homes or private
17 offices, while protecting their privacy by not requiring them to
18 allow members of the public into private sites, may increase the
19 number of volunteers willing to serve on government boards,
20 particularly when they live on an island different from where
21 the boards' offices are located. Additionally, allowing boards
22 to conduct remote meetings within reasonable restrictions to
23 ensure board transparency and public access, would help to

1 increase public participation in the formation and conduct of
2 public policy.

3 Furthermore, the benefits of remote meetings should
4 continue in non-emergency times, which requires permanent
5 amendments to the Sunshine Law, part I of chapter 92, Hawaii
6 Revised Statutes. For remote meetings not held during times of
7 emergency, there is a need for boards to also provide for an in-
8 person meeting location where members of the public can come to
9 observe the remote meeting or testify in person using
10 interactive conference technology equipment provided by the
11 board, without requiring board members to be at the in-person
12 location. This allows members of the public who do not have the
13 equipment, internet connection, desire, or ability to readily
14 access an online meeting a way to view the meeting and testify
15 in person, as has traditionally been the method of conducting
16 meetings, even if the board members themselves are not
17 physically in the same room.

18 Remote meetings could also take advantage of the relative
19 ease of recording a meeting using interactive technology via
20 many remote meeting platforms, and thus this proposal would
21 require, when practicable, a board conducting a remote public
22 meeting to also record the meeting and provide public access to
23 the recording until such time as the actual meeting minutes have

1 been posted online. This would benefit the public by allowing
2 even those members of the public who were not able to attend the
3 meeting itself to still find out what happened via the
4 recording, without requiring the board to record a remote
5 meeting or provide access to the recording when it determines
6 that doing so is not practicable.

7 Recognizing that not all boards are equipped with adequate
8 staffing or technological equipment and resources to conduct
9 remote meetings in a manner that ensures public access as
10 outlined in this Act, these amendments should permit, but not
11 require, boards to conduct remote meetings. These amendments
12 would also continue to provide boards an alternative option to
13 conduct an in-person meeting with board members and other
14 participants physically present at multiple public meeting sites
15 connected using interactive conference technology, as the
16 Sunshine Law currently allows. Retaining this option will
17 continue to allow for greater public participation between
18 islands or parts thereof in those circumstances when a board may
19 not have sufficient internet bandwidth, staffing, or resources
20 to effectively administer an online meeting or to accommodate a
21 potentially large, worldwide audience that could possibly
22 disrupt or overwhelm an online meeting and drown out the voices
23 of residents in Hawaii's communities.

1 Thus, this Act gives boards various options in how they
2 could conduct public meetings: (1) in the traditional manner
3 with all participants in person at a single site; (2) in an in-
4 person meeting with board members and other participants
5 physically present at multiple meeting sites connected using
6 interactive conference technology; or (3) in a remote meeting
7 using interactive conference technology to connect board members
8 and other participants from non-public physical locations, with
9 at least one public meeting site where people can attend in
10 person to testify or view the remote meeting using the equipment
11 provided by the board. To supplement the public meeting sites,
12 this Act also recognizes that boards may list on their agendas
13 additional locations open for public participation where the
14 loss of audiovisual connection to the public meeting shall not
15 necessarily result in termination of the public meeting.

16 While all public meeting options require at least one
17 physical location where participants can attend in person, this
18 Act does not affect the governor's emergency powers to suspend
19 in-person meetings or other Sunshine Law requirements that are
20 not feasible if the COVID-19 pandemic continues or another
21 emergency arises.

22 Therefore, the purposes of this Act are to expand and
23 enhance public participation in public meetings, to lower the

1 costs of holding meetings, to protect public health and safety,
2 to promote voluntary participation on boards, and to avoid
3 unnecessary and possibly burdensome travel by board members,
4 staff, testifiers, observers, other participants, and the
5 general public, by allowing boards the option to use interactive
6 conference technology to conduct remote meetings under the
7 Sunshine Law, while still retaining the option to conduct
8 traditional in-person meetings at a single meeting site or at
9 multiple meeting sites connected by interactive conference
10 technology.

11 PART II

12 SECTION 2. Chapter 92, Hawaii Revised Statutes, is amended
13 by adding to part I a new section to be appropriately designated
14 and to read as follows:

15 "§92- Remote meeting by interactive conference
16 technology; notice; quorum. (a) A board may hold a remote
17 meeting by interactive conference technology. A board holding a
18 remote meeting pursuant to this section shall not be required to
19 allow members of the public to join board members in person at
20 nonpublic locations where board members are physically present
21 or to identify those locations in the notice required by section
22 92-7; provided that at the meeting, each board member shall

1 state who, if anyone, is present at the nonpublic location with
2 the member. The notice required by section 92-7 shall:

3 (1) List at least one meeting location that is open to the
4 public;

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

6 (A) Remotely view the video and audio of the meeting
7 through internet streaming or other means; and

8 (B) Provide remote oral testimony in a manner that
9 allows board members and other meeting
10 participants to hear the testimony, whether
11 through an internet link, a telephone conference,
12 or other means.

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

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

21 (1) The interactive conference technology used by the
22 board shall allow interaction among all members of the

1 board participating in the meeting and all members of
2 the public attending the meeting;

3 (2) Except as provided in subsections (c) and (d), a
4 quorum of board members shall be visible and audible
5 to other members and the public during the meeting;
6 provided that so long as a quorum of board members is
7 visible, no other meeting participants shall be
8 required to be visible during the meeting;

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

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

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

19 (6) When practicable, boards shall record meetings open to
20 the public and make the recording of any such meeting
21 electronically available to the public as soon as
22 practicable after a meeting and until such time as the

1 minutes required by section 92-9 are electronically
2 posted on the board's website.

3 (c) A meeting held by interactive conference technology
4 shall be automatically recessed for up to one hour to restore
5 communication when audiovisual communication cannot be
6 maintained with a quorum of members or with the public location
7 identified in the board's notice pursuant to subsection (a)(1)
8 or with the remote public broadcast identified in the board's
9 notice pursuant to subsection (a)(2)(A). This section shall not
10 apply based on the inability of a member of the public to
11 maintain an audiovisual connection to the remote public
12 broadcast, unless the remote public broadcast itself is not
13 transmitting an audiovisual link to the meeting. The meeting
14 may reconvene when either audiovisual communication is restored,
15 or audio-only communication is established after an unsuccessful
16 attempt to restore audiovisual communication, but only if the
17 board has provided reasonable notice to the public as to how to
18 access the reconvened meeting after an interruption to
19 communication. If audio-only communication is established, then
20 each speaker shall be required to state their name prior to
21 making their remarks. Within fifteen minutes after audio-only
22 communication is established, copies of nonconfidential visual
23 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
22 interactive conference technology shall confirm that no
23 unauthorized person has access to the executive meeting as

1 indicated on the control panels of the interactive conference
2 technology being used for the meeting, if applicable."

3 SECTION 3. Chapter 92, Hawaii Revised Statutes, is amended
4 by adding to part I a new section to be appropriately designated
5 and to read as follows:

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

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

13 and

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

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

1 SECTION 4. 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 5. 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
22 the public may join board members at any of the identified
23 locations. The notice may list additional locations open for

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

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

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

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

14 (d) Notwithstanding the other provisions of this section
15 to the contrary, a board member with a disability that limits or
16 impairs the member's ability to physically attend the meeting
17 may participate in a board meeting from a location not
18 accessible to the public; provided that the member with a
19 disability is connected to other members of the board and the
20 public by both visual and audio means, and the member identifies
21 where the member is located and who, if anyone, is present at
22 that location with the member."

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

3 "(a) The board shall give written public notice of any
4 regular, special, emergency, or rescheduled meeting, or any
5 executive meeting when anticipated in advance. The notice shall
6 include an agenda that lists all of the items to be considered
7 at the forthcoming meeting; the date, time, and place of the
8 meeting; the board's electronic and postal contact information
9 for submission of testimony before the meeting; instructions on
10 how to request an auxiliary aid or service or an accommodation
11 due to a disability, including a response deadline, if one is
12 provided, that is reasonable; and in the case of an executive
13 meeting the purpose shall be stated. If an item to be
14 considered is the proposed adoption, amendment, or repeal of
15 administrative rules, an agenda meets the requirements for
16 public notice pursuant to this section if it contains a
17 statement on the topic of the proposed rules or a general
18 description of the subjects involved, as described in section
19 91-3(a)(1)(A), and a statement of when and where the proposed
20 rules may be viewed in person and on the Internet as provided in
21 section 91-2.6. The means specified by this section shall be
22 the only means required for giving notice under this part
23 notwithstanding any law to the contrary."

1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act, upon its approval, shall take effect
4 on July 1, 2021.

5

6

INTRODUCED BY: *Mark L. ...*

7

BY REQUEST

Report Title:

Sunshine Law; Interactive Conference Technology; Remote Meetings

Description:

Expands board and public participation by giving boards the option, in conjunction with in-person meetings, to use interactive conference technology to remotely conduct public meetings under the Sunshine Law, 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, with members of the public given the option to participate either remotely or at an in-person public location. Establishes requirements for the conduct of remote meetings. Requires remote meetings held by interactive conference technology to recess for a maximum prescribed period when audiovisual communication cannot be maintained by the board (not due to a member of the public's inability to maintain such communication) and allows the meeting to be reconvened even if only audio communication can be reestablished. Establishes a new notice requirement to provide the board's contact information for the submission of written testimony by electronic or postal mail, which also applies to remote meeting agendas. 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 in a pandemic.

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JUSTIFICATION SHEET

DEPARTMENT: Department of Accounting and General Services, Office of Information Practices.

TITLE: A BILL FOR AN ACT RELATING TO SUNSHINE LAW BOARDS.

PURPOSE: Expand and enhance public participation in public meetings, lower the costs of holding meetings, protect public health and safety, promote voluntary participation on boards, and avoid unnecessary and possibly burdensome travel by board members, staff, testifiers, observers, other participants, and the general public, by allowing boards the option to use interactive conference technology to conduct remote meetings under the Sunshine Law, while still retaining the option to conduct traditional in-person meetings at a single meeting site or at multiple meeting sites connected by interactive conference technology.

MEANS: Add two new sections to part I of chapter 92, Hawaii Revised Statutes, and amend sections 92-2, 92-3.5, and 92-7(a), Hawaii Revised Statutes.

JUSTIFICATION: The COVID-19 pandemic forced the implementation of emergency measures suspending certain requirements of the state's Sunshine Law in order to allow boards to continue meeting and conducting necessary business, while protecting participants' health and safety and expanding public access to meetings throughout our island state. During the emergency stay-at-home orders and travel restrictions, board members, staff, or members of the public could not attend

public meetings in person. In lieu of traditional in-person meetings, remote meetings connected people in different physical locations through the use of interactive conference technology and thus enabled and enhanced board and public participation. Remote meetings, popularly referred to as "virtual meetings," could be safely held and allowed more people from different islands or parts of islands to effectively participate, often during times when they would not otherwise be physically able or authorized to leave their work, homes, or schools to participate in an in-person meeting.

Based on boards' experiences with remote meetings during the COVID-19 pandemic, the increased costs of staffing, technological equipment and resources needed to conduct remote meetings are offset by the savings in time, convenience, and travel costs for board members and participants, especially those from the neighbor islands. During the COVID-19 pandemic, remote meetings helped to prevent the spread of disease, and even when there is not an ongoing pandemic, remote meetings can be a way to protect the health and safety of participants, particularly those who have disabilities or medical conditions that would place them at greater risks during travel or attendance at in-person public meetings. Allowing board members to participate in remote meetings from their homes or private offices, while protecting their privacy by not requiring them to allow members of the public into private sites, may increase the number of volunteers willing to serve on government boards, particularly when they live on an island different from where the boards' offices are located. Additionally, allowing boards to conduct remote meetings within reasonable restrictions to ensure board transparency and public access, would help to increase public participation in the formation and conduct of public policy.

The benefits of remote meetings should continue in non-emergency times, which requires permanent amendments to the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes. For remote meetings not held during times of emergency, it is important for boards to also provide for an in-person meeting location where members of the public can come to observe the remote meeting or testify in person using interactive conference technology provided by the board, without requiring board members to be at the in-person location. This allows members of the public who do not have the equipment, internet connection, desire, or ability to readily access an online meeting a way to view the meeting and testify in person, as has traditionally been the method of conducting meetings, even if the board members themselves are not physically in the same room.

This proposal could take advantage of the relative ease of recording a meeting using interactive technology via many remote meeting platforms, and thus would require a board conducting a remote public meeting to also record the meeting when practicable, and provide public access to the recording until such time as the actual meeting minutes have been posted online. This would benefit the public by allowing even those members of the public who were not able to attend the meeting itself to still find out what happened via the recording, without requiring the board to keep the recording past the time its minutes are posted or requiring a board to record a meeting when doing so is not practicable.

Recognizing that not all boards are equipped with adequate staffing or technological equipment and resources to conduct remote meetings, these amendments would permit, but not require, boards to conduct remote meetings. Amendments would also continue to

provide boards an alternative option to conduct an in-person meeting with board members and other participants physically present at multiple connected public meeting sites, as the Sunshine Law currently allows, rather than limit them to holding either a remote meeting, or an in-person meeting with all participants at a single site.

In the event the COVID-19 pandemic continues or another emergency arises, however, this bill does not affect the Governor's emergency powers to suspend in-person meetings or other Sunshine Law requirements that are not feasible during an emergency. This bill would also allow boards to institute contact tracing, masking, and social distancing as needed to address a contagious illness for which the Governor has previously declared a state of emergency, even if the state of emergency has since expired.

Impact on the public: This bill would increase the ability of members of the public to attend and testify at Sunshine Law meetings because it would allow Sunshine Law meetings to be conducted over the internet, as they have been during the COVID-19 pandemic, as a permanent option rather than an emergency measure. Because an individual could participate in remote meetings from their home, office, or wherever the individual has internet access, it could be more readily combined with other daily activities and obligations than a traditional in-person meeting in a government office.

Impact on the department and other agencies: This bill gives boards the option to conduct remote meetings using interactive conference technology, while still allowing them the option to continue to conduct in-person meetings in the traditional way or to connect multiple in-person meetings through interactive conference technology. For

those that choose to utilize interactive conference technology to conduct remote meetings or connect multiple in-person meetings, this bill would save boards the time and cost of making inter-island travel arrangements for board members, would make it easier for boards to meet quorum as members' attendance requires less of a time commitment than in-person attendance including travel time, and would make it easier for boards to find members willing to serve as the time commitment and travel required to serve on a board would be reduced.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: None.

OTHER AFFECTED
AGENCIES: This bill affects all state and county government boards subject to the Sunshine Law.

EFFECTIVE DATE: July 1, 2021.