

JAN 22 2021

A BILL FOR AN ACT

RELATING TO SUNSHINE LAW BOARDS.

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

1 SECTION 1. The legislature finds that the COVID-19
2 pandemic forced the implementation of emergency measures
3 suspending certain requirements of the State's Sunshine Law in
4 order to allow boards to virtually meet and conduct necessary
5 business through the use of interactive conference technology,
6 while protecting participants' health and safety and expanding
7 public access to meetings throughout our island State. During
8 the emergency stay-at-home orders and travel restrictions, it
9 was not possible for board members, staff, or members of the
10 public to attend public meetings in person. Through the use of
11 interactive conference technology, however, virtual meetings
12 enabled and enhanced board and public participation. Virtual
13 meetings could be safely held and allowed more people from
14 different islands or parts of islands to effectively
15 participate, often during times when they would not otherwise be
16 physically able to leave their work, homes, or schools to
17 participate in an in-person meeting.



1 The legislature finds that the increased costs of staffing
2 and technological equipment and resources needed to conduct
3 virtual meetings are offset by the savings in time, convenience,
4 and travel costs for board members and participants, especially
5 those from the neighbor islands. Importantly, virtual meetings
6 help to prevent the spread of disease and protect the health and
7 safety of all participants, particularly those who have
8 disabilities or medical conditions that would place them at
9 greater risks during travel or attendance at in-person public
10 meetings. The legislature also finds that allowing board
11 members to participate in virtual meetings from their homes or
12 private offices, while protecting their privacy and not
13 requiring them to allow members of the public into their homes
14 or private offices, may increase the number of volunteers
15 willing to serve on government boards, particularly when they
16 live on an island different from where the boards' offices are
17 located.

18 The legislature further finds that the benefits of virtual
19 meetings should continue in non-emergency times and that
20 permanent amendments are needed to the Sunshine Law, part I of
21 chapter 92, Hawaii Revised Statutes. Except for times of



1 emergency, the legislature recognizes the need for boards
2 conducting virtual meetings to also provide for an in-person
3 meeting location where members of the public can observe the
4 virtual meeting or testify in person using interactive
5 conference technology provided by the board, without requiring
6 board members to be at the in-person location. Recognizing that
7 not all boards are equipped with adequate staffing or
8 technological equipment and resources to conduct virtual
9 meetings, the legislature finds that these amendments should
10 permit, but not require, boards to conduct virtual meetings.

11 The legislature further finds that telecommunications
12 infrastructure can have occasional failures. To promote
13 openness, efficiency, and safety by facilitating meetings using
14 interactive conference technology, it is important that a
15 virtual meeting be allowed to continue without the need to be
16 adjourned when a technological failure occurs.

17 Therefore, the purpose of this Act is to:

- 18 (1) Expand and enhance public participation in public
19 meetings, while protecting the health and safety of
20 board members, staff, testifiers, observers, other
21 participants, and the general public, by allowing



boards to use interactive conference technology to
conduct virtual meetings under the Sunshine Law; and
(2) Allow a meeting conducted by interactive conference
technology to continue without the need to be
adjourned when a technological failure occurs.

SECTION 2. Section 92-3.5, Hawaii Revised Statutes, is
amended to read as follows:

"§92-3.5 Meeting by interactive conference technology;
notice; quorum. (a) A board may hold a meeting by interactive
conference technology; provided that [the]:

(1) The interactive conference technology used by the
board allows interaction among all members of the
board participating in the meeting and all members of
the public attending the meeting[, and the notice
required by section 92-7 identifies all of the
locations where participating board members will be
physically present and indicates that members of the
public may join board members at any of the identified
locations.];

(2) Board members shall be visible and audible to other
members and the public during the public meetings;



1 provided that, during executive meetings from which
2 the public has been excluded, board members shall be
3 audible to other authorized participants and are not
4 required to be visible;

5 ~~[(b)]~~ (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 (6) To preserve the executive nature of any portion of a
15 meeting closed to the public, all participants shall
16 confirm to the presiding officer that no unauthorized
17 person is present or able to hear them at their remote
18 locations, and the person organizing the interactive
19 conference technology shall confirm that no
20 unauthorized person has access to the executive
21 meeting, as indicated on the control panels of the



1 interactive conference technology being used for the
2 meeting, if applicable; and

3 (7) When practicable, a board shall record meetings and
4 make the recording of any meeting open to the public
5 electronically available to the public as soon as
6 practicable after a meeting and until such time as the
7 minutes required by section 92-9 are electronically
8 posted on the board's website.

9 ~~[(c) A meeting held by interactive conference technology~~
10 ~~shall be terminated when audio communication cannot be~~
11 ~~maintained with all locations where the meeting by interactive~~
12 ~~conference technology is being held, even if a quorum of the~~
13 ~~board is physically present in one location. If copies of~~
14 ~~visual aids required by, or brought to the meeting by board~~
15 ~~members or members of the public, are not available to all~~
16 ~~meeting participants, at all locations where audio only~~
17 ~~interactive conference technology is being used, within fifteen~~
18 ~~minutes after audio only communication is used, those agenda~~
19 ~~items for which visual aids are not available for all~~
20 ~~participants at all meeting locations cannot be acted upon at~~
21 ~~the meeting.~~



1 ~~(d)]~~ (b) Notwithstanding the other provisions of this
2 section to the contrary, a board member with a disability that
3 limits or impairs the member's ability to physically attend the
4 meeting may participate in a board meeting from a location not
5 accessible to the public; provided that the member with a
6 disability is connected to other members of the board and the
7 public by both visual and audio means, and the member identifies
8 where the member is located and who, if anyone, is present at
9 that location with the member. When practicable, meetings held
10 by interactive conference technology may be recessed for not
11 more than one hour when audio communication cannot be maintained
12 with a quorum of members or with the public location where the
13 meeting by interactive conference technology is being held.

14 (c) A board holding a meeting by interactive conference
15 technology pursuant to this section shall not be required to
16 allow members of the public to join board members at non-public
17 locations where board members are physically present or to
18 identify those locations in the notice required by section 92-7;
19 provided that, at the meeting, each board member shall identify
20 who, if anyone, is present at the non-public location with the



1 member; and provided further that the notice required by section
2 92-7 shall:

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

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

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

8 (B) Provide oral testimony through an Internet link,
9 telephone conference, or other means.

10 (d) Notwithstanding section 92-3, a board may require
11 members of the public attending a meeting in person to:

12 (1) Provide their names and contact information for the
13 purpose of contact tracing; 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 those requirements are necessary because of the



1 continuing prevalence of the contagious illness for which the
2 state of emergency was declared."

3 SECTION 3. Section 92-7, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

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



1 rules may be viewed in person and on the Internet as provided in
2 section 91-2.6. The means specified by this section shall be
3 the only means required for giving notice under this part
4 notwithstanding any law to the contrary."

5 SECTION 4. Statutory material to be repealed is bracketed
6 and stricken. New statutory material is underscored.

7 SECTION 5. This Act shall take effect upon its approval.

8

INTRODUCED BY:


By Request



S.B. NO. 439

Report Title:

Hawaii State Association of Counties Package; Public Agency Meetings; Interactive Conference Technology

Description:

Clarifies laws regarding public meetings held by interactive conference technology by, among other things, requiring board members to be visible and audible to other members and the public, authorizing a board to require attendees to provide their names and contact information for contact tracing during certain states of emergency, and repealing the requirement that a meeting held by interactive conference technology be terminated when audio communication cannot be maintained with all locations where the meeting by interactive conference technology is being held.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

