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**Notice of Meeting
 UNIVERSITY OF HAWAI'I**

BOARD OF REGENTS COMMITTEE ON GOVERNANCE

Members: Regents Loo (Chair), Wilson (Vice-Chair), Haning, Higaki, and Lee

Date: Thursday, February 15, 2024

Time: 3:30 p.m.

Place: University of Hawai'i at Hilo
 Daniel K. Inouye College of Pharmacy
 Hale Kīho'iho'i Room 101
 722 South Aohoku Place
 Hilo, HI 96720

See the Board of Regents website to access the live broadcast of the meeting and related updates: www.hawaii.edu/bor

AGENDA

- I. Call Meeting to Order**
- II. Approval of Minutes of the November 2, 2023 Meeting**
- III. Public Comment Period for Agenda Items:**

Individuals who are unable to provide testimony at this time will be allowed an opportunity to testify when specific agenda items are called.

All written testimony on agenda items received after posting of this agenda and up to 24 hours in advance of the meeting will be distributed to the board. Late testimony on agenda items will be distributed to the board within 24 hours of receipt. Written testimony may be submitted via the board's website through the testimony link provided on the Meeting Agendas, Minutes and Materials page. Testimony may also be submitted via email at bor.testimony@hawaii.edu, U.S. mail at 2444 Dole Street, Bachman 209, Honolulu, HI 96822, or facsimile at (808) 956-5156.

Those wishing to provide oral testimony virtually may register [here](#). Given the constraints with the format of hybrid meetings, individuals wishing to orally testify virtually must register no later than 12:00 p.m. on the day of the meeting in order to be accommodated. Registration for in-person oral testimony on agenda items will also be provided at the meeting location 15 minutes prior to the meeting and closed at the posted meeting time. It is highly recommended that written testimony be submitted in addition to registering to provide oral testimony. Oral testimony will be limited to three (3) minutes per testifier.

Although remote oral testimony is being permitted, this is a regular meeting and not a remote meeting by interactive conference technology under Section 92-3.7, Hawai'i Revised Statutes (HRS). Therefore, the meeting will continue

If you need an auxiliary aid/service or other accommodation due to a disability, contact the Board Office at (808) 956-8213 or bor@hawaii.edu as soon as possible. Requests made as early as possible have a greater likelihood of being fulfilled. Upon request, this notice is available in alternate/accessible formats.

notwithstanding loss of audiovisual communication with remote testifiers or loss of the public broadcast of the meeting.

All written testimony submitted are public documents. Therefore, any testimony that is submitted orally or in writing, electronically or in person, for use in the public meeting process is public information and will be posted on the board's website.

IV. Agenda Items

- A. Discussion on Regent Policy 9.212 Executive and Managerial Personnel Policies
- B. Board Review and Discussion on Strategic Plan Imperative - Meet Hawai'i's Workforce Needs of Today and Tomorrow
- C. Discussion on Board of Regent Bylaws and Regent Policy 1.202 Relating to Board Communications and Legislative Advocacy
- D. Possible Action on Legislative Options to Address State Legislative Issues and Measures

V. Adjournment

**DISCLAIMER – THE FOLLOWING ARE DRAFT MINUTES AND ARE SUBJECT TO
FURTHER REVIEW AND CHANGE UPON APPROVAL BY THE COMMITTEE****MINUTES****BOARD OF REGENTS COMMITTEE ON GOVERNANCE
MEETING****NOVEMBER 2, 2023**

A video recording of this meeting may be viewed at the Board of Regents website as follows:

[Meeting Video](#)

I. CALL TO ORDER

Chair Laurel Loo called the meeting to order at 9:00 a.m. on Thursday, November 2, 2023, at the University of Hawai'i (UH) at Mānoa, Information Technology Building, 1st Floor Conference Room 105A/B, 2520 Correa Road, Honolulu, Hawai'i 96822, with regents participating from various locations.

Committee members in attendance: Chair Laurel Loo, Vice-Chair Ernest Wilson, Regent William Haning, Regent Wayne Higaki, and Regent Gabriel Lee.

Others in attendance: Board Chair Alapaki Nahale-a; Regent Neil Abercrombie; Regent Lauren Akitake; Regent Abigail Mawae; Regent Diane Paloma; Regent Laurie Tochiki (ex officio committee members); President David Lassner; Vice President (VP) for Administration Jan Gouveia; VP for Academic Strategy Debora Halbert; VP for Legal Affairs/University General Counsel Carrie Okinaga; VP for Research and Innovation Vassilis Syrmos; VP for Information Technology/Chief Information Officer Garret Yoshimi; VP for Budget and Finance/Chief Financial Officer Kalbert Young; Interim VP for Community Colleges Della Teraoka; UH-Mānoa Provost Michael Bruno; UH-Hilo Chancellor Bonnie Irwin; UH-West O'ahu Chancellor Maenette Benham; Executive Administrator and Secretary of the Board of Regents (Board Secretary) Yvonne Lau; and others as noted.

II. APPROVAL OF MINUTES

Chair Loo inquired if there were any corrections to the minutes of the October 5, 2023, committee meeting which had been distributed. Hearing none, the minutes were approved.

III. PUBLIC COMMENT PERIOD

Board Secretary Lau announced that the Board Office did not receive any written testimony and that no individuals signed up to provide oral testimony.

Regent Abercrombie arrived at 9:02 a.m.

IV. AGENDA ITEMS

A. Board Review and Discussion on Strategic Plan Imperative - Develop Successful Students for a Better Future

Chair Loo provided the rationale for the committee's review and discussion of each imperative contained within the University of Hawai'i System Strategic Plan 2023-2029 (Strategic Plan) highlighting a lack of familiarity with the overall Strategic Plan and its imperatives among regents who were relatively new members of the board and did not take part in the current Plan's creation. She spoke about the purpose of this exercise, which was for regents to conduct in-depth discussions on each imperative and reaffirm the board's commitment to these imperatives or propose changes to them; asked more seasoned regents to share their thoughts about, and provide insight on, the development of the Strategic Plan and its imperatives; went over the goal and objectives of the imperative to Develop Successful Students for a Better Future, as well as the metrics being used to evaluate achievement of its objectives; and invited input from regents on this matter. Board Chair Nahale-a added that having these discussions at the committee level provided regents with an avenue for deeper contemplation of the Strategic Plan so as to determine whether or not the Plan should be modified and provide greater clarity to the administration about the board's expectations.

Regent Mawae arrived at 9:06 a.m.

Although he was in support of the Strategic Plan and the imperative to Develop Successful Students for a Better Future, Regent Abercrombie expressed his desire for an explicit reference to the exploration of the humanities, which was one of the fundamental premises for the establishment of universities, to be included in the Strategic Plan stressing the importance of this area of study, particularly in light of current global events.

Regent Akitake conveyed her belief that receiving contextual information on the Strategic Plan, in addition to the thought processes used to develop its imperatives, would be beneficial to regents. Board Secretary Lau remarked that the administration was scheduled to provide updates to regents on each of the Strategic Plan's imperatives at board meetings with the presentation on the imperative to Develop Successful Students for a Better Future slated to be provided in October. However, due to time constraints arising from lengthy discussions on other matters at the October meeting, the issue was deferred to a later date. President Lassner concurred with Board Secretary Lau's assessment but remarked that the administration could provide another presentation on the overall Strategic Plan at the request of the board.

Regents offered comments on the complexity involved in quantifying student success, the ability of the above-mentioned metrics to take into consideration the various factors that can impact student achievement, and the critical importance of factual, sound data when determining the types of investments the university must make to provide students with the greatest opportunity to succeed. Several regents also verbalized the need for honest self-reflection to occur on portions of the Strategic Plan where goals and expectations are not being met, the provision of candid reports on these matters, and frank conversations about areas where the university needs improvement or is underperforming. Nevertheless, regents expressed their general support for the Strategic Plan.

Chair Loo asked whether the administration could provide data on each imperative's metrics when they are presented to the board. President Lassner replied in the affirmative. Regent Akitake suggested that the administration provide context to their data when it is presented in order for it to be viewed with a proper perspective.

V. ADJOURNMENT

There being no further business, Chair Loo adjourned the meeting at 9:29 a.m.

Respectfully Submitted,

Yvonne Lau
Executive Administrator and Secretary of
the Board of Regents

Discussion Item: Role of University of Hawai‘i Board of Regents (“BOR”) in Approving EM Appointments

Type	Appointment Type	Reference	Current Approach	What BOR Receives and Acts On
1	Direct EM Report to BOR: Pres, BOR Sec, Auditor	RP 9.212 (III.D)	BOR is appointing authority and directly manages entire process (selection, salary & appointment).	BOR manages entire process
2	Subordinate of EM that reports directly to the BOR (Ex. Vice Presidents, Chancellors, UHM Athletics Director)	RP 9.212 (III.D)	The EM that reports directly to the BOR (i.e., President, BOR Secretary, Internal Auditor) manages entire selection process and develops recommended salary, subject to final approval of appointment & salary by the BOR.	BOR receives appointment memo describing selection process, qualifications of selectee, and salary template with peer comparisons.
3	Appointment of all other EMs at salary above maximum of applicable scale	RP 9.212 (III.D)	Except for Types 1 and 2, the supervisor of any other EM manages the selection and appointment process. If, however, a salary is recommended above the maximum of salary schedule, then final approval of salary is required by the BOR.	BOR receives appointment memo describing process, qualifications of selectee, and salary template with peer comparisons.
4	Certain head coaches	RP 9.202 (III.H.2)	In general, the administration selects and appoints all coaches; however: Approval from the (1) chair or vice chair of the BOR, and (2) Chair or Vice Chair of the Student Success Committee is required for: (1) head coach contracts of more than 5 years, (2) Amended terms of head coach contracts of more than 5 years, or (3) any salaries for any coach or administrator that exceeds the salary schedule by more than 25% and/or exceeding \$500,000 annually.	BOR action is not required. An action memo is submitted to (1) Chair or Vice Chair of BOR, and (2) chair/vice chair of Student Success Committee for approval.

Issue: The current BOR has asked itself what its role is and should be in Types 2 and 3.

Background: The current policy was approved by prior Boards. In the past, for Type 2 the BOR primarily considered whether the search process was fair and open, and whether there are any obvious flaws in the appointment or salary. For Type 3 the BOR previously considered only the question of the salary.



Regents Policy Chapter 9, Personnel

Regents Policy RP 9.212, Executive and Managerial Personnel Policies

Effective Date: May 21, 2020

Prior Dates Amended: July 1, 1982; Oct. 21, 1988; Sept. 11, 1998; Oct. 22, 1999; Oct. 19, 2001; Oct. 18, 2002; Oct. 17, 2003; Oct. 19, 2006; Sept. 27, 2007; Jan. 10, 2008; Apr. 16, 2009; August 1, 2014 (recodified); July 1, 2016

Review Date: August 2023

I. **Purpose and Authority**

This Regents Policy RP 9.212 (“Policy”) provides a framework for the terms and conditions of service applicable to individuals appointed to executive and managerial (“EM”) positions at the University of Hawai‘i, (“University”), which are excluded from a bargaining unit as specified in Section 89-6(f)(2), Hawai‘i Revised Statutes (“HRS”), due to top-level executive, managerial, and administrative responsibilities. All employment actions taken pursuant to this Policy shall be in accordance with RP 1.205, Policy on Nondiscrimination and Affirmative Action.

This Policy is established pursuant to the authority granted to the Board of Regents (“Board”) by Article X, Section 6 of the Constitution of the State of Hawai‘i, and by Section 304A-1001, HRS.

This Policy supersedes all prior policies and practices that may conflict with any provision contained herein.

II. **Definitions**

The term “EM” shall mean executive and managerial positions at the University.

III. **Board Policy**

A. Establishment and Classification

1. There shall be an EM class of positions established based on the needs of the University and in a manner consistent with the University’s organizational structure. Generally speaking, executive and managerial positions (1) have system-wide, campus-wide, or major campus program responsibilities and report directly to the Board, President, Vice Presidents, or Chancellors, (2) report directly to executives and head major organizational segments of the University, or (3) serve as high-level



executive assistants. The Board retains authority to establish, classify, and abolish positions reporting to the Board and to the President. The President retains authority, which shall not be further delegated, to establish, classify, and abolish all other positions.

2. Positions shall be classified according to the complexity, breadth, and depth of responsibility and the critical importance of the position to the operation of the University. Each position shall be analyzed and described in writing to ensure equity within the University organization while considering comparable university systems nationwide.

B. Salary Schedule

1. The University aspires to provide compensation for its EM personnel that is competitive with pay levels of individuals who have similar responsibilities, demonstrated competence, and breadth of demonstrated experience. The President shall establish a salary schedule for all EM positions ("Salary Schedule"), which sets forth minimum, midpoint, and maximum salary ranges based on relevant competitive markets, including higher education and local markets, as well as on the level of responsibility of the position, equity in relation to comparable University positions, and value of the hire in fulfilling the strategic mission of the University.
2. Annually, the President shall provide the Board a copy of the current Salary Schedule and a listing of all EM positions that indicates the placement within the Salary Schedule. For vacant positions, the listing should show the date the vacancy occurred and intentions regarding the filling or reassignment of the position. For filled positions, the listing should show the date of appointment to the position, current salary, and the reason for any change to compensation that occurred since the prior report.

C. Recruitment

1. Recruitment for any vacant position shall require prior written approval of the President.
2. The University of Hawai'i seeks to attract the best-qualified candidates who support the mission of the University and who respect and promote excellence through diversity. In support of this goal, EM vacancies shall be advertised in locations which are considered appropriate sources for recruitment.



3. Waiver of recruitment for positions reporting directly to the President shall require approval of the Board. The President may waive recruitment for all other EM positions.

D. Appointment and Initial Salary

1. To attract and retain competent and experienced personnel, it is the aspiration of the University to offer compensation that is competitive with the market from which the personnel are recruited, including higher education and local markets. For comparison purposes, total compensation shall include salary and benefits.
2. Appointments should be at the minimum of the range unless a higher salary is justified based on:
 - the candidate's knowledge, skills, and experience;
 - the candidate's current salary; and
 - budget and fiscal conditions of the unit.
3. There shall be an Appointing Authority for every EM position ("Appointing Authority"). The Board shall be the Appointing Authority for all EM positions reporting directly to the Board. The President shall be the Appointing Authority for all other EM positions at the University, however, positions reporting directly to the President shall be subject to Board approval. Except for positions reporting directly to the President, the President shall have the authority to further delegate Appointing Authority for all other EM positions. See Illustration 1 below.
4. There shall be an Approving Authority that is at least one level above the Appointing Authority in the organization ("Approving Authority"). The President shall serve as the Approving Authority for all appointments above the midpoint and up to and including the maximum of the range within the Salary Schedule. Except for positions reporting directly to the Board and the President, the President shall have the authority to further delegate Approving Authority for all other EM positions up to and including the midpoint of the range within the Salary Schedule.

All appointments for EM positions that report to a position that reports directly to the Board and/or for all EM appointments exceeding the maximum of the range set forth in the Salary Schedule shall require approval of the Board. See Illustration 1 below



5. EM appointments are at will, and not contractual appointments to specific positions and EM appointees may be reassigned and/or receive an adjustment in pay based on changing assignments of responsibilities to meet the needs of the University. Unless otherwise approved by the Board, no offer of employment shall include a multi-year employment term.

Illustration 1:

Authority	Appointing Authority	Approving Authority
Board	All positions reporting directly to Board	<ul style="list-style-type: none"> • All positions that report to positions that directly report to the Board • All appointments exceeding the maximum of the range in the Salary Schedule
President	All other EMs (unless delegated)	All appointments above the midpoint and up to and including the maximum of the range in the Salary Schedule
Chancellor & Below	As delegated by the President	President may delegate all appointments up to and including the midpoint of the range in the Salary Schedule

E. Evaluation

1. EM employees are expected to perform their duties and responsibilities in a manner that achieves the highest standards of quality and professionalism. To that end, evaluations are a critical component of the continued employment, professional development, and compensation of all EM employees.
2. The assigned responsibilities, performance, and accomplishments of each appointee to an EM position shall be evaluated annually. The evaluation shall be consistent with criteria and procedures established by the



President and the Appointing Authority, including specific metrics aligned to the University's strategic goals. The review shall also include identification of specific goals to be accomplished in the coming year.

F. Salary Adjustments

1. Annual Salary Adjustments

- a. To ensure that EM salaries are competitive, salary adjustments as described herein may be granted annually for EM employees as a group, subject to the availability of Board-authorized funds for salary adjustments, and subject to performance evaluations.
- b. The Board shall approve any salary adjustments for positions reporting directly to the Board, i.e. the President, the Executive Administrator and Secretary of the Board of Regents, and the Director of the Office of Internal Audit. (See RP 2.203, Policy on Evaluation of the President and Other Persons Reporting Directly to the Board.)
- c. For all other EM positions, including EM positions reporting to the Executive Administrator and Secretary of the Board of Regents and the Director of the Office of Internal Audit, the President shall establish guidelines and approve an annual salary adjustment methodology not to exceed an increase of 5%, an authority which shall not be further delegated. Any annual salary adjustments that exceed a 5% increase shall require prior approval of the Board.
- d. The President shall report to the Board on the guidelines used for annual salary adjustments for positions under the President's delegated authority.
- e. This "Annual Salary Adjustments" section only authorizes annual salary adjustments for EM employees as a group and shall not authorize adjustments for individual EM employees outside of the general methodology and guidelines set forth by the President for annual adjustments.

2. Other Salary Adjustments

- a. Outside of the annual adjustment guidelines set forth above, the



President may approve salary adjustments for individual EM employees for merit, equity, or retention below the maximum of the range set forth in the Salary Schedule; provided, however, that all adjustments for EM positions that report to a position that reports directly to the Board and/or for all EM appointments exceeding the maximum of the range set forth in the Salary Schedule shall require approval of the Board.

G. Term and Termination

1. Subject to the terms of this Policy, EM positions are at-will and serve at the pleasure of the Board. The Appointing Authority for an EM position, as set forth in Section III.D of this Policy, has the authority to terminate the EM's employment with the University. Termination of EM personnel from employment, either with or without cause, is not appealable.
2. EM personnel without return rights to another position may be terminated from employment, without cause, at any time by being provided three (3) months prior written notice during the first two (2) years of employment and six (6) months prior written notice after the first two (2) years of employment.
3. EM personnel with return rights to another position may be terminated from their EM position, without cause, at any time by being provided thirty (30) days written notice. The salary at the time of return shall be that which the individual would have received had he/she not accepted the EM appointment; provided, however, the President may approve adjustments to the return-salary as deemed equitable and appropriate.
4. EM personnel may be terminated from employment for cause, effective immediately, with no obligation of prior notice on the part of the Board or University. In termination for cause, the employment relationship with the Board or University shall cease immediately with no further employment rights or obligations, and such decision shall be considered final.

H. Professional Improvement Leave

1. EM personnel may be granted leave with pay for professional improvement consistent with development in their profession and the needs of the University. Professional improvement leave is a privilege



for the purpose of advancing the University by (1) enhancing the performance of the employee and thereby, enriching the University's programs or (2) enabling EM employees to prepare to assume or resume faculty or professional duties after significant administrative service to the University. The leave shall be used to enhance or gain professional expertise and engage in professional activities to serve the University in support of the University's mission and goals.

2. Professional improvement leave may be granted after six (6) years of full-time continuous service, including creditable service in other Board classifications, for periods of up to six (6) months at full pay or twelve (12) months at half pay with total months earned at the rate of one (1) month for each year of service. Leaves of shorter duration and intermittent leaves may also be granted. However, the total duration of the intermittent leave taken with pay should not exceed the total leave provided for under this Policy. The President may grant exceptions to the minimum creditable service requirement when deemed in the best interests of the University.
3. The leave approved under this provision shall be taken at the salary applicable to the position the individual will occupy upon return from the professional improvement leave. For example, if the individual will return to an EM position, the leave may be taken at the current EM salary, however, if the individual will return to a faculty position, the leave shall be taken at the appropriate faculty salary for the faculty position.
4. An individual granted a leave with pay for professional improvement shall agree to return to service at the University. The return service obligation shall be equivalent to the duration of the leave. Upon the return of the individual from professional leave, the individual shall submit a written report to the appropriate supervisor on the activities during the leave.

I. Other Conditions of Service

1. EM personnel shall be granted all rights and benefits accorded other University employees as provided by statute, rule, or Board policy, except as may be specifically modified by this Policy or other policies of the Board. These rights and benefits shall be subject to adjustments and modifications as provided by HRS Chapter 89C, which provides for comparability with bargaining unit members. Any additional benefits



shall require prior approval of the Board.

IV. **Delegation of Authority**

Except as specified above, there is no policy-specific delegation of authority.

V. **Contact Information**

Office of Human Resources, 956-8988

VI. **References**

- RP 2.203
- http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-115/HRS0089/HRS_0089-0006.htm
- http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0089C-.htm
- http://www.capitol.hawaii.gov/hrscurrent/Vol01_Ch0001-0042F/Const/CONST_0010-0006.htm
- http://www.capitol.hawaii.gov/hrscurrent/Vol05_Ch0261-0319/HRS0304A/HRS_0304A-1001.htm

VII. **Exhibits and Appendices**

No Exhibits or Appendices Found

VIII. **Approved**

_____/S/
Kendra Oishi
Executive Administrator and
Secretary of the Board of Regents

5/21/2020
Date



Regents Policy Chapter 9, Personnel

Regents Policy RP 9.202, Classification and Compensation Plans

Effective Date: November 16, 2023

Prior Dates Amended: Jan. 16, 1958; Dec. 2, 1959; Oct. 11, 1962; Sept. 10, 1964; Apr. 16, 1969; Aug. 19, 1969; Mar. 14, 1974; Dec. 12, 1974; Dec. 11, 1975; July 15, 1976; Dec. 9, 1976; Jan. 16, 1977; June 16, 1977; July 14, 1977; Apr. 20, 1978; Oct. 20, 1978; Dec. 7, 1979; Jan. 10, 1980; Oct. 17, 1980; Dec. 5, 1980; Feb. 5, 1981; June 18, 1981; Oct. 16, 1981; Feb. 19, 1982; Oct. 22, 1982; Sept. 30, 1983; Nov. 18, 1983; Mar. 16, 1984; July 27, 1984; June 21, 1985; Sept. 20, 1985; June 20, 1986; July 25, 1986; July 24, 1987; Sept. 18, 1987; Oct. 16, 1987; Nov. 20, 1987; May 20, 1988; Oct. 21, 1988; Nov. 18, 1988; Feb. 17, 1989; Sept. 15, 1989; Nov. 17, 1989; Feb. 16, 1990; Apr. 20, 1990; Oct. 19, 1990; Nov. 16, 1990; June 21, 1991; Sept. 20, 1991; Feb. 21, 1992; June 19, 1992; July 17, 1992; Mar. 19, 1993; Sept. 17, 1993; Oct. 21, 1994; Aug. 23, 1996; June 20, 1997; Nov. 14, 1997; Jan. 16, 1998; Apr. 17, 1998; Jan. 21, 2000; Feb. 18, 2000; Apr. 20, 2000; June 16, 2000; Aug. 11, 2000; Aug. 15, 2000; Apr. 20, 2001; Jan. 18, 2002; Mar. 15, 2002; June 2002; Oct. 18, 2002; Mar. 14, 2003; Apr. 17, 2003; May 16, 2003; Nov. 21, 2003; May 18, 2006; Aug. 2006; Mar. 15, 2007; July 26, 2007; Sept. 2007; Nov. 15, 2007; Feb. 15, 2008; May 29, 2008; Sept. 2008; Nov. 21, 2008; Oct. 31, 2014 (recodified); June 1, 2017; June 7, 2018

Review Date: August 2028

I. **Purpose:**

To set forth policy on classification and compensation plans. Revisions to this policy regarding faculty classifications will be applied prospectively to faculty employees hired on or after August 1, 2024. Faculty employees that were hired and classified prior to August 1, 2024, shall retain their existing classification and tenure eligibility, promotion and tenure criteria, and types of work duties unless they elect to 1) convert to the new classification plan; 2) apply for another faculty position in the new classification plan; or 3) separate from service.

II. **Definitions:**

No policy specific or unique definitions apply.

III. **Policy:**

- A. Except for civil service positions, the board shall classify all positions in the university and adopt classification and compensation plans pursuant to Sections 304A-1001 and 304A-1002, Hawai'i Revised Statutes, and as appropriate.
- B. The president, with the exception of select undelegated executive managerial personnel, is authorized, consistent with existing statutes and board policies,

to grant special salary adjustments in situations where funds are available and the adjustments are warranted on the basis of retention, market, equity, and/or merit.

- C. Executive and managerial positions are classified and compensated in accordance with the executive and managerial personnel policies in RP 9.212.
- D. Compensation shall be in accordance with provisions reflected in the most current collective bargaining agreement negotiated between the university and the exclusive collective bargaining representative. In the event that the faculty member is not subject to collective bargaining, the president shall have the authority to establish compensation guides.

E. Faculty Positions

- 1. The president is delegated by the Board of Regents the authority to establish a faculty classification plan, administer the plan, and make amendments to the plan, provided that any new faculty categories or campus faculty senates shall be subject to prior approval of the board.
- 2. In establishing the faculty classification plan, the foundation of the tenure-track shall consist of one or more components of teaching, research, specialized educational service, and community service as described in the Collective Bargaining Agreement. The board recognizes that some classifications, including librarians, extension agents, and community college faculty, have work responsibilities distributed between one or more components as described above or further defined by professional standards associated with their specialized field.
- 3. Classification Plan for Faculty
 - a. The classification may include the following categories for tenure-eligible faculty: Academic Faculty (F) for all faculty engaged in instruction, research, specialized educational service, community service or some combination of these; Librarian (B); Extension Agent (A); Clinical Professor (H); and Community Colleges (C).
 - b. The classification may include the following categories for non-tenure eligible faculty: Instructor (I2), Junior Extension Agent (A2), Researcher (R2), Clinical Professor (H2), Lecturer (L), Visiting (V), Non-Compensated Faculty (NC), Professor of

Practice (P), and Affiliate Graduate Faculty (NC).

- c. Non-tenured faculty may still be eligible for promotion depending on the classification.
 - d. Existing faculty hired before August 1, 2024 will retain their current classification. These include: I for all faculty excluding law and clinical medicine faculty, J for law, M for clinical medicine, C for Community Colleges, B for Librarian, A for Extension Agent, R for Researcher, S for Specialist, Lecturer, Adjunct, and Non-compensated Faculty.
4. Titles of positions are determined by the board, and no faculty member may use any title not specifically authorized as provided below:
- a. Academic Faculty (F), Community College (C) and Clinical Faculty (H) includes acting assistant professor, assistant professor, associate professor, and professor.
 - b. Librarian (B) includes Librarian II-V.
 - c. Extension Agent (A) includes Junior Extension Agent, Assistant Extension Agent, Associate Extension Agent, Extension Agent.
 - d. Instructor (I) includes Assistant Instructor, Associate Instructor, Instructor, Senior Instructor.
 - e. Clinical Instructor (H2)
 - f. Lecturers (L)
 - g. Professor of Practice (P)
 - h. Affiliate Non-Compensated Faculty (NC) includes assistant, professor, associate professor, and professor.
 - i. Existing faculty hired before August 1, 2024 will retain their current titles. Instructional Faculty (I), Law (J), Community College (C), and Clinical Medicine (M) includes: instructors, assistant professors, associate professors, and professors. Librarian (B) includes Librarian II-V. Extension Agent (A) includes Junior Extension Agent, Assistant Extension Agent, Associate Extension Agent, Extension Agent. Researchers (R) includes junior researcher, assistant researchers, associate researchers, and researchers. Specialists (S) includes junior specialists, assistant specialists, associate specialists, and specialists. Non-compensated clinical faculty includes clinical instructor, clinical assistant professor, clinical associate professor, clinical professor. Lecturers and Adjuncts.

F. High Demand Disciplines.

1. The president is delegated the authority to establish high demand academic disciplines for which recruitment and/or retention of faculty of quality desired by the university exceed the maximum of the appropriate salary schedule.
2. The president is authorized to recruit faculty in the recognized high demand disciplines at salaries that exceed the maximum of the appropriate salary schedule.

G. Graduate Assistants.

1. The president shall have the authority to establish, amend, and administer a classification and compensation plan for graduate assistants.

H. Administrative, Professional and Technical (APT) Positions.

1. APT classification and pay system.
 - a. For all APT positions, including athletic coaches and related administrators, the board delegates to the president the authority to:
 - (1) Adopt, revise, and abolish career group standards and bands.
 - (2) Assign positions to career groups and bands.
 - (3) Determine designated new hire rates for career groups and bands.
 - (4) Promulgate policies and procedures relating to the classification, compensation, and appointment terms of coaches and related administrators, including a salary schedule, in accordance with this policy.
 - b. The APT Appeals Board shall adjudicate appeals filed on the banding of individual positions. The Appeals Board shall support its decisions by findings based on fact.

The APT Appeals Board shall consist of three members serving staggered terms of three years. One member shall be recommended by the university and one by the exclusive representative of APT employees, in accordance with Chapter 89, Hawai'i Revised Statutes. The third member shall be recommended by the university and exclusive representative. The appointment of all three members shall be referred by the president to the board for approval. If there is no agreement as to the third member, the board shall appoint such member.

Members of the APT Appeals Board shall be familiar with state organization and personnel functions and preferably have knowledge of university organization and functions and position classification. Such members may be excluded personnel or members of other governmental or private firms. However, they shall not be employees or officers of the university or of any state bargaining unit or employee organization which represents state bargaining unit members unless mutually agreed to by the parties concerned.

The members of the APT Appeals Board shall select a chairperson.

2. Athletic Coaches and Related Administrators

a. Definitions

Original Term: The term of the initial contract at the time the contract is entered into. Where there is an Original Term with no extension, the Original Term shall be the Existing Term.

Existing Term: The remaining time period for any contract term at any point in time.

Amended Term: The time period that is established as a result of a contract extension that combines (1) that portion of an Original or Existing Term that remains to be completed; and (2) the term of the extension beyond that Original or Existing Term. Any years that have already been completed shall not be included for purposes of calculating the Amended Term.

b. Approval

(1) Board of Regents

Upon recommendation of the chancellor and the president, the approval of the chair or vice chair of the Board of Regents and the chair or vice chair of the Committee on Student Success shall be required for:

- (a) Original Terms of head coaches of more than 5 years;
- (b) Amended Terms of head coaches of more than 5 years; or
- (c) Appointments, extensions and salary adjustments for head coaches, non-head coaches, and administrators exceeding the salary schedule by more than twenty-five percent (25%) and/or exceeding \$500,000 annually.

(2) Delegation to the president

- I. The authority to approve all other appointments and compensation of head coaches, non-head coaches, and administrators is delegated to the president, which may be further delegated. Civil service employees in positions in the university subject to Chapter 76, Hawai'i Revised Statutes, shall be appointed, compensated, and otherwise governed by the provisions of law applicable to such positions.

IV. Delegation of Authority:

The president, with the exception of select undelegated executive and managerial personnel, is authorized, consistent with existing statutes and board policies, to grant special salary adjustments; establish compensation guidelines; establish, plan, administer, and amend faculty and graduate assistant classifications; establish high demand academic disciplines; and recruit. See RP 9.202 III (B),(E)(F), and (G).

V. Contact Information:

Office of the Vice President for Administration, 956-6405, vpadmin@hawaii.edu

Office of the Vice President for Academic Strategy, 956-6897, ovpas@hawaii.edu

VI. References:

- <http://www.hawaii.edu/offices/bor/>
- Section 304A-1002 Hawai'i Revised Statutes, provides that "The board of regents shall classify all members of the faculty of the university including research workers, extension agents, and all personnel engaged in instructional work...."

Approved as to Form:

/S/
Yvonne Lau
Executive Administrator and
Secretary to the Board of Regents

11/16/2023
Date

EXECUTIVE MANAGERIAL SALARY SCHEDULES Effective October 1, 2022

UNIVERSITY OF HAWAI'I SYSTEM & MĀNOA E/M SALARY SCHEDULE			
Band	Minimum	Midpoint	Maximum
SM-1	\$78,750	\$118,125	\$157,500
SM-2	\$115,500	\$160,125	\$204,750
SM-3	\$136,500	\$186,375	\$236,250
SM-4	\$204,750	\$259,875	\$315,000
SM-5	\$283,500	\$338,625	\$393,750

UNIVERSITY OF HAWAI'I HILO E/M SALARY SCHEDULE			
Band	Minimum	Midpoint	Maximum
H-1	\$78,750	\$118,125	\$157,500
H-2	\$115,500	\$162,750	\$210,000
H-3	\$141,750	\$196,875	\$252,000
H-4	\$231,000	\$283,500	\$336,000

UNIVERSITY OF HAWAI'I WEST 'OAHU E/M SALARY SCHEDULE			
Band	Minimum	Midpoint	Maximum
WO-1	\$78,750	\$118,125	\$157,500
WO-2	\$110,250	\$154,875	\$199,500
WO-3	\$131,250	\$175,875	\$220,500
WO-4	\$189,000	\$241,500	\$294,000

UNIVERSITY OF HAWAI'I COMMUNITY COLLEGES E/M SALARY SCHEDULE			
Band	Minimum	Midpoint	Maximum
CC-1	\$78,750	\$118,125	\$157,500
CC-2	\$105,000	\$136,500	\$168,000
CC-3	\$120,750	\$152,250	\$183,750
CC-4	\$162,750	\$207,375	\$252,000

Imperative ►

Meet Hawai'i's workforce needs of today and tomorrow

Goal

Eliminate workforce shortages in Hawai'i while preparing students for a future different than the present.



Objectives

- Prepare professionals to fulfill statewide needs in occupations that are essential to community well-being, including education, health, technology, skilled trades and sustainability/resilience.
- Enhance non-traditional offerings, including micro-credentials serving needs of specific groups of students, and industry certified credit and non-credit credentials, for those seeking upskilling or career change opportunities.
- Partner with employers to ensure the necessary preparation and support for students to succeed in their careers.

- Prepare graduates for life-long learning, innovation and entrepreneurship.

Metrics

- Size of workforce shortages in key sectors/occupations (e.g., teacher shortage).
- Number of students with work-based learning, entrepreneurial and research experiences, and internships with a preference for paid internships.

[◀ Back to imperatives](#)



Last modified: January 18, 2023



Regents Policy Chapter 1, General Provisions

Regents Policy RP 1.202, Relationship of the Board to Administration and University

Effective Date: Oct. 17, 2003

Prior Dates Amended: Nov. 27, 1941; Sept. 12, 1942; Sept. 17, 1942; Oct. 1, 1942;
Oct. 20, 1944; Nov. 9, 1961; Oct. 18, 2002; Oct. 31, 2014 (recodified)

Review Date: August 2017

I. Purpose:

To set forth policy regarding the rules of conduct and communication protocol.

II. Definitions:

“Government” may be thought of as the establishment of the principles, laws and policies, and “administration” as the carrying out and execution of these principles, laws and policies once approved by the board.

The term “through proper channels” refers to the obligation of the board members to secure detailed information or information requiring careful compilation, either through the secretary or through the executive officer.

III. Policy:

A. Principles and Rules of Conduct.

1. Principles. With respect to the duties and functions of the board and the president, the following are the applicable principles:
 - a. It is recognized that the board has been granted full legal power and authority to manage and control the affairs of the university, and the responsibility for the successful operation of the university and the achievement of the purposes as prescribed in the statutes rests exclusively with the board.
 - b. It is recognized that a distinction must be made between what may, for convenience, be called the “government” of the university, and the “administration” thereof. “Government” may be thought of as the establishment of the principles, laws and policies, and “administration” as the carrying out and execution of these principles, laws and policies once

approved by the board. Therefore, the interpretation of all board policies shall rest exclusively with the board and may be rendered, as necessary, through its designee(s).

- c. The functions of the board are concerned with the government of the university; and its duties, in nature, are legislative and at times quasi-judicial. The execution of the policies authorized and established by the board is entrusted to the president, vice presidents, chancellors, and other officers of administration of the university. The regents must not concern themselves directly with the administration of the university, or individually or take part collectively, in administration, provided that it is the responsibility of the board to satisfy itself, through proper channels, that the principles, laws and policies established by the board are, in fact, being administered and that the administration is adequate.

The term “through proper channels” refers to the obligation of the board members to secure detailed information or information requiring careful compilation, either through the secretary or through the executive officer. It is not intended to place any restriction upon members of the board conversing freely and frankly with any officers or other employees of the university. Any extended or detailed investigation or inquiry on the basis of which it is proposed to predicate board action should, however, be carried on in a formal, orderly manner with the approval of the board and the knowledge of the president. Ordinarily where assistance is sought of the faculty in major matters of educational policy, the board will act through the president; and such assistance will come through the relevant academic senate for the affected campus(es) or some committee thereof.

Likewise, the administration shall communicate with the board through the secretary and only with permission of the chairperson may the administration deal directly with a member of the board. This is to ensure that all regents have equal access to information and are given equal regard for their time and contributions.

- d. No member of the board shall serve on committees of the university concerned with curriculum and educational problems when a matter is to eventually require the board's consideration, nor on any selection committees.
- e. The primary duty of the board is first to determine and set forth the objectives of the university, and second, to provide the means, in the form of adequate budget, personnel and materials, to achieve these objectives. In determining the objectives of the university, the assistance of the faculty will be sought and obtained through proper channels.

2. Rules of Conduct. The rules of conduct between members of the board and administration personnel shall be as follows:
- a. In carrying out any policy established by the board, except in so far as the method shall be defined by the board, the method of execution shall be within the discretion of the president.
 - b. Except as specifically authorized by formal action, no member of the board can represent the board within the university and no member shall interfere, engage in, or interact directly with the campuses without prior authorization from the chairperson. All meetings between board members and any member of the administration, including the president, shall be authorized by the board's chairperson and arranged through the secretary and/or with the full knowledge of the secretary. In addition, no unilateral action of a member of the board has the authorization nor support of the board; and the authority of the board reposes in the board as a whole. Likewise, all communication from the president and any members of the administration to the members of the board must flow through the secretary unless otherwise authorized.
 - c. The board members shall make written request through the secretary for any detailed information with reference to actions of the president, particularly where it is desired to challenge such actions as inconsistent with the established policy of the board.
 - d. The interpretation of all board policies rests exclusively with the board. Where no policy has been established by the board, the president shall consult with the board prior to taking action; however, the president shall be free to exercise his/her judgment in taking action on emergency matters of major importance provided that in consultation with the chairperson, it is determined that a special meeting of the board cannot be held in time to address the emergency. Therefore, every attempt shall be made to have the board convened in special session as soon as possible. The president shall inform the chairperson of such circumstances, advising him/her prior to taking any action(s) where board policy is silent.
 - e. The president shall, by appropriate memoranda either to the secretary or by information circulated to all board members, promptly advise board members as to how specific orders of the board have been carried out.
 - f. The determination of what correspondence of the president, if any, shall be sent to the board for its files shall rest in the sole discretion of the president unless the board, by appropriate action, shall otherwise direct.

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- g. These rules may be amended from time to time by action of the board.
- B. Procedures Relating to Communication to and from the Board and its Members
1. All communications involving advice, recommendations, instructions, etc., written or oral, from any board member individually or as a representative of a board committee, shall first receive the approval of the chairperson and thereafter be transmitted through the executive officer. This action does not preclude discussion or exchange of opinion or similar dealings between board members and staff members. All formal inquiries shall be made through the secretary and all meetings between board members and other members and members of the administration shall be arranged through and/or with the full knowledge of the secretary, with such meetings subject to Hawai'i Revised Statutes Chapter 92 (sunshine laws).
 2. Communications and notifications emanating from official board action and relating to specifically or generally to university affairs, internal or external, instructional and administrative, should be transmitted through the executive officer. Whenever legally necessary, or in cases specific by the board, communications and notifications emanating from board action shall be handled by the secretary.
 3. Correspondence addressed to the board or to the secretary or to the university shall go to that officer under whose jurisdiction the correspondence shall be handled. A certain latitude of judgment in matters of correspondence is granted to the secretary. The work of the secretary and of the executive officer should be coordinated through mutual agreement.
 4. Shortly after each meeting of the board, the secretary shall furnish the executive officer with an abstract of board action in order that the executive officer may handle correspondence as soon as possible and involve the appropriate units for publicity.
 5. Copies of all board related correspondence handled by the executive officer shall be filed with the secretary in the office of the regents and, likewise, copies of all board related correspondence handled by the secretary shall be sent to the executive officer.

IV. Delegation of Authority:

The execution of the policies authorized and established by the board is entrusted to the president, vice presidents, chancellors, and other officers of administration of the university.

V. Contact Information:

Office of the Board of Regents, 956-8213, bor@hawaii.edu

VI. References:

- <http://www.hawaii.edu/offices/bor/>
- http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092F/HRS_0092F-.htmList associated executive policies

Approved as to Form:

Cynthia Quinn
Executive Administrator and
Secretary of the Board of Regents

Date

BYLAWS OF THE BOARD OF REGENTS OF THE UNIVERSITY OF HAWAII
(as of July 20, 2023)

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**BYLAWS OF THE BOARD OF REGENTS
UNIVERSITY OF HAWAI'I**

ARTICLE I. Definitions

As used in these Bylaws:

“Board” or “BOR” means the Board of Regents of the University;

“HRS” means the Hawai'i Revised Statutes, as may be amended from time to time;

“Meetings” shall not include rule-making hearings, declaratory rulings or contested cases under Chapter 91, HRS;

“Chairperson” means the chairperson of the board;

“President” means the President of the University;

“Secretary” means the Executive Administrator and Secretary of the Board; and

“University” means the University of Hawai'i system and its various campuses.

ARTICLE II. Membership and Organization

- A. Membership. The membership of the Board shall be as required by Chapter 304A-104, HRS. The members of the Board shall serve without pay, but shall be entitled to reimbursement for necessary expenses while attending meetings and while in the discharge of duties and responsibilities.

Notwithstanding the term of office, the term of a Board member shall expire upon the failure of the member, without valid excuse, to attend three consecutive meetings duly noticed to all members of the Board. The Chairperson or acting Chairperson of the Board shall determine if the absence of the member is excusable. The expiration of the member's term shall be effective immediately after the third consecutive unattended meeting and unexcused absence.

- B. Officers, Organization. As required by Section 304A-104, HRS, the Officers of the Board shall consist of a Chairperson, up to two Vice-Chairpersons, and a Secretary (who shall be appointed by the Board and shall not be a member of the Board). The Chairperson and up to two Vice-Chairpersons shall be elected at its first meeting after June 30 of the next year or thereafter until their successors are elected and have qualified and whose election shall be immediately certified by the Board to the Lieutenant Governor. The President shall act as the chief executive officer of the Board.

1. Term. The term of the office of Chairperson and up to two Vice-Chairpersons shall be for one year. A Chairperson may serve more than one term, but not more than two consecutive terms.

2. **Nomination.** To promote interest in board leadership positions, each June the Chairperson shall appoint two regents (the “polling regents”) who do not aspire to the position of chair or vice chair in the upcoming fiscal year, at least one of whom will remain on the Board in the upcoming fiscal year, to poll the remaining regents, including any persons confirmed by the Hawai‘i State Senate for a board seat but not yet sworn in, to determine (a) their interest in being chair or a vice chair in the upcoming fiscal year, and (b) whom they would like to see in any position in the upcoming fiscal year for which they are not interested. The polling regents shall, after they conduct their polling, discuss results with the board secretary who shall ensure at least one candidate exists for each position. At the meeting at which the elections are held, the respective polling regents may nominate for chair and vice chair(s) those who in their respective polling group had the support of a majority of those who would be regents in the upcoming year; if no regent appeared to have the support of a majority, then the polling regents shall nominate those regents who in their respective polling had more than nominal support. In addition, the board secretary must call for other nominations from the floor.
3. **Vote.** Votes for the Chairperson and up to two Vice-Chairpersons of the Board shall be by ballot if more than one person is nominated for an office.
4. **Succession.** In the event of a vacancy in the office of the Chairperson, the First Vice-Chairperson shall succeed as Chairperson for the unexpired term. If at that time there is a vacancy in the office of the First Vice-Chairperson, the Second Vice-Chairperson shall succeed as Chairperson for the unexpired term. If at that time there is also a vacancy of the office of the Second Vice-Chairperson, the Secretary shall succeed as Chairperson for the sole purpose of conducting an election as soon as possible for a new Chairperson to serve for the unexpired term.

C. **Duties of Officers.**

1. **Chairperson.** The Chairperson, in addition to presiding at all regular and special Board meetings, shall:
 - a. Appoint the chairperson and members of the standing committees and any other committees, except as provided under Section 304A-321, HRS.
 - b. Acknowledge communications, petitions, requests, and proposals on behalf of the Board and, except in emergencies, refer same to the President or Secretary or an appropriate Committee of the Board for action or recommendation so as not to detract from the Board’s governance and fiduciary responsibilities.
 - c. Maintain liaison with the President to see that there is an effective working relationship between the University administration and the Board.
 - d. Approve all press releases and public statements made by the Board.

- e. Approve agenda items for any regular or special meeting of the Board.
 - f. Coordinate the efforts of the Board's standing committees to strengthen the roles and functions of same.
2. Vice-Chairperson(s). The First Vice-Chairperson will assume the duties and responsibilities of the Chairperson in the absence of the Chairperson and will undertake such other duties as may be assigned by the Chairperson. If there is a second Vice-Chairperson, he/she will assume the duties and responsibilities of the First Vice-Chairperson in the absence of the First-Vice Chairperson and will undertake such other duties as may be assigned by the Chairperson or First Vice-Chairperson.
3. Secretary. The Secretary shall serve under the direction of the Board through the Chairperson and shall provide the necessary administrative support services to the Board. The Secretary shall:
- a. Prepare and distribute the agenda for each of the regular and special Board and standing and other committee meetings.
 - b. Schedule regular and special Board meeting dates in consultation with the Chairperson.
 - c. Record and prepare minutes and reports for each of the regular and special Board and standing and other committee meetings.
 - d. Be responsible for securing information from the University administration.
 - e. Acknowledge and answer routine correspondence directed to the Chairperson and/or Board.
 - f. Serve as liaison between the University administrative staff and the Board.
 - g. Review policy proposals submitted by the University administration.
 - h. Maintain a calendar of the Board's unfinished business.
 - i. Conduct research and analysis of policies relating to the governance of the University by the Board.
 - j. Review rules and regulations affecting the University in accordance with the Hawai'i Administrative Procedures Act.
 - k. Maintain, collect, and preserve the official records of the Board.
 - l. Collate and index policies which are adopted by the Board.
 - m. Serve as "Records Officer" under the State archives program.

- n. Serve as “Certifying Officer” of official University documents.
- o. Perform additional duties as assigned by the Chairperson and the various standing and other committee chairpersons.

D. Standing Committees of the Board.

1. Establishment of Standing Committees. To facilitate consideration of policy matters that must be approved by the Board and to facilitate the exercise of the Board’s oversight responsibilities, five standing committees are established. Authority to act on all matters is reserved for the Board, and the functions of each standing committee shall be to consider and make recommendations to the Board pursuant to these guidelines:
 - a. All committees work with the university administration to recommend strategic goals, objectives, and metrics for activities relevant to their committee’s purview.
 - b. All committees annually review progress against the university’s strategic goals and objectives relevant to their committee’s purview.
 - c. All committees annually review their committee charters as set forth in these bylaws and recommend additions, deletions, or other amendments as appropriate.
 - d. All committees the regent policies relevant to their committee’s purview every three years and recommend amendments as appropriate.
 - e. All committees review and recommend requests for exemptions to policies relevant to their committee’s purview.
2. Standing Committees. The following are the standing committees of the Board and their functions:
 - a. Committee on Student Success: This committee is responsible for recommending policy and exercising oversight over the academic mission, goals, and programs of the University, student success and welfare, including intercollegiate athletes, and the university’s research enterprise.

This committee is also the liaison between the board and the following affiliated organizations:

- All Campus Council of Faculty Senate Chairs
- Career and Technical Education Advisory Council
- P-20 Council
- University of Hawai’i Student Caucus

Specific additional duties include:

- (1) Review the academic mission and strategic direction of the system and its major units.
 - (2) Periodically review the extent to which programs support the mission and strategic direction of the University.
 - (3) Monitor the quality and effectiveness of educational programs.
 - (4) Review annually and advise the board of any irregularities concerning:
 - (a) the health, safety and academic progress of student-athletes;
 - (b) compliance with NCAA and conference requirements;
 - (c) any event or situation that may draw unusual public interest to the athletics program, a particular team, student athlete, or department employee.
 - (5) Evaluate and approve long range plans that establish the strategic goals and objectives for research, innovation, and technology transfer at the University.
 - (6) Review and make recommendations on proposals to establish or to terminate Organized Research Units and research centers.
- b. Committee on Institutional Success. This committee is responsible for recommending policy and exercising oversight over (a) the preparation and execution of the university's capital and operating budgets, (b) the development and management of its facilities including land use master plans for each campus, (c) the use of university lands, (d) personnel policies and practices and (e) endowment funds and other financial assets of the University.

This committee is also the liaison between the board and the following affiliated organizations:

- Council of Staff Council Chairs
- Research Corporation of the University of Hawai'i
- University Health Partners
- University of Hawai'i Foundation

Specific additional duties include:

- (1) Review proposals relative to naming of University improvements and facilities and make its recommendations to the Board.

- c. Committee on Independent Audit. This committee, which shall have the same membership as the Committee on Institutional Success, is responsible for exercising oversight over the university's external auditors and the university's office of internal audit as set forth in Chapter 304A-321, Hawaii Revised Statutes.

Specific additional duties include:

- (1) Advise the Board regarding the Board's responsibilities to oversee:
 - (a) the quality and integrity of the University's compliance with legal, regulatory and policy requirements, financial reporting and financial statements, and internal controls related to risks;
 - (b) the function, disclosures, and performance of the University's compliance, internal control, and risk management systems regarding ethics and compliance, risk, finance, and accounting, and the adequacy of such systems; and
 - (c) the independent certified public accountant's qualification, independence and performance, as well as performance of the internal audit function.
- (2) Review the annual internal audit plan and the extent to which it addresses high risk areas.
- (3) Review the annual report of the internal audit department and discuss significant issues of internal controls with the Internal Auditor and management.
- (4) Discuss the planned scope of the annual independent audit with the independent certified public accountants and review the results of the audit with the independent certified public accountants and management.
- (5) Receive and review the annual certified financial reports with the independent certified public accountants and management.
- (6) Recommend to the Board the certified public accountants to serve as the independent auditor, and their fees.
- (7) Revise the scope of the annual audit, and approve any services other than audit and audit related services provided by the certified public accountants.

- d. Committee on Kuleana. This committee is responsible for recommending policy and exercising oversight over the mission goals, and programs of the university that promote the university's role in fulfilling kuleana to

Native Hawaiians and to Hawai'i including (a) the reconciliation of injustices, (b) the university's and its research enterprise's contribution to a robust Hawai'i economy, (c) the achievement of the university's strategic imperatives and (d) the achievement of the university's stewardship objectives for Maunakea.

This committee is also the liaison between the board and the following affiliated organizations:

- Maunakea Management Board
- Pūko'a Council

- e. Committee on Governance. This committee has the central responsibility of ensuring that board members are prepared to exercise their fiduciary duties and is the key means by which board members receive a comprehensive orientation to higher education, to their institution, and to the principles of highly effective trusteeship. The board looks to this committee to help it ask and answer the right governance questions.

Specific duties include, but are not limited to:

- (1) Ensure board statutes, bylaws, policies, and rules are being reviewed and updated on a routine and regular basis.
- (2) Ensure board education and board member development is provided for board members.
- (3) Provide recommendations to the board regarding best practices for board effectiveness.

3. Appointment of Committee Members. The chairperson and voting members of each standing committee shall be appointed by the Chairperson and shall serve for one year or until the appointment of their successors. The Chairperson shall be an ex officio, voting member of all standing committees, provided that the Chairperson shall only vote in committees to break a tie or when the presence of the Chairperson is needed to comprise or maintain a quorum. All board members who are not voting members of a committee or committees shall be ex officio, nonvoting members of such committees. The President, as chief executive officer of the University, shall assign a member of the University administrative staff to each standing committee who shall be the administrative liaison with the chairperson of the committee.

The Committee on Student Success shall include Regents from the four major islands.

4. Meetings. Each standing committee shall schedule meetings as appropriate. The Committee on Student Success meetings shall be held on each of the islands with community college campuses, to the extent practicable.

5. Referrals to Committees. Each standing committee shall consider all matters referred to it by the Chairperson and shall make appropriate recommendations within a reasonable time to the Board.
6. Progress Reports. Each standing committee shall make progress reports to the Board periodically or when requested by the Chairperson.
7. Task Groups. Task groups may be established by the Chairperson upon authorization by the Board, and with such powers and duties as determined by the Board. The tenure of a specific task group shall expire at the completion of its assigned task.

E. New Board Member Orientation

New Board members shall be scheduled to receive an orientation within one month of the beginning of their term. The orientation shall include, among other things, an overview of the University system, BOR responsibilities, accreditation standards for Board governance, and BOR policies and practices. New Board members shall also be provided with a Reference Guide covering these and other topics.

ARTICLE III. Advisory Committees and Consultants

- A. Creation. The Board may create an advisory committee, as necessary, which shall serve as advisory to the Board. The committee membership shall be appointed by the Chairperson, subject to approval by the Board. The tenure of the advisory committee shall expire at the completion of the assigned task.
- B. Consultant Services. The Board may engage the services of consultants as it deems necessary.

ARTICLE IV. Meetings

- A. Number and Place of Meetings. The Board shall meet not less than ten times annually (July 1, thru June 30) and may from time to time meet in each of the counties of Honolulu, Hawai'i, Maui, and Kaua'i. The Board shall at each meeting set the time and place for its next regular meeting.
- B. Special Meetings. Special meetings may be called by:
 1. The Chairperson;
 2. The Secretary, upon request by a majority of the members of the Board; or
 3. Any Board member, with the consent of the Chairperson.
- C. Call for Committee Meetings. Standing committee meetings shall be called by the Secretary in consultation with the committee chairperson. In the event of a joint meeting, the Chairperson shall designate the presiding committee chairperson.

- D. Public Notice of Meetings. All meetings of and public appearances before the Board and its standing committees shall comply with Chapter 92, HRS, and shall be as set forth in the Rules of Practice and Procedures of the Board of Regents (Hawai'i Administrative Rules, Title 20, Subtitle 1, Chapter 1.1).

ARTICLE V. Quorum

A majority of all voting members to which the Board is entitled shall constitute a quorum. For purposes of standing committees, the Chairperson shall only be counted in determining quorum to constitute a majority.

ARTICLE VI. Voting

Voting by the Board and its standing committees shall be as set forth in the Rules of Practice and Procedures of the Board of Regents (Hawai'i Administrative Rules, Title 20, Subtitle 1, Chapter 1.1).

ARTICLE VII. Legal Counsel

- A. The University General Counsel. The University General Counsel shall be designated as legal counsel for the Board. The University General Counsel or the University General Counsel's representative(s), in the capacity of legal counsel for the Board, shall be present at all regular and special meetings and certain standing committee meetings of the Board.
- B. Requests for Written Legal Opinions. Requests for any written legal opinion of the University General Counsel shall be made by the Chairperson or designee with the full knowledge of the Board. Whenever a legal opinion is rendered by the University General Counsel, such opinion shall be in writing and along with a copy of the written request for such opinion, distributed immediately to all Board members.
- C. Conflicts. By policy and organizational structure, the University General Counsel serves the Board as well as the University administration. Understandably, there may be occasions when it becomes necessary to avoid a perception of conflict, or actual conflict, or to obtain specialized legal expertise. At such times, the Board may exercise its discretion in securing the services of independent legal counsel through the Secretary.

ARTICLE VIII. Robert's Rules of Order

Meetings shall be conducted in accordance with the current edition of Robert's Rules of Order insofar as they are applicable and not inconsistent with these bylaws, or applicable statutes or rules.

ARTICLE IX. Amendments

These bylaws may be amended only by two-thirds (2/3) vote of all the members to which the Board is entitled. Any proposed amendment to the bylaws shall be submitted in writing for consideration and vote by the members at a Board meeting.

ARTICLE X. Conflicts of Interest

- A. **Standard of Conduct.** Members of the Board shall comply with the provisions of these bylaws and are subject to the standards of conduct and financial interest disclosure requirements of Chapter 84, HRS (State Ethics Code) and must act in accordance with Chapter 84, HRS.
- B. **Fiduciary Responsibility.** Members of the Board serve a public interest role and thus have a clear obligation to conduct all affairs of the University in a manner consistent with this concept. Members of the Board are expected to place the welfare of the University above personal interests, the interests of family members, or others who may be personally involved in affairs affecting the University. All decisions of the Board shall be made solely on the basis of a desire to promote the best interests of the University and the public good.
- C. **Disclosures.** In the event the Board must consider any matter for the University which also directly involves:
 - 1. a regent or a member of the regent's family (which shall be a spouse, parents, siblings and their spouses, children and their spouses, and any household member);
 - 2. a public or private organization with which a regent is affiliated, as defined below; or
 - 3. a regent's personal financial interest as defined under Chapter 84, HRS;

Any affected regent, at the first knowledge of the matter, shall fully disclose, as noted below, the precise nature of the interest or involvement.

For purposes of this article, an affiliation exists if a regent or a member of the regent's family is an owner (which shall be defined as: (1) an ownership interest valued at more than \$5,000; or (2) 10% or more ownership of the business), officer, director, trustee, partner, employee (which shall also include legal counsel, consultant, contractor, advisor, or representative) or agent of such organization.

All disclosures required under this article must be directed in writing to the Secretary who, together with the University General Counsel, shall be responsible for the administration of this bylaw.

Matters covered under this article shall be reported initially to the Chairperson for appropriate action. Should the Chairperson be the regent with a potential conflict, the matter shall be reported to the Vice-Chairperson. Should both the Chairperson and the Vice-Chairperson have a potential conflict, the matter shall be reported to

the chairperson of a Board standing committee in the order as listed in Article II, Section D of the bylaws of the Board.

Information disclosed to the Secretary shall be held in confidence to the extent authorized by law.

This disclosure requirement shall not apply to any regent who declares a conflict of interest and recuses himself/herself from consideration of the matter before the Board.

- D. **Determination of Conflicts.** Questions concerning possible conflicts of interest shall be directed to the Secretary. Board shall resolve the questions by majority vote at a Board meeting in compliance with Chapter 92, HRS. Where any matter covered by Chapter 84, HRS, is involved, the potential conflict shall be referred to the State Ethics Commission for disposition. Questions of potential conflict not covered by Chapter 84, HRS, may be referred to the University General Counsel for a legal opinion, except that questions of conflict under Section 78-4, HRS, shall be referred to the University General Counsel for a legal opinion.

Restraint on Participation. A member of the Board who has declared a conflict of interest and recused himself/herself or who has been found to have a conflict of interest in any matter before the Board shall refrain from participating in the consideration of the proposed matter. The regent may not vote on such matters before the Board and may not be present during the Board's deliberation and at the time of vote.

- E. **Sanctions and Remedies.** Any Board action favorable to a regent obtained in violation of this bylaw is voidable on behalf of the Board; provided that in any proceeding to void a Board action pursuant to this bylaw, the interests of third parties who may be damaged thereby shall be taken into account. Any proceeding to void a Board action shall be initiated within sixty (60) days after the determination of a violation under this bylaw. The Board may pursue all legal and equitable remedies and/or sanctions through the University's legal counsel. Any Board action imposing a remedy or sanction under this section must be initiated within one year after the action of the Board that is affected by a violation.

QUICK REVIEW: Sunshine Law Options to Address State Legislative Issues and Measures (Revised August 2022)

Sunshine Law boards that track legislation and submit testimony on legislative issues or measures are faced with the annual question: how can they keep up with the legislative calendar and submit testimony on a timely basis while still following the Sunshine Law? The State Office of Information Practices has prepared this Quick Review to provide several options. This Quick Review was written to address issues boards commonly have in tracking bills and testifying during the Hawaii State Legislature's regular session, but most of the options discussed could be adapted for use with other legislative bodies such as the federal Congress or a county council.

When dealing with legislative matters when legislative committees often give less than six days' notice of their hearings, one major hurdle that boards face is the Sunshine Law's six-day notice requirement before conducting a meeting to discuss a legislative measure. Since most boards typically meet on a monthly or less frequent basis, their meeting schedule together with the six-day notice requirement leave them with limited options to timely notice a meeting and discuss the adoption of its legislative testimony or position before the legislative hearing.

The Sunshine Law, however, allows board members to discuss board business outside a meeting in limited circumstances, as set forth in the "permitted interactions" section of the law. HRS § 92-2.5. These permitted interactions are not considered to be "meetings" of a board or subcommittee subject to the Sunshine Law's six-day advance notice requirements. HRS §92-2.5(i). Note, however, that the Sunshine Law does not allow permitted interactions to "be used to circumvent the spirit or requirements" of the law and thus permitted interactions generally cannot be mixed and matched or used serially because the resulting communication would go beyond the limits of any one permitted interaction. For instance, if four of nine board members are assigned to a permitted interaction group on a bill, the law would not allow one of those members to also talk about the same bill to a member who was not part of the group under the two-person permitted interaction, because doing so would mean the bill was serially discussed by a total of five members, more than allowed by either of those permitted interactions.

Among the various types of permitted interactions authorized under section 92-2.5, HRS, the most useful in developing or adopting positions on legislative measures are the four described in:

(1) **section 92-2.5(a)**, HRS, which allows two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought;

(2) **section 92-2.5(b)(2)**, HRS, which allows a board to create a permitted interaction group (“PIG”) with less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting;

(3) **section 92-2.5 (e)**, HRS, which allows less than a quorum of board members to attend a legislative hearing (or other “informational meeting”) and report their attendance at the next board meeting; and

(4) **section 92-2.5(h)**, HRS, allowing an unlimited number of board members to circulate draft State legislative testimony for members’ review, written comment, and approval, subject to various limitations.

Permitted interactions are discussed in greater detail in OIP’s three-part Quick Review series on “Who Board Members Can Talk To and When,” which may be viewed on OIP’s [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

Besides permitted interactions, other options for a board to address legislative matters are by delegation to staff, or through the special limited meeting provision for county councils, or at an emergency meeting of the board. What follows are the various options and practical considerations for a board to discuss and submit timely testimony on legislative issues or measures.

First Option: Delegation to Staff

At the outset of the legislative session, a board may file a notice of a public meeting with an agenda indicating that the board will consider the adoption of a position or the general policy direction it will take on specific legislative topics, subject matters and legislative measures, including the relevant bill numbers, if available, which the board desires to present in testimony during a legislative session. (A board may contact OIP’s Attorney of the Day to discuss whether the notice of an agenda item is legally sufficient.)

The board could then delegate to staff (e.g., executive director) the authority to track legislative measures and draft testimony in accordance with the positions and policy directives previously adopted by the board. The members of a board’s staff (assuming they are not board members) can freely discuss legislative measures the board is tracking among themselves without implicating the Sunshine Law or requiring a permitted interaction. Likewise, discussions involving staff and a single board member would not raise Sunshine Law concerns, unless the discussions comprise a serial communication between staff and individual board members to solicit a commitment to vote on a specific matter.

If the entire board wanted the opportunity to comment on and approve testimony drafted by staff, the board’s staff could then circulate draft testimony to all board members for their review and written comment and approval under section 92-2.5(h),

HRS, (discussed as the fifth option) so long as (1) the legislative deadline was too soon to allow the board to notice a meeting and (2) the board posts all drafts and communications about the testimony within 48 hours on the board's website or an appropriate state or county website. Alternatively, the staff could submit the testimony without further review or approval by the board, or after running it by one member, such as the board chair. Throughout the legislative session, the board's staff could also report on legislative measures and testimony at board or committee meetings conducted pursuant to the Sunshine Law, at which time the entire board or committee could discuss and deliberate on the measures.

Second Option: Delegation to Two Board Members

A board could delegate to two board members the authority to prepare and submit legislative testimony, talk to legislators, and attend legislative hearings, all in accordance with the position or policy direction the board had previously adopted. Under the permitted interaction authorized in section 92-2.5(a), HRS, two board members may discuss between themselves official board business, including legislative measures of interest to the board, provided that no commitment by the board members to vote on board business is made or sought and the two members do not constitute a quorum of the board.

The two board members working on a legislative issue or measure can provide reports at any meeting of the board when the issue is on the agenda. Moreover, different combinations of members may be assigned to work on different legislative issues or measures. However, the two board members assigned to a legislative measure or issue must be careful to avoid involving additional members in discussions of that matter outside a board meeting because these discussions could constitute a serial discussion among three or more members in violation of the Sunshine Law.

Discussions by all members may take place at duly noticed board meetings. The full board can continue to oversee the implementation of the general policy direction by the two board members and address any new issues that arise during the legislative session at its regularly scheduled meetings. If necessary, the full board may also hold emergency meetings, as described in the sixth option below.

Third Option: Permitted Interaction Group under Section 92-2.5(b)(2), HRS

Some boards may prefer to have more than two members involved in legislative matters. If so, a board may consider the establishment of a PIG under section 92-2.5(b)(2), HRS, which could consist of more than two members, so long as it is less than a quorum of the board.

Initially, the board should adopt its position or establish policy directives at a public meeting duly noticed under the Sunshine Law. The agenda item in the public meeting notice would describe the specific topic, subject matter, or legislative measure,

including any bill number, if known, that the board desires to adopt a position on or to set a policy directive in response to any legislative measure the board anticipates could be discussed during a legislative session. An additional agenda item for the public meeting should describe the PIG to be established under section 92-2.5(b)(2), HRS, including the assignment of specific board members to the PIG and the establishment of the scope of each member's authority to present, discuss, or negotiate any position that the board had previously adopted.

A legislative PIG established under section 92-2.5(b)(2), HRS, and acting within the scope of each member's previously defined authority, would not be subject to the investigative PIG's requirements under section 92-2.5(b)(1), HRS, to initially report its findings at a public meeting before the full board could discuss or act on the report at a subsequent meeting. Nor would a legislative PIG established under section 92-2.5(b)(2), HRS, be subject to the reporting requirements of section 92-2.5(e), HRS, for attending informational meetings described in the fourth option below.

Fourth Option: Permitted Interaction for Informational Meeting or Presentation

Section 92-2.5(e), HRS, allows two or more members of a board, but less than a quorum, to attend and participate in discussion at an informational meeting or presentation on matters relating to official board business, including meetings of another entity or a legislative hearing. The meeting or presentation, however, must not be specifically and exclusively organized for or directed toward board members, and a commitment by board members relating to a vote on a matter cannot be made or sought. At the next duly noticed board meeting, the board members must report their attendance at the informational meeting or presentation and the matters relating to official board business that were discussed during the meeting or presentation.

Under this permitted interaction, it would not be necessary for the full board to have previously created a PIG under section 92-2.5(b), HRS, or to have established a position or policy on a legislative measure or issue.

Fifth Option: Permitted Interaction for Board to Draft and Approve Testimony

If a board has no staff or if its members wish to take a more active role in legislative matters, then a board's own members may prepare and submit any legislative testimony in accordance with the position or policy direction the board had previously adopted. When a legislative deadline is too soon to allow the board to hold a meeting to approve testimony, any number of board members may circulate draft testimony for approval, so long as all drafts and comments are in writing and are posted within 48 hours of the statement's circulation to the board, on the board's website or an appropriate state or county website, pursuant to the legislative permitted interaction found at section 92-2.5(h), HRS.

This testimony permitted interaction, however, may be of limited benefit to boards because it would foreclose the use of other permitted interactions. To comply with specific statutory requirements and to avoid creating a serial use of permitted interactions, the testimony permitted interaction could not be readily used in combination with other permitted interactions, such as a general delegation of legislative authority to two members under section 92-2.5(a), HRS, or to a permitted interaction group (PIG) under section 92-2.5(b)(2), HRS. While these latter two permitted interactions allow in-person or phone communications between board members, the legislative permitted interaction requires all communications to be in writing and posted on the board's website. Additionally, the two other permitted interactions allow only a limited number of board members to communicate with each other, but the testimony permitted interaction allows communication among all board members.

Given these inherent conflicts between the requirements of different permitted interactions, a board that wants its board members to not just prepare and submit testimony but also talk about legislative issues generally outside a meeting, including attending hearings and meeting with legislators, will be better served by delegating the authority to pursue the board's previously adopted legislative positions to a subset of members acting under another permitted interaction, rather than drafting and approving testimony as a board under the testimony permitted interaction of section 92-2.5(h), HRS. Alternatively, the board could delegate that authority to staff as discussed in option one while retaining the option to have the board's members review and approve the testimony drafted by staff under this permitted interaction.

Sixth Option: Limited Meeting by County Council as Guests of Another Group

Any number of county councilmembers may attend a limited meeting that is open to the public, as guests of a board or community group holding its own meeting, provided that the following requirements of section 92-3.1(b), HRS, are met:

(1) six days' advance notice of the limited meeting must be provided to indicate whose board or community group the council is attending, but no agenda is necessary as it is not the council's own meeting;

(2) if the other board or community group is subject to the Sunshine Law, then that board or group must still meet the Sunshine Law's notice requirements;

(3) no more than one limited meeting per month may be held by the County Council involving the same board or community group;

(4) no limited meetings may be held outside the State; and

(5) the limited meeting shall not be used to circumvent the purpose of the Sunshine Law.

Additional requirements under section 92-3.1(c), HRS, for limited meetings apply, such as prior OIP approval and videotaping of the limited meeting, as well as the general meeting requirements, such as keeping minutes.

This option would allow more than a quorum of a county council to meet with constituents or community groups regarding their legislative concerns, but would not be a preferred way for the council itself to address legislative matters. If a quorum or more of a board wanted to attend a specific legislative hearing together, however, this form of limited meeting would be the only option for doing so, other than noticing the hearing as a regular board meeting.

Seventh Option: Emergency Meeting

If an unanticipated legislative issue or measure arises that requires the full board's action, an emergency meeting could be noticed under section 92-8(b), HRS, but this would not be a preferred option. An emergency meeting requires the board to meet the following conditions:

- (1) The board must state in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary, and must obtain the Attorney General's concurrence.
- (2) Two-thirds of all members to which the board is entitled must agree that the conditions necessary for an emergency meeting exists.
- (3) Although six days' advance notice is not required, the written finding that an unanticipated event has occurred and that an emergency meeting is necessary, and an emergency meeting agenda, must be electronically posted in the same way as for a regular meeting notice and agenda, and copies provided to the office of the Lt. Governor or appropriate county clerk's office and made available in the board's office.
- (4) Persons requesting notification of board meetings on a regular basis must be contacted by postal mail, email, or telephone as soon as practicable.
- (5) The board's action must be limited to only action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7, HRS.

Because of the additional requirements for noticing an emergency meeting, as well as the logistical challenges of frequently gathering a quorum of a board's membership on short notice, this option is not one that would be used on a regular basis to deal with legislative issues or measures.

In closing, there are various options available to a Sunshine Law board to deal with legislative matters in a timely fashion. For additional guidance, please feel free to contact OIP's Attorney of the Day at 586-1400 or oiip@hawaii.gov.

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OPEN MEETINGS

Guide to
“The Sunshine Law”
for State and County Boards

Office of Information Practices
State of Hawaii
August 2023



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OPEN MEETINGS

Guide to “The Sunshine Law” *for State and County Boards*

August 2023

Part I of Chapter 92,
Hawaii Revised Statutes

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INTRODUCTION

This Open Meetings Guide (Guide) was prepared by the Office of Information Practices (OIP) as a reference tool for board members and members of the public to understand the open meetings requirements of Hawaii's "Sunshine Law" (Part I of Chapter 92, HRS). This edition of the Guide is applicable to all State and county boards, except neighborhood boards. A separate edition was developed by OIP specifically for neighborhood boards, which have some unique provisions under Part VII of Chapter 92, HRS.

Every year, in response to questions and complaints about the manner in which State and county boards conduct their business, OIP initiates investigations into alleged Sunshine Law violations. Many of the questions, complaints, and violations arise because of a misunderstanding or a lack of understanding, and sometimes both, about the statute and its requirements.

The Sunshine Law imposes numerous requirements and restrictions on the manner in which a State or county board can conduct its business. Many board members, especially those who serve or have served on non-governmental boards, are surprised by the restrictions placed on how they, in their capacity as State or county board members, must conduct board business.

For instance, with a few exceptions, board members are not allowed to discuss board business with each other outside of a meeting, including by telephone or through email or social media. In addition, a board usually cannot consider at a meeting matters that were not included in its published agenda.

If you are elected or appointed to a government board, the honor and privilege of serving comes with the added responsibility of learning and complying with the Sunshine Law. We hope that this Guide will assist you and members of the public in generally understanding the statute's requirements.

We have attempted to present the law in “plain English” through the types of questions that are most frequently asked. We have also included the statute, various forms, and checklists.

Please note that the comments contained in this Guide are general in nature. OIP provides more detailed comments on various topics in Quick Reviews and other guidance that can be found on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

If you have questions about specific factual circumstances that may not be answered by this Guide, you should consult with your attorney, your board’s attorney, or OIP. OIP provides an “Attorney of the Day” (AOD) service, through which you may speak with an OIP staff attorney to receive, typically on the same day, general legal guidance and assistance with Sunshine Law issues.

Thank you for your participation in Hawaii’s open government.

Cheryl Kakazu Park, Director

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GENERAL INFORMATION

What is the Sunshine Law?

The Sunshine Law is Hawaii's open meetings law. It governs the manner in which all State and county boards must conduct their business. The law is codified at Part I of chapter 92, Hawaii Revised Statutes (HRS).

What is the general policy and intent of the Sunshine Law?

The intent of the Sunshine Law is to open up governmental processes to public scrutiny and participation by requiring State and county boards to conduct their business as openly as possible. The Legislature expressly declared in the statute that "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."

In implementing this policy, the Legislature directed that the provisions in the Sunshine Law requiring open meetings be liberally construed and the provisions providing for exceptions to open meeting requirements be strictly construed against closed meetings. Thus, with certain specific exceptions, all discussions, deliberations, decisions, and actions of a board relating to the official business of the board must be conducted in a public meeting.

In other words, absent a specific statutory exception, board business cannot be discussed in secret. There must be advance notice; public access to the board's discussions, deliberations, and decisions; opportunity for public testimony; and board minutes.

What boards are covered by the Sunshine Law?

There is no list that specifically identifies the boards that are subject to the Sunshine Law. As a general statement, the Sunshine Law applies to all State and county boards, commissions, authorities, task forces, and committees that have supervision, control, jurisdiction, or advisory power over a specific matter and are created by the State Constitution, statute, county charter, rule, executive order, or some similar official act. A committee or other subgroup of a board that is subject to the Sunshine Law is also considered to be a “board” for purposes of the Sunshine Law and must comply with the statute’s requirements.

Examples of State and county boards that are subject to the Sunshine Law include the county councils, neighborhood boards, police commissions, liquor commissions, licensing boards, island burial councils, Board of Water Supply, Board of Land and Natural Resources, Land Use Commission, Board of Agriculture, Board of Health, University of Hawaii’s Board of Regents, Board of Education, Small Business Regulatory Review Board, Real Estate Commission, and the boards of the Hawaii Tourism Authority, Aloha Tower Development Corporation, Hawaii Health Systems Corporation, Natural Energy Laboratory of Hawaii Authority, and Stadium Authority.

The Sunshine Law does not apply to the judicial branch or to the adjudicatory functions exercised by certain boards (with the exception of Land Use Commission hearings, which are open to the public). The Legislature sets its own rules and procedures concerning notice, agenda, minutes, enforcement, penalties, and sanctions, which take precedence over similar provisions in the Sunshine Law.

What government agency administers the Sunshine Law?

Since 1998, OIP has administered the Sunshine Law. OIP also oversees the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), which is commonly referred to as Hawaii’s “open records” law or Hawaii’s version of the federal Freedom of Information Act.

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PUBLIC MEETINGS

MEETINGS DEFINED

Are all meetings of State and county boards open to the public?

Generally, yes. All meetings of State and county boards are required to be open to the public unless an executive meeting or other exception is authorized under the law. The open meeting requirement also applies to the meetings of a board's committees or subgroups.

Are site inspections, presentations, workshops, retreats and other informal sessions that involve board business considered to be meetings open to the public?

Generally, yes. Apart from the permitted interactions set forth in section 92-2.5, HRS, which are discussed below, the Sunshine Law requires a board to conduct, in either open or executive meeting, all of its discussions, deliberations, decisions, and actions regarding matters over which the board has supervision, control, jurisdiction, or advisory power.

Moreover, based upon the express policy and intent of the Legislature that the formation and conduct of public policy be conducted as openly as possible, OIP interprets the statute to require that any site inspection or presentation regarding a matter before the board, or which is reasonably likely to come before the board for a decision in the foreseeable future, be conducted as part of a properly noticed meeting.

Because the site inspection or presentation of a matter before the board are an integral part of the board's deliberation and decision-making process, they must be conducted in a properly noticed meeting. If it is not practical to allow the public to attend a site inspection as part of a meeting, the board may still be able to conduct the site inspection as a "limited" meeting under section 92-3.1, HRS.

With respect to board retreats, if board business is to be discussed, the retreat must be conducted as a meeting, which requires public notice, the keeping of minutes, the opportunity for public testimony, and public access to the board's discussions, deliberations, and decisions. Conversely, so long as no board business is discussed, the retreat is not considered a meeting subject to the Sunshine Law's requirements.

MULTI-SITE AND REMOTE MEETINGS

Can a member of the public attend public meetings in person?

Yes. Public meetings have traditionally been held in person, whether at a single site or multiple connected sites. Although the Sunshine Law now allows boards to hold remote meetings over the internet, as described below, a board must still provide at least one physical location where members of the public may attend a public meeting in person, even if the rest of the meeting is being conducted remotely.

Must board members attend public meetings in person?

It depends on what type of meeting the board is holding. For an in-person meeting held at a single site or multiple connected sites, members must generally attend in person at a public meeting site listed in the board's notice. However, if the board is holding a remote meeting, board members can attend the meeting remotely from private locations such as their homes or offices.

Even when a board is holding an in-person meeting, a board member with a disability that limits or impairs the member's ability to physically attend may participate from a location not noticed and not accessible to the public, so long as the member is connected by audio and video means and identifies where the member is and who else is present with the member. Thus, for example, a disabled board member may participate from a non-noticed location such as a private residence or hospital, so long as the other Sunshine Law requirements are met. § 92-3.5, HRS.

What is a remote meeting?

The Sunshine Law allows a board to hold a remote meeting by interactive conference technology (ICT). The law does not define a "remote meeting," but ICT is defined in section 92-2, HRS, as "any form of audio and visual conference technology, or audio conference

technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.” Because remote meetings require video interactivity with limited exceptions, a remote meeting held by ICT will typically be hosted via an online meeting platform such as Zoom or WebEx.

The remote meeting option requires the ICT used by the board to allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting. The new section also establishes various requirements for remote meetings discussed below that would allow members of boards and the public to participate in a public meeting held online, from the privacy of their own homes, offices, or other nonpublic locations.

What is the difference between a remote meeting and a multi-site meeting?

A remote meeting allows “remote” board and public participation, typically online, from private locations. By contrast, a multi-site meeting is an in-person meeting held at multiple public locations that are connected by ICT. Even though ICT is used to connect the different sites, **board members must attend a multi-site meeting in person** at one of the physical locations identified in the notice as a public meeting site, unless they are disabled and meet the requirements of section 92-3.5, HRS, to be able to participate remotely. Members of the public are not necessarily required to be in-person — the board has the option, but is not required, to allow members of the public to participate remotely in a multi-site meeting, such as by phoning in oral testimony.

What is the difference between an “additional location” and the official meeting location(s)?

Besides the official in-person meeting site(s) that a board is required to provide for every meeting, the Sunshine Law allows boards to also set up additional unofficial in-person sites, also known as “courtesy” sites. Before the Sunshine Law was amended to allow remote meetings, OIP had interpreted the requirement for meetings held via ICT to terminate if connection was lost to one site as only applying to sites noticed as official meeting sites where board members may be present. OIP’s interpretation was codified by Act 220, SLH 2021, to expressly allow boards the option to set up unofficial “additional locations” for the public’s convenience. There are two differences between an official meeting site and an additional location. First, for any type of meeting, if a noticed “additional location” is cut off from the rest of the meeting by

a connection failure, the meeting can still continue without that location so long as the notice made it clear that such an occurrence could happen. This is in contrast to an official meeting site where the meeting would have to recess and perhaps terminate if that site was cut off. Second, for an in-person meeting, board members cannot participate from an “additional location,” but instead must go to an official meeting site; the “additional location” is offered as an option for the public rather than for board members.

This option allows boards with a widespread constituency to improve public access to their in-person meetings for constituents in rural areas or on other islands while still limiting the number of sites for which a communication failure could require cancellation of the whole meeting.

What are the requirements for a board to hold a remote meeting online?

A board must provide **public access to the remote meeting**. The meeting has to be on a platform that allows for audio-visual interaction between board members and the public, who can attend and participate from anywhere they wish via an online connection, or in some cases a phone connection. Board members and the public do not need to be at a public meeting site, and the meeting notice is not required to list private locations where board members are attending from or to allow the public to join members at private locations. Instead, **the notice must tell the public how to remotely view and testify at the meeting**. This will usually be in the form of a link to an online platform, perhaps with a phone number as an additional option for the public. A board can choose to have separate connections for viewing and for testifying at a meeting; for instance, a board expecting large public interest in a contentious issue might prefer to offer the public a view-only online connection separate from the link used by board members, paired with a phone number for presenting oral testimony, to avoid the potential for abuse of the online platform and disruption to the meeting. In most cases, though, boards will find it easier to use the same online meeting link for all meeting attendees. In either case, public access to the meeting must be contemporaneous with the meeting and allow members and the public to hear the oral testimony provided.

Although board members and the public need not physically attend a remote meeting and can instead participate from private locations, the board must still **provide for the public at least one physical meeting site linked by ICT** to the remote meeting. This requirement recognizes that in-person meetings are the traditional way of holding public meetings and that not all persons, including board members, have

the ability, equipment, internet capacity, or desire to attend online meetings.

Except during executive meetings closed to the public or when the ICT connection is interrupted, a **quorum of board members must be visible** to other members and the public during the public portion of a remote meeting. As with an in-person meeting, a board member's brief absence from view during a meeting, such as to take a five-minute restroom break, would not cause the board to lose quorum. However, if a board member who is needed to meet the quorum requirement will be out of view for an extended period of time or will be absent during a vote, the board should call for a recess until quorum can be reestablished.

At the start of the meeting, the presiding officer must **announce the names** of the participating board members, and board members attending from private locations must state who else is with them, though board members are not generally required to name anyone under 18 years old. All votes must be conducted by **roll call**, unless the vote is unanimous.

The notice and minutes requirements for remote meetings are discussed later in the Procedural Requirements section. The requirements when a remote meeting's ICT connection is interrupted or lost are discussed below.

What happens if the ICT connection is interrupted or lost?

If the audio-visual connection is lost during the public portion of a remote meeting or during a multi-site meeting, the Sunshine Law **requires the meeting to automatically recess for up to 30 minutes while the board attempts to restore the connection**. This requirement applies for all official meeting sites and the remote connection(s) provided as part of a remote meeting, however, it does not apply when the remote connection is working properly but a member of the public has lost internet connectivity or is otherwise unable to access the remote connection due to issues on that person's end.

The board **may reconvene with audio-only communication** if the visual link cannot be restored, **provided that the board has provided reasonable notice** to the public as to how to access the reconvened meeting after an interruption. For remote meetings only, the law specifically **requires speakers to state their names before speaking**, if the meeting has been reconvened with audio-only communication.

Within 15 minutes of establishing audio-only communication, 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 by posting on the internet or other means to all meeting participants (including those participating remotely), otherwise agenda items with unavailable visual aids cannot be acted upon at the reconvened meeting.

If the meeting cannot be reconvened within 30 minutes after interruption to communication, and reasonable notice has not been provided to the public of how the meeting will be continued to another date or time, then the meeting is **automatically terminated**. OIP recommends that board prepare in advance for the possibility of technical difficulties and has provided tips in the next section.

What are some tips to provide reasonable notice to continue any Sunshine Law meeting, whether in person or connected by ICT?

Here are some tips for providing reasonable notice to continue any Sunshine Law meeting:

- The board's **notice may contain a contingency provision** stating that if the board loses online connection, then people should check the board's website (give address) for reconnection information. Alternatively, the notice could provide that if the connection is lost for more than 30 minutes, the meeting will be continued to a specific date and time, with the new link for the continued meeting either on the agenda itself or to be provided on the board's website.
- **At the start of the online meeting, the board could announce audibly** that if online connection is lost, information on reconvening or continuing the meeting will be posted on its website and give the website address.
- If the audio and video have gone down but there is still a chat function or something similar available, the board should also **post a visual notice** of the continuation of a meeting in that way.
- If visual connection has been lost during a meeting using ICT, the board could **audibly announce** that the meeting will be continued and direct people to its website where the relevant information has been posted.

- If time permits, the board can **email** people on its email list with a notice of continuation of the meeting. *See* the appendix or OIP's website for a form notice of continuation.

May a board hold an in-person multi-site meeting via telephone?

Yes. Section 92-3.5, HRS, continues to allow board members to participate at an in-person meeting held at multiple meeting sites connected by ICT that provides for audio or audiovisual interaction among all board members and meeting participants. Unless the disability provisions of section 92-3.5, HRS, apply as described below, board members may participate only from the official, physical meeting sites noticed. Therefore, while the multiple sites may be connected only via telephone, board members must be at one of the in-person locations that was identified on the meeting notice as being open to the public.

If copies of visual aids are brought to such a meeting by board members or members of the public, they must be available to all meeting participants at all locations. Therefore, if audio-only interactive conference technology (*e.g.*, teleconference) is being used, all visual aids must be available within 15 minutes to all participants, or those agenda items for which visual aids are not available cannot be acted upon at the meeting.

If audio communication cannot be maintained at all noticed locations, then the meeting is automatically recessed for up to 30 minutes to restore communication. The meeting may reconvene if either audio or audiovisual communication is restored within 30 minutes. If it is not possible to timely reconvene the meeting, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated. Note that the failure to maintain at least audio communication at all noticed locations will require termination of the meeting, even if all or a quorum of board members are physically present in one location.

May a sick or disabled board member participate in a meeting from home or another private location?

Yes. If it is a remote meeting, that member can participate via the remote meeting link from a private location in the same way that other members and the general public can. Even for an in-person meeting, under the provisions for in-person multi-site meetings "a board member

with a disability that limits or impairs the member’s ability to physically attend the meeting” may attend a meeting via a connection by **audio and video** means (*e.g.*, by videoconference, Skype, or Zoom) from a **private** location not open to the public, such as a home or hospital room. HRS § 92-3.5. The disability need not be permanent, so for example, a board member that has the flu or is hospitalized may participate via videoconference from home or a hospital room. A disabled board member attending from a private location must identify the location and any persons who are present at that location with the member. To protect the disabled member’s privacy interests and because members of the public are not able to participate from the private location, the disabled member’s location during a meeting may be generally identified, such as “home” or “hospital,” without providing an exact address.

Because members of the public are not able to participate from the private location, the filed notice does not have to state that a disabled board member will be participating from home, a hospital, or other location. It is sufficient for the disabled board member to announce at the meeting that he or she is participating from a stated location, without providing an exact address, and to state the names of any person that are present at the location with the member.

Must a board provide additional in-person meeting sites to allow the public to more easily participate?

No. The Sunshine Law does not require a board to provide more than the one in-person meeting site for any meeting. For an in-person meeting, it also does not require accommodating requests to remotely participate. At the same time, the Sunshine Law does not restrict remote participation in an in-person meeting by people who are not board members. However, it is **up to the board to decide** whether or not to allow testifiers, presenters, and other members of the public to watch, testify, or otherwise participate in an in-person meeting from places other than the official meeting site(s) by:

- Allowing testifiers to call in from home;
- Allowing their participation via audio or videoconferencing from a location not listed on the notice; or
- Setting up audio or videoconferencing at a location where no board member will be present, such as an additional location listed as such on the notice and not guaranteed to remain open for the whole meeting.

Boards are not required by the Sunshine Law to provide additional locations or accommodate requests from testifiers to testify remotely by telephone or other means. Boards may be required, however, to reasonably accommodate individuals with disabilities under the Americans with Disabilities Act (ADA), and should consult with their own attorneys or the State Disability and Communication Access Board at (808) 586-8121 (Voice) or (808) 586-6162 (TTY), email dcab@doh.hawaii.gov, or go to DCAB's website at health.hawaii.gov/dcab/ for advice on how to comply with the ADA. OIP does not have authority to provide legal advice on the ADA.

If the notice lists one or more additional locations for the convenience of members of the public who cannot make it to the official in-person meeting location(s), the notice must make clear the distinction between the noticed official meeting location(s) and the listed additional location. An additional location may be cancelled or shut down early while the meeting continues at the public meeting locations listed on the filed notice. Moreover, in most cases, board members themselves cannot attend an in-person meeting from an additional location or another non-noticed location, which also means that they cannot call in, cannot participate or just listen in by phone, and cannot vote or be counted toward quorum for an in-person meeting if they are at an additional location or other non-noticed location. The only exception to this rule is for disabled board members, as described above.

BOARD PACKETS

What is a board packet?

A board packet consists of the documents that are compiled by the board or its staff and distributed to board members before a public meeting for use at that meeting. Not all boards create and distribute board packets, and the requirements relating to board packets only apply to those boards that actually distribute board packets.

Must board packets be made available to the public?

Yes, but documents may be redacted or withheld as discussed below. Any board packet prepared for a meeting must be made available for public inspection in the board's office at the time it is distributed to board members, **but no later than 48 hours before the meeting**. Although the board is not required to automatically mail or email the

packet itself to people on its notification list, it must notify them that the board packet is available for inspection in the board's office and must provide "reasonably prompt" access to the packet to any person upon request. The board must accommodate requests for electronic access to the board packet as soon as practicable, which it can do by emailing the packet to requesters or by posting the packet on its website or in a file-sharing site and letting the public know where it can be found.

What board packet documents may be withheld or redacted from public inspection?

The public disclosure requirement for board packets only applies to information that would be disclosable under the UIPA; in other words, non-public information within board packets can be redacted. In addition, the law allows the board to potentially withhold more records in creating the public version of the board packet than could have been withheld in response to a formal UIPA record request. Specifically, the public version of a board packet is not required to include executive meeting minutes, license applications, and other records for which the board cannot reasonably complete its redaction of nonpublic information in the time available before the meeting. In this way, the board packet provision recognizes the challenge facing a board when it must both put together a board packet and create a public version of the board packet in the short time before a meeting, when the board packet may include materials from third parties that the board has not previously reviewed, or materials with public information and nonpublic information mixed together.

For example, if a board packet includes a long document with confidential information embedded throughout it, which would make redaction unreasonable or overly time-consuming in the days before the board meeting, the board could withhold the entire record from the public board packet. On the other hand, if a similarly long document is made up of several distinct sections, only some of which are confidential, then it may be relatively straightforward for the board to separate them and include only the non-confidential sections in the public board packet. If a document includes some confidential information but is only a few pages long, then the confidential information can readily be redacted before the record is included in the public board packet. If a document of any length is fully public, then it should be included in an unredacted form in the public board packet.

If a board has made a public board packet available, does it still need to respond to a UIPA request for the original packet?

Yes. The UIPA has separate and different requirements from the Sunshine Law, and **the Sunshine Law's board packet disclosure requirement does not replace the right of a member of the public to request a board packet under the UIPA.** In responding to such a request, a board would follow the UIPA's deadlines, standards for what may be redacted, and fees. For most members of the public, however, free access to the public version of the board packet prior to the meeting under the Sunshine Law will be preferable to waiting two weeks or more to receive what may be a slightly less redacted version for which review and segregation fees may be assessed under the UIPA.

Do you have any practice tips for boards to prepare public board packets?

- When compiling a board packet, prepare the public version at the same time. As each document comes in, determine whether it must be included in the public packet and prepare a redacted version if necessary.
- Have a copy of the public board packet available in the board's office by the time the packet goes out to board members. If the public board packet is available for public inspection only in electronic format, have equipment available for the public to be able to view the packet.
- Have a PDF version of the public packet ready to be emailed or faxed upon request, or if the board prefers, available to download from the board's website or a file-sharing service.

TESTIMONY

Must a board accept testimony at its meetings?

Yes. Boards are required to accept both oral and written testimony from the public on any item listed on the meeting agenda. Boards can decline to accept public testimony that is unrelated to a matter listed on the agenda.

Can the public provide testimony from a remote location by telephone, videoconference, or using other interactive technology?

If a board is holding a remote meeting via ICT, the public has a right to attend and testify at the meeting from a remote location using the ICT link(s) provided by the board.

If a board is conducting an in-person meeting, however, the law does NOT require a board to allow public testimony or participation from a location that was not listed on the notice as a meeting site, such as a person's home. Thus, unless the board is conducting a remote meeting, the **board may choose, but is not required** by the Sunshine Law, to hear testimony online or via telephone from members of the public who are not physically present at a meeting location.

Note, however, that a board may choose to establish additional locations to allow the public to testify remotely when holding an in-person meeting. See the discussion on additional locations in the earlier section for Multi-Site and Remote Meetings.

Is a board required to read aloud the written testimony during its meeting?

No. There is no requirement that a board read aloud each piece of written testimony during its meeting for the benefit of those attending the meeting. A board, however, must ensure that written testimony is distributed to each board member for that member's consideration before the board's action. Moreover, upon request, any member of the public is entitled to receive copies of the written testimony submitted to the board.

Is written communication received by only one board member regarding a matter on the board's meeting agenda considered written testimony?

Possibly. For instance, on occasion, the board chair or individual board members may receive email or other written correspondence regarding a matter on the board's agenda. If a written communication is received prior to the meeting and reasonably appears to be testimony relating to an agenda item (as opposed to correspondence directed only to the recipient), irrespective of whether the writing is specifically identified as "testimony," the board member receiving the communication must make reasonable efforts to cause the testimony to be distributed to the

other members of the board by the board's staff. The receiving board member should not directly distribute the testimony to other board members as it may be considered a serial communication or discussion outside of a meeting, which are prohibited by the Sunshine Law.

How can a board avoid the possible problem of only one board member receiving testimony intended for the entire board?

The Sunshine Law now requires that the posted notice for a meeting provide the board's electronic and postal contact information for submission of testimony before the meeting. This requirement avoids possible confusion as to whether an email or other written communication received by only one board member is intended to be "testimony" to the entire board, because the public will know the mailing address and email address written testimony should be directed to.

Providing the board's contact information does not completely relieve individual board members of their obligation to consider whether written communication that they individually receive was intended by the sender to be "testimony" for consideration by the entire board. Nonetheless, it reduces the likelihood of written testimony being sent to individual board members and may excuse a board member's reasonable failure to recognize that a written communication was intended to be "testimony."

How must a board distribute written testimony to its members?

As a general rule, a board is empowered to determine how to best and most efficiently distribute the testimony to its members, *e.g.*, whether to transmit it electronically or to circulate copies in paper format, and whether to distribute it in advance of the meeting or at the beginning of the meeting, so long as the testimony is distributed in a way that is reasonably calculated to be received by each board member. However, distribution of testimony to members prior to the meeting is subject to the board packet requirements discussed above, which means any testimony not sent out to board members and made available to the public at least 48 hours before the meeting as required for a board packet cannot be distributed to members until the beginning of the meeting. Additionally, any distribution of testimony before the meeting should be done by the board's staff, not members, to avoid improper discussion of board business outside a meeting.

May a board limit the length of each person's oral testimony offered at its meetings?

Yes. Boards are authorized to adopt rules regarding oral testimony, including, among other things, rules setting limits on the amount of time that a member of the public may testify. For instance, a council could adopt rules limiting each person's oral testimony to three minutes per item. Boards also are not required to accept oral testimony unrelated to items on the agenda for the meeting.

To what extent can a board decide when to take oral testimony during its meeting?

Within certain limits, a board can choose when to hear oral testimony on agenda items. However, a board cannot hear all the oral testimony only at the beginning of the meeting, and it must hear the testimony on a given agenda item prior to its consideration of that agenda item. Beyond those restrictions, a board can choose when to hear testimony. For instance, a board could allow a limited testimony period at the beginning of the meeting to accommodate members of the public who prefer not to wait, and then continue to hear testimony immediately before each agenda item from those who have not testified earlier on that item. A board could also choose to hear testimony on several agenda items together (in which case it should still allow people testifying on multiple items a full opportunity to testify on each of those items).

May a board set a deadline for the public to submit written testimony or register for oral testimony?

No. The Sunshine Law does not authorize boards to set deadlines or require registration as a condition of giving oral testimony, and doing so would be inconsistent with the requirement to allow all interested persons the opportunity to provide written and oral testimony. However, a board may still request that the public submit written testimony by a set time or sign up in advance for oral testimony, so long as it **makes clear that the request is not a requirement, accepts written testimony submitted at a later time, and offers all public attendees the chance to present oral testimony even without prior registration.**

RECESSING, CONTINUING, CANCELLING, OR RELOCATING MEETINGS

Can a board recess and later reconvene a meeting?

Yes, as a general rule, boards are authorized to recess both public and executive meetings, and to reconvene at another date and time to continue and/or complete public testimony, discussion, deliberation, and decision-making relating to the items listed on the agenda. Meeting continuances were extensively discussed by the Hawaii Supreme Court in Kanahele v. Maui County Council, 130 Haw. 228, 307 P.3d 1174 (Kanahele) (2013). The Court recognized that section 92-7(d), HRS, requires items of reasonably major importance, which are not decided at a scheduled meeting, to “be considered only at a meeting continued to a reasonable date and time.” The Court also found that a board is not limited by this statute to only one continuance of a meeting and is not required to post a new agenda or accept oral testimony at a continued meeting.

There are specific procedures that boards must follow if the ICT connection to a remote or multi-site meeting has been interrupted or lost. See the previous sections on In-Person, Multi-Site, and Remote Meetings.

What kind of notice should a board provide for a meeting that will be continued?

Although the Sunshine Law contains no specific requirements for a written public notice or oral announcement for continued meetings, the Hawaii Supreme Court stated in Kanahele, discussed above, that “the means chosen to notify the public of the continued meeting must be sufficient to ensure that meetings are conducted “as openly as possible; and in a manner that ‘protect[s] the people’s right to know.’” Id. at 1198. When a meeting is being recessed for longer than 24 hours, the board should provide, if practicable, both oral and written (including, if possible, electronic) notice of the date, time, and place of a continuance. The date, time, and location of the reconvened meeting generally should be orally announced at the time that the meeting is recessed.

Based on the Court’s guidance and examples in Kanahele, OIP has prepared a “Notice of Continuance of Meeting” form, which is available on the [Forms page at oip.hawaii.gov](https://oip.hawaii.gov/forms/) and as an appendix to this Guide. This notice may be used to continue an ongoing meeting that had been originally posted as required under section 92-7, HRS. Consequently,

the continuance notice is not subject to the same requirements of the original notice under section 92-7, HRS. Rather than post a new agenda for a continued meeting, a board should attach the agenda of the meeting being continued to a “Notice of Continuance of Meeting,” on which the board should type, hand write, or otherwise note the agenda item(s) being continued.

Can the meeting be reconvened at a different location?

Yes. A board may reconvene a meeting at a location different from where the meeting was initially convened, as long as the board announces the location where the meeting is to be reconvened at the time when it recesses the meeting or otherwise notifies the public of the new location. The new location should be included in all announcements and other such publications, if any, regarding the reconvened meeting.

Must the continuance notice be posted?

Yes. A board should physically post in the board’s office and, if practicable, at the physical meeting site, a “Notice of Continuance of a Meeting,” with the agenda from the continued meeting attached thereto. Additionally, if possible and time permits, the Notice and agenda should be electronically posted on the board’s website or the State or county electronic calendar, as appropriate, and emailed to persons on the board’s email list.

Keep in mind that because the meeting notice requirements of section 92-7, HRS, do not apply to the notice of continuance, the failure to electronically post the continuance notice on the State or county electronic calendar or to give six days’ advance notice would not require the cancellation of the continued meeting. State boards are also able to post a notice of a meeting being continued within six days by contacting NIC Hawaii (not OIP) at Hawaiiicalendar@ehawaii.gov from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays).

Does a board have to re-hear testimony or accept new testimony at a continuation of a meeting?

No. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting.

Must a notice be posted online when cancelling a meeting?

Boards are not required by the Sunshine Law to electronically file a notice when cancelling a meeting. A board's mere failure to be present at a noticed meeting automatically cancels the meeting. However, as a courtesy to the public, OIP recommends posting notification of a cancelled meeting at the board's office and at the meeting location, taking down the original meeting notice from the online calendar, and informing those people who have asked to receive notice by email.

What notice must be provided if a physical meeting location must be changed?

If a board must change the physical location of a meeting on the day of the meeting (for example, the room loses power or air conditioning), it may call the meeting to order at the noticed location and announce that it will be recessed and then reconvened shortly thereafter in the new location. A written notification of the new meeting location should be posted at the originally noticed physical location.

What happens if the link to a remote meeting provided in the meeting notice has changed or does not work?

The meeting notice for a remote meeting must include the remote meeting location, typically a link for an online meeting platform. If a board must change the online location of a meeting on the day of the meeting, perhaps because the original link is not working, it may do so if its meeting notice also provided the alternative online location in its meeting notice as a back-up link in case of connection problems with the first. If a board cannot use its noticed remote meeting location and it has not previously provided an alternative, it would be unable to convene the meeting in the first place, and thus would not have the option to convene it and announce its continuation at a different online location.

DISCUSSIONS BETWEEN BOARD MEMBERS OUTSIDE OF A MEETING

Can board members discuss board business outside of a meeting?

The Sunshine Law generally prohibits discussions about board business between board members outside of a properly noticed meeting, with

certain statutory exceptions. While the Sunshine Law authorizes interactions between board members outside of a meeting in specified circumstances, the statute expressly cautions that such interactions cannot be used to circumvent the requirements or the spirit of the law to make a decision or to deliberate towards a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

In practical terms, this means that board members cannot “caucus” or meet privately before, during, or after a meeting to discuss business that is before the board or that is reasonably likely to come before the board in the foreseeable future.

The statute, however, does not prohibit discussion between board members outside of a properly noticed meeting about matters over which the board does not have supervision, control, jurisdiction, or advisory power. For instance, where the chair of a board has the sole discretion to set the agenda, the board has no “power” over that decision and, therefore, board members may request the addition of possible agenda items outside of a properly noticed meeting, so long as they do not discuss the substance of items. Similarly, logistical issues, such as when members are available to meet, are typically not “board business” and thus may be discussed in an email sent to all board members.

Does the Sunshine Law also prohibit board members from communicating between themselves about board business by telephone, memo, fax, or email outside of a meeting?

Yes. Board members cannot discuss board business between themselves outside of a properly noticed meeting by way of the telephone or by memoranda, fax, email, or social media, such as Facebook. As a general rule, if the statute prohibits board members from discussing board business face-to-face, board members cannot have that same discussion through other media.

Can board members discuss board business with non-board members outside of a meeting?

Generally, yes. The Sunshine Law only applies to boards and their discussions, deliberations, decisions, and actions. Because the Sunshine Law does not apply to **non**-board members, a board member may discuss board business with **non**-board members outside of a meeting.

Board members should not discuss with non-board members any matters discussed during a closed executive meeting, or the members could risk waiving the board's ability to keep the matters confidential.

SOCIAL EVENTS

What about social and ceremonial events attended by board members?

The Sunshine Law does not apply to social or ceremonial gatherings where board business is not discussed. Therefore, board members can attend functions such as Christmas parties, dinners, inaugurations, orientations, and ceremonial events without posting notice or allowing public participation, so long as they do not discuss official business that is pending or that is reasonably likely to come before the board in the foreseeable future.

If I am a board member, what should I do if another board member starts talking about board business at a social event?

The Sunshine Law is, for the most part, self-policing. It is heavily dependent upon board members understanding what they can and cannot do under the law. In the situation where a board member raises board business with other board members outside of a meeting, board members should remind each other that such discussion can only occur at a duly noticed meeting. If a board member persists in discussing the matter, the other board members should not participate in the discussion and should physically remove themselves from the discussion.

PERMITTED INTERACTIONS

What are “permitted interactions”?

Over the years, the Sunshine Law has been revised to recognize eight “permitted interactions,” which are designed to address instances when members of a board may discuss certain board matters outside of a meeting and without the procedural requirements, such as notice, that would otherwise be necessary. The statute specifically states that the “[c]ommunications, interactions, discussions, investigations, and presentations described in [the permitted interaction] section are not

meetings for purposes of [the Sunshine Law].” These permitted interactions are summarized below.

What are the types of “permitted interactions” allowed by the Sunshine Law?

- ***Two Board Members.*** Two board members may discuss board business outside of a meeting as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board. Nevertheless, it would be a serial communication contrary to the Sunshine Law for a board member to discuss the same board business with more than one other board member through a series of one-on-one meetings.
- ***Investigations.*** A board can designate two or more board members, but less than the number of members that would constitute a quorum of the board, to investigate matters concerning board business. The board members designated by the board are required to report their resulting findings and recommendations to the entire board at a properly noticed meeting. This permitted interaction can be used by a board to allow some of its members (numbering less than a quorum) to participate in, for instance, a site inspection outside of a meeting or to gather information relevant to a matter before the board.
- ***Presentations/Negotiations/Discussion.*** The board can assign two or more of its members, but less than the number of members that would constitute a quorum of the board, to present, discuss, or negotiate any position that the board has adopted.
- ***Selection of Board Officers.*** Two or more board members, but less than the number of members that would constitute a quorum of the board, can discuss between themselves the selection of the board’s officers.
- ***Acceptance of Testimony at Cancelled Meetings.*** If a board meeting must be cancelled due to lack of quorum or conference technology problems, the board members present may still receive testimony and presentations on agenda items from members of the public and may question them, so long as there is no deliberation or decision-making at the cancelled meeting. The members present must create a record of the oral testimony or presentations. At the next duly noticed meeting of the board, the members who were present at the cancelled meeting must provide the record and copies of the testimony or presentations received at the cancelled meeting. Deliberation and

decision-making on any item, for which testimony or presentation were received at the cancelled meeting, can only occur at a subsequent duly noticed meeting of the board.

- ***Discussions with the Governor.*** Discussions between one or more board members and the Governor are authorized to be conducted in private, provided that the discussion does not cover a matter over which a board is exercising its adjudicatory function. This permitted interaction does not allow discussions with county mayors.
- ***Administrative Matters.*** Certain routine administrative matters, such as board budget or employment matters, can be discussed between two or more members of a board and the head of a department to which the board is administratively assigned.
- ***Attendance at Informational Meetings or Presentations.*** The Sunshine Law allows two or more members of a board, but less than a quorum, to attend an informational meeting. The board members may participate in discussions, even among themselves, so long as the discussions occur as part of the informational meeting or presentation and no commitment relating to a vote on the matter is made or sought. At the next duly noticed meeting of the board, the members who attended the informational meeting or presentation must report their attendance and the matters presented and discussed that related to official board business.

This informational meeting provision thus allows less than a quorum of board members to attend, for example, neighborhood board meetings, legislative hearings, and seminars, at which official board business is discussed, so long as no commitment to vote is made and the subsequent reporting requirements are met. The law is intended to improve communication between the public and board members and to enable board members to gain a fuller understanding of the issues and various perspectives. As with the rest of the law, this permitted interaction will be interpreted to prevent circumvention of the spirit of the Sunshine Law and its open meeting requirements.

- ***Circulation of proposed testimony.*** A board that has previously adopted a position on a legislative measure may circulate its proposed testimony among board members for review and written comment to meet a tight legislative deadline, so long as all proposed testimony drafts and board member communications about the testimony are publicly posted online within 48 hours of the statement's circulation to the board. This permitted interaction is best used for proposed testimony drafted by board staff or a single member, as

discussed in OIP's Quick Review on Sunshine Law Options to Address State Legislative Issues and Measures, which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training/).

For a more detailed discussion, please see OIP's three-part "Quick Review: Who Board Members Can Talk to and When," which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training/).

BOARD DISCUSSION OF LEGISLATIVE ISSUES

How can a Sunshine Law board keep up with the fast-paced legislative calendar and submit timely testimony on legislative issues?

When dealing with legislative matters, one major hurdle that boards face is the Sunshine Law's six-day notice requirement prior to conducting a meeting to discuss a legislative measure, even though legislative committees often give less than six days' notice of their hearings. Since most boards typically meet on a monthly or less frequent basis, their meeting schedule together with the notice requirement leave them with limited options to timely notice a meeting and discuss the adoption of its legislative testimony or position prior to the legislative hearing.

The Sunshine Law, however, allows board members to discuss board business outside a meeting in limited circumstances, as set forth in the "permitted interactions" section of the law, as discussed above. The permitted interactions that are most useful in developing or adopting positions on legislative measures are the ones allowing: (1) two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board; (2) a board to assign less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting; (3) less than a quorum of board members to attend a legislative hearing (or other "informational meeting") and report their attendance at the next board meeting; and (4) a board to circulate draft testimony for members' review and written comment.

Besides permitted interactions, other options for a board to address legislative matters are through emergency or limited meetings or delegation to staff.

The various options or practical approaches that a board could take to

discuss and submit timely testimony on legislative issues or measures are discussed in more detail in OIP's "Quick Review: Sunshine Law Options to Address State Legislative Issues and Measures," which is posted on the [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

DISCUSSIONS BETWEEN MULTIPLE BOARDS

When members of multiple Sunshine Law boards hold a joint meeting, roundtable discussion or similar event, how can they do so without violating the Sunshine Law?

When planning an event that will bring together members of multiple Sunshine Law boards, every attendee who is a member of a Sunshine Law board must be able to justify his or her presence under the Sunshine Law with respect to his or her own board. The justification could be that no one else from that particular board was present, so there was no discussion of board business among that board's members; or it could be that one of the Sunshine Law's permitted interactions applied to the particular board's members who attended; or it could be that the event was noticed as a meeting of the members' own board (or a joint meeting of multiple boards including theirs). The justification does not have to be the same for all the boards with members attending, but all members of each board should have a Sunshine Law justification before attending and participating in the discussion of their board's business during the roundtable meeting.

For a more detailed discussion, please see OIP's "Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law," which is posted on OIP's [Training page at oip.hawaii.gov](https://oip.hawaii.gov/training).

3

EXECUTIVE MEETINGS

What is an executive meeting?

An executive meeting (also called an executive session) is a meeting of the board that is closed to the public. Because an executive meeting is a narrowly construed exception to the Sunshine Law's presumption that all government board meetings will be open to the public, board members are advised to carefully weigh the interests at stake before voting to exercise their discretion to close a meeting. Because the "final action" taken by the board in an executive meeting may be voided by the courts if the board has violated the procedural requirements for going into such a closed meeting, boards must be careful to follow all requirements.

Must a board give notice that it intends to convene an executive meeting?

Yes, if the executive meeting is anticipated in advance.

What must the agenda contain when the board anticipates convening an executive meeting?

In addition to listing the topic the board will be considering (as is required for all items the board will consider whether in public or executive session), the agenda for the open meeting generally must indicate that an executive meeting is anticipated and should cite the statutory authority for convening the anticipated executive meeting. For an executive meeting, the listing of the topic should describe the subject of the executive meeting with as much detail as possible without compromising the closed meeting's purpose. For instance, if the board is to consider a proposed settlement of a lawsuit in an executive meeting, the agenda would note that the purpose of the executive session was consulting with the board's attorney on questions or issues regarding the board's powers, duties, privileges, immunities, and liabilities, and cite section 92-5(a)(4), HRS. The agenda in such a case should also describe the topic of the meeting as, at a minimum, the lawsuit identified by case name and civil number, and unless such description would compromise the purpose of closing the meeting from the public, that the board would consider a proposed settlement.

Can a board convene an executive meeting when it is not anticipated in advance?

With significant restrictions, the Sunshine Law allows the board to convene an executive meeting when the need for excluding the general public from the meeting was not anticipated in advance. If, for example, during the discussion of an open meeting agenda item, the board determines that there are legal issues that need to be addressed by its attorney, the board may announce and vote to immediately convene an executive meeting to discuss those matters pursuant to section 92-5(a)(4), HRS.

The board, however, cannot convene an executive meeting to discuss an item that is not already on its meeting agenda without first amending the agenda to add the item in accordance with the Sunshine Law's requirements. No item can be added to an agenda if it is of reasonably major importance and the board's action will affect a significant number of persons. At least two-thirds of the board's total members (present or absent) must vote in favor of amending the agenda.

How does a board convene an executive meeting?

To convene an executive meeting, a board must vote to do so in an open meeting and must publicly announce the purpose of the executive meeting. The minutes of the open meeting must reflect the vote of each board member on the question of closing the meeting to the public. Two-thirds of the board members present must vote in favor of holding the executive meeting, and the members voting in favor must also make up a majority of all board members, including members not present at the meeting and vacant membership position. Note that the 2/3 vote of all members present that is required to convene an executive meeting is different from the 2/3 vote of a board's total membership (including vacant positions) that is required to amend an agenda.

Is a board required to report to the public on what happened in an executive meeting?

When a board reconvenes in public session, it must report, in general terms, its discussion and any final action it took during the executive session. The board is not required to disclose any information that would be inconsistent with the purpose of the executive session. If disclosure would frustrate the purpose of the executive session, the board can keep the information confidential for as long as that continues to be true. Instead, a board should briefly summarize what happened in the

executive session, without disclosing any sensitive details, and give the public an idea of what topic the board discussed during the session. In the limited instances where a board can and did properly vote during an executive session, it must also inform the public what action it took.

What are the eight purposes for which an executive meeting can be convened?

Section 92-5(a), HRS, gives the board the discretion to go into an executive meeting only for the following eight specific reasons:

(1) ***Licensee Information.*** A board is authorized to meet in an executive meeting to evaluate personal information of applicants for professional and vocational licenses.

(2) ***Personnel Decisions.*** A board may hold an executive meeting to “consider the hire, evaluation, dismissal or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved.” However, if the person who is the subject of the board’s meeting requests that the board conduct its business about him or her in an open meeting, the request must be granted and an open meeting must be held.

(3) ***Labor Negotiations/Public Property Acquisition.*** A board is allowed to deliberate in an executive meeting concerning the authority of people designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations.

(4) ***Consult with Board’s Attorney.*** A board is authorized to consult in an executive meeting with its attorneys concerning the board’s powers, duties, immunities, privileges, and liabilities.

(5) ***Investigate Criminal Misconduct.*** A board with the power to investigate criminal misconduct is authorized to do so in an executive meeting.

(6) ***Public Safety/Security.*** A board may hold an executive meeting to consider sensitive matters related to public safety or security.

(7) ***Private Donations.*** A board may consider matters relating to the solicitation and acceptance of private donations in executive meetings.

(8) ***State/Federal Law or Court Order.*** A board may hold an

executive meeting to consider information that a State or federal law or a court order requires be kept confidential.

Does “embarrassing” or “highly personal” information allow a board to hold an executive meeting?

A board may not hold such discussions in an executive meeting unless the discussion falls within one of the eight circumstances listed in the statute for which an executive meeting is allowed.

Can confidential or proprietary information be considered in a closed-door meeting?

Again, unless there is an exception that permits the board to convene in an executive meeting, no matter how sensitive the information may be, a board cannot consider such information in a closed meeting. In such a case, a board may be better off using an applicable permitted interaction in section 92-2.5, HRS, to allow less than a quorum of board members to take a close look at the sensitive information so that it can be discussed in more general terms at the board’s meeting.

Does the Sunshine Law require a closed meeting when one of the eight purposes is applicable?

No. A board may, but is not required to, enter an executive meeting closed to the public when one of the eight purposes listed above is applicable.

Is a board subject to the Sunshine Law’s criminal penalties for holding an open meeting, even if one of the eight purposes is applicable?

No. Although section 92-13, HRS, provides for the criminal prosecution of board members who willfully violate the Sunshine Law, the Hawaii Supreme Court has held that holding an open meeting does not violate the Sunshine Law. Consequently, board members are not subject to criminal prosecution under section 92-13, HRS, for holding an open meeting.

When personnel matters concerning an individual will be discussed, can an open meeting be held only upon the subject employee’s request?

No. Section 92-5(a)(2), HRS, gives the subject employee the right to

request an open meeting, but does not require the employee's consent to hold an open meeting. Because the Sunshine Law presumptively requires open meetings, the board may choose to discuss personnel matters in the open. Meetings related to personnel matters are not required to be closed to the public.

Must all personnel matters be discussed in a closed executive meeting?

No. Certain personnel matters must be discussed in an open meeting. Under the Uniform Information Practices Act (Modified), chapter 92F, HRS (UIPA), certain types of government employment information must be disclosed upon request, such as employee names, job titles, and salary information. HRS § 92F-12(a)(4). Consequently, government employees do not have a legitimate expectation of privacy in such information, and the board cannot justify closing a meeting simply to discuss those types of personnel matters. Additionally, if the discussion is about personnel policies, and not about an individual, then there is no legitimate expectation of privacy at stake, so the meeting cannot be closed to discuss such policies. To the extent possible, policy-making must be conducted in public meetings.

The personnel matters that may be discussed in a closed meeting under section 92-5(a)(2), HRS, must relate to “the hire, evaluation, dismissal or discipline” of an individual officer or employee, or to “charges brought against” such an individual, and also requires a showing that “consideration of matters affecting privacy will be involved.” Just because a matter involves an employee's personnel status does not necessarily mean that a legitimate privacy interest will be impacted. If no legitimate privacy interest will be involved in the board's discussion, then the board cannot properly close the meeting to the public.

How do you determine if there is a legitimate privacy interest under the personnel exception allowing closed executive meetings?

Unlike the test balancing private interests against the public interest that is set forth in the UIPA at section 92F-14(a), HRS, to determine if disclosure of a record would constitute a clearly unwarranted invasion of personal privacy, the Sunshine Law requires a case-by-case analysis of the specific person and information at issue to see whether the person being discussed has a legitimate expectation of privacy. Only people, not companies or entities, can have an expectation of privacy. There is a legitimate expectation of privacy in “highly personal and intimate” information, which may include medical, financial, education, or

employment records. Some circumstances, however, may reduce or entirely defeat the legitimacy of a person's expectation of privacy, as in the case of government officials with high levels of discretionary and fiscal authority, like the University's president or a head coach. Moreover, if the information must be disclosed by law, rule or regulation, or if it has already been disclosed, then there is no legitimate expectation of privacy that would warrant holding a closed executive meeting to discuss such information.

May a board vote in an executive meeting?

Generally, no. In most instances, the board must vote in an open meeting on the matters considered in an executive meeting. In rare instances, the Sunshine Law allows the board to vote in the executive meeting when the vote itself, if conducted in an open meeting, would defeat the purpose of the executive meeting, such as by revealing the matter for which confidentiality may be needed. In those rare instances where a board can and does vote in an executive meeting, it must report any action taken when it returns to public session and summarize in general terms what happened in the executive session without disclosing information that would frustrate the reason for going into executive session in the first place.

Can non-board members participate in an executive meeting?

The board is entitled to invite into an executive meeting any non-board member whose presence is either necessary or helpful to the board in its discussion, deliberation, and decision-making regarding the topic of the executive meeting. Once the non-board member's presence is no longer needed, however, the non-board member must be excused from the executive meeting. Because the meeting is closed to the general public, the board should allow the non-board members to be present during the executive meeting only for the portions of the meeting for which their presence is necessary or helpful, such as when a board staff member, attorney, or applicant is there to address a particular issue. Non-board members who may be needed throughout an executive session may include those providing technical or production support, or who are taking the minutes of the meeting. All persons attending an executive meeting, however, would be required to maintain the confidentiality of what was discussed in the meeting.

There are additional requirements for an executive meeting held as part of a remote meeting, which are discussed next.

What are the requirements for an executive meeting when the meeting is held remotely?

During a remotely held meeting when board members go into an executive session closed to the public, they can participate via telephone or audio only, without being visible online as is generally required for the public portion of a remote meeting. Because participants may not be visible during an online executive session, and to preserve the executive nature of any portion of a meeting closed to the public, the presiding officer must **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. Additionally, if the remote meeting platform allows doing so, **the person organizing the ICT must look at the listed participants and confirm that no unauthorized person has access to the executive session**.

These statutory requirements are intended to prevent the executive session from being breached by or remotely transmitted to unauthorized persons during remote meetings. The “authorized participants” that the presiding officer must identify at the start of an executive session would generally be anyone properly included in the closed portion of the meeting, such as board members, staff members necessary to running the meeting (*e.g.*, technical or production staff), and in some cases, third parties whose presence is necessary to the closed meeting (*e.g.*, applicant, witness, or attorney).

For additional discussion of executive session issues, see OIP’s **Quick Review: Executive Meetings Closed to the Public**.

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OTHER TYPES OF MEETINGS

EMERGENCY MEETINGS

Where public health, safety, or welfare requires a board to take action on a matter, can a board convene a meeting with less than six days' notice?

A board may hold an emergency meeting with less notice than required by the statute or, in certain circumstances, no notice when there is “an imminent peril to the public health, safety, or welfare.” When the board finds that an emergency meeting is appropriate, (1) the board must state its reasons in writing; (2) two-thirds of all members to which the board is entitled must agree that an emergency exists; (3) the board must electronically file an emergency agenda and the board’s reasons in the same way it would file its regular notice and agenda, except for the usual six-days’ advance notice deadline; and (4) persons requesting notification on a regular basis must be contacted by postal or electronic mail or telephone as soon as practicable.

UNANTICIPATED EVENTS

When an unanticipated event requires a board to take immediate action, can a board convene a meeting with less than six days' notice?

A board may convene a special meeting with less than six calendar days’ notice because of an unanticipated event when a board must take action on a matter over which it has supervision, control, jurisdiction, or advisory power. The law defines an unanticipated event to mean (1) an event that the board did not have sufficient advance knowledge of or reasonably could not have known about; (2) a deadline beyond the board’s control established by a legislative body, a court, or an agency; and (3) the consequence of an event for which the board could not have reasonably taken all necessary action.

The usual rule is that a State or county board may deliberate and decide whether and how to respond to the unanticipated event as long as (1) the board states, in writing, its reasons for finding that an unanticipated

event has occurred and that an emergency meeting is necessary; (2) the attorney general and two-thirds of all members to which the board is entitled concur with the board's finding; (3) the board's findings and the agenda for the emergency meeting are electronically filed in the same way it would file its regular notice and agenda, except for the usual six-days' advance notice deadline; and (4) persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable. At an emergency meeting, the board can only take those actions that need to be immediately taken.

LIMITED MEETINGS

If a board finds it necessary to inspect a location that is dangerous or impracticable for public attendance, may the board hold a meeting that is not open to the public?

Yes. A board may hold a "limited meeting" that is not open to the public when either (1) the meeting location is dangerous to health or safety, or (2) an on-site inspection of the meeting location is necessary and public attendance at that location is impracticable. Prior to the limited meeting, the board must publicly deliberate in a regular meeting on the need for the limited meeting, two-thirds of all members to which the board is entitled must vote to adopt the determination that it is necessary to hold a limited meeting for one of the reasons specified above, and the board must obtain the OIP Director's concurrence in its determination. Note that the board may be unable to meet the two-thirds voting requirement due to board vacancies or absences; for example, if a board should have five members but only four are appointed, then it would need all four members to vote to adopt the determination and would not be able to do so if one of the members is absent.

Public notice of a limited meeting must still be provided, and a videotape of the meeting must be made available at the next regular board meeting, unless the OIP Director waives the videotape requirement. No decision-making can occur during the limited meeting.

See the Sunshine Law forms section of OIP's website at <https://oip.hawaii.gov/forms/> for a fillable checklist to use when requesting the OIP Director's concurrence for a limited meeting or to request a waiver of the videotaping requirement.

Can county councils have limited meetings to attend other boards' or community groups' meetings, such as candidate forums?

Yes. County councils have a special limited meeting provision that allows an unlimited number of councilmembers to be the guests of a board or community group holding its own meeting, such as for candidate forums or neighborhood board meetings. To qualify for this “guest meeting,” the council must follow the requirements to hold a limited meeting, as described above. But unlike the regular limited meetings described above, the guest meeting must be open to the public. The council need not file an agenda. However, if the host organization itself is a board which must follow the Sunshine Law requirements, then that board must file an agenda. The council can have no more than one guest meeting per month for any one board or community group, and no guest meetings can be held outside of Hawaii.

See the appendices to this Guide for a checklist to use when requesting the OIP Director’s concurrence for a council to attend a meeting as guests of another board or community group meeting or to request a waiver of the videotaping requirement.

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PROCEDURAL REQUIREMENTS

NOTICE AND AGENDA

What are the Sunshine Law's requirements for giving notice of meetings?

With the exception of emergency meetings, **a board must give at least six calendar days' advance notice** of any regular, special, or rescheduled meeting or any anticipated executive meeting. Meetings held by interactive conference technology (section 92-3.5, HRS), and limited meetings (section 92-3.1, HRS) are subject to the following provisions on notice as well as other conditions set forth in the applicable sections of the Sunshine Law. Emergency meetings (section 92-8, HRS) must also be noticed, but notice may be filed within a shorter time period than the normal six days, and there are additional conditions.

Sunshine Law meeting notices must be posted on State and county electronic calendars as the official notice of the meeting.

If there is a dispute as to whether an agenda was electronically filed at least six calendar days prior to the meeting, a printout of the electronic time-stamped agenda is conclusive evidence of the posting date.

A board must also file the notice with the Lt. Governor's office or the county clerk's office, which must continue to post the notices in a central location in a public building in paper form or in electronic format, such as via a monitor linked to the electronic calendar. This enables the public to still inspect courtesy copies of the meeting notices posted outside of the Auditorium at the State Capitol or at county buildings. The board must also retain proof of filing the notice with the Lt. Governor's or county clerk's office. The electronic calendar, however, will provide the official notice required by the Sunshine Law. Therefore, the failure to file timely copies of notices with the Lt. Governor's office or county clerks does not require cancellation of the meeting. Moreover, the Lt. Governor or county clerks have the discretion to determine whether they want paper documents to be provided to them, or if

electronic copies can be faxed to them or emailed to an email address designated by them.

The notice must also be posted at the meeting site, whenever feasible. Newspaper publication is not required for Sunshine Law meeting notices.

In addition to the date, time, and place of the meeting, the meeting notice must **include an agenda**, which lists all of the items to be considered at the forthcoming meeting. (The “guest meeting” form of limited meeting, discussed above, is an exception to this requirement.) The agenda requirements are discussed later herein.

If an executive meeting is anticipated, the notice must also state the **purpose of the executive meeting**. The Sunshine Law also requires all meeting notices to include the **board’s electronic and postal contact information for submission of testimony** before the meeting, and provide instructions on **how to request an auxiliary aid or service or an accommodation due to a disability**, which may include a reasonable deadline. Sample language is provided on page 43 of this Guide.

Does a board have to notify individual members of the public of every meeting?

The Sunshine Law requires the board to maintain a list of names and addresses of those persons who have requested notification of meetings and to mail or email a copy of the notice to those persons at the time that the notice is filed. A meeting must be cancelled if the board fails to send notice at least six days in advance of the meeting via postal mail (as determined by postmark date) or email to people on its notification list.

What happens if a board files its notice less than six days before the date of the meeting?

The State electronic calendar will not allow a board to file a regular meeting notice with less than six days’ notice, unless authorization is received after contacting NIC Hawaii (not OIP) at hawaiicalendar@ehawaii.gov from 7:45 a.m. to 4:30 p.m. on Mondays through Fridays (excluding state holidays). Unless the short notice is specifically allowed (such as for an emergency meeting), if a board files its notice less than six calendar days before the meeting, the meeting is cancelled as a matter of law and no meeting can be held. The board chair or the director of the department within which the board is

established must ensure that a notice is posted at the meeting site to inform the public of the cancellation of the meeting.

Note that notices for emergency meetings may be posted on the State calendar with less than six days' notice, but only after special permission is obtained from the calendar's administrator (not OIP).

What happens if there is a joint meeting of two boards that are both subject to the Sunshine Law?

If there is a joint meeting with two or more boards, then each board is responsible for meeting the Sunshine Law's requirements, but they can coordinate to avoid duplicative actions. All boards must ensure that notices are timely mailed or emailed to persons on their own notification lists; but if a person is on more than one mailing list, then only one of the boards must send the notice to that person. If one board meets all Sunshine Law requirements, but the other board in a joint meeting fails to do so, then the first board can proceed with the meeting without the second board. The second board must cancel its meeting and cannot have a quorum or more of its members in attendance at what would have been a joint meeting with the first board.

Do you have any practice tips for boards to help them comply with the notice requirements?

- Be careful to keep accurate records of postal and email addresses of persons on the notification list, and any changes to those addresses, so that notices will be timely and properly sent to them, as the board's errors in an address that made a notice non-deliverable could potentially require the cancellation of a meeting.
- Reduce opportunities for clerical errors by board employees, particularly with email addresses. If possible, have requesters directly enter their own email or mailing addresses online to be added to the board's notification list, and keep a record of the addresses entered by the requesters so that any mistakes will be attributed to the correct source. Consider emailing an acknowledgement after requesters register for email notification, to ensure that the correct email address has been entered onto the board's email notification list.
- If mail is not deliverable, check the address to make sure that it was sent to the correct postal or email address. Keep a record of postal and email addresses that are returned as undeliverable and dates that they were sent to provide proof that the notification was timely sent to

the address provided by the requester.

- Consider filing agendas well before the six-day requirement, so that any potential errors in postal or email addresses can be corrected and timely notices can be sent to people on the notification list.
- Use technology to automate the notification process, reduce duplicative requests to the boards themselves, and eliminate potential clerical errors by the board in entering email addresses. Check to see whether the State or county electronic calendars will automatically notify those persons who subscribe to certain meeting notices.
- Keep a time-stamped copy of the agenda to provide conclusive evidence of the date when the notice was filed. The State electronic calendar shows the date and time that a meeting notice was posted or last updated. If a county calendar does not have this feature, then the board could print out and time-stamp a copy of the electronically filed meeting notice to keep in its files as evidence of the date that the meeting notice was posted.

What must the agenda contain?

The agenda must list all of the business to be considered by the board at the meeting. It must be sufficiently detailed so as to provide the public with adequate notice of the matters that the board will consider so that the public can choose whether to participate.

For anticipated executive meetings, as noted above, the agenda must be as descriptive as possible without compromising the purpose of closing the meeting to the public and must identify the statutory basis that allows the board to convene an executive meeting regarding the particular matter.

To meet the Sunshine Law's requirement to include instructions on how to request an auxiliary aid or accommodation, the Disability and Communication Access Board recommends that boards include the following language on its agendas: "If you need an auxiliary aid/service or other accommodation due to a disability, contact [Name] at [phone number and email address] as soon as possible, preferably by [reply date]. If a response is received after [reply date], we will try to obtain the auxiliary aid/service or accommodation, but we cannot guarantee that the request will be fulfilled. Upon request, this notice is available in alternate formats such as large print, Braille, or electronic copy."

For a more detailed discussion, please see OIP's "Agenda Guidance for Sunshine Law Boards," which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

Are general descriptions such as "Unfinished Business" or "Old Business" allowed?

No. The practice of listing general descriptions on agendas such as "Unfinished Business" or "Old Business" without any further description is insufficient and does not satisfy the agenda requirements.

Can a board amend its meeting agenda once it has been filed?

Adding an item to the agenda is **not** permitted if (1) the item to be added is **of reasonably major importance** and (2) action on the item by the board **will affect a significant number of persons**. Determination of whether a specific matter may be added to an agenda must be done on a case-by-case basis.

If the requirements above are met, boards may amend an agenda during a meeting to add items for consideration, but only after the affirmative vote of two-thirds of **all** board members to which the board is entitled, which **includes members not present at the meeting and vacant membership positions**. For example, if a board is entitled to 9 members, but only 5 are appointed and present, then it does not have the 6 votes needed to meet the 2/3 requirement to amend an agenda during the meeting.

Note that the voting requirement for amending an agenda **is not the same** as, and is typically harder to obtain than, the vote of two-thirds of members present and a majority of the total membership that is needed to go into an executive meeting.

MINUTES

Is a board required to keep minutes of its meetings?

Yes. Boards must either keep written minutes, or recorded minutes with a written summary. If a board chooses to keep 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 have included.

Boards are not required to create a transcript of or (except for remote meetings) to electronically record a meeting. But a board may choose to keep a recording of the entire meeting with a **written summary** instead of doing **written minutes**. If a board chooses to keep **recorded minutes with a written summary**, 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 which 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.

The option to create recorded minutes does not impose any general requirement to record meetings for boards that prefer using written minutes. Moreover, if a board is recording a meeting solely to help it prepare written minutes and plans to delete or record over the recording once those minutes are prepared, the temporary recording need not be posted online and typically need not be retained once the board no longer

needs it.

However, **for one specific type of meeting — a remote meeting held using ICT — boards are required to record the meeting “when practicable.”** The remote meeting recording provision recognizes that it is usually easy to record an online meeting, but still allows boards to skip doing so in those unusual circumstances where recording an online meeting presents a more significant challenge. **A board must make the recording of a remote meeting electronically available to the public as soon as practicable after the meeting** and until the board’s actual minutes (whether written or recorded) are posted on the board’s website. **Even after minutes are posted, the law explicitly encourages a board to keep the recording online, and requires that a copy of the recording be sent to the State Archives before removing it from a board’s website.**

For a more detailed discussion of what must be included in minutes, please see OIP’s “Quick Review: Sunshine Law Requirements for Public Meeting Minutes,” which is posted on the [Training page at oip.hawaii.gov](http://oip.hawaii.gov).

Must the minutes of a board’s meeting be posted online?

Yes. The Sunshine Law requires all boards to post their written or recorded minutes online within 40 days after the meeting. If the board chooses to post a recording of its meeting, it still needs to also post a written summary within 40 days after its meeting, because the written summary is part of the recorded minutes.

A board that is preparing written minutes for an in-person meeting does not need to post a recording, even if it has one – for instance, temporary recordings intended to be used for note-taking to prepare written minutes do not need to be posted online, since the written minutes will be posted online instead. However, if a board is preparing written minutes for a meeting for which a recording is available online, a link to that recording must be included at the beginning of the written minutes. Additionally, for a remote meeting held via ICT, a board is required to record the meeting “when practicable” and make that recording available to the public until its actual minutes are posted online, at which point it is encouraged to keep the recording online but permitted to take it down so long as it first sends a copy to the State Archives.

Must draft minutes be posted online within 40 days after a meeting, even if they have not yet been approved by the board?

Yes. The Sunshine Law does not require boards to approve minutes. If a board does approve its minutes as a usual practice but has not had the opportunity to approve minutes for a meeting, minutes that satisfy the Sunshine Law's requirements must nevertheless be posted online within 40 days after the meeting, because there is no exception to the posting requirement when a board has not approved its minutes. The board can post its draft minutes online, marked as a "draft," and replace them with the board-approved minutes when those are ready, so long as it has minutes that satisfy the Sunshine Law's requirements posted within the required 40 days.

If the board does not have its own website, where must its minutes be posted?

A board that has its own website will most likely prefer to post its minutes there, but a board that does not have its own website may post its minutes on an appropriate State or county website instead, such as the website for the department to which the board is administratively attached.

To provide enough time for an IT office or website administrator to post minutes online after they have been prepared by the board, the deadline for posting is 40 days after a meeting.

Must executive meeting minutes be posted online?

No. Minutes of an executive meeting closed to the public need not be posted online if the disclosure would defeat the purpose of going into executive meeting.

Keep in mind, however, that the Sunshine Law is different from the UIPA. The Sunshine Law permits boards to delay publication of executive meeting minutes for so long as publication would defeat the lawful purpose of the executive meeting. At some point in the future, the minutes may have to be disclosed in response to a UIPA request, when disclosure would no longer compromise the purpose for going into the executive meeting. For example, minutes of an executive meeting to discuss a property's acquisition should be disclosed after the property has been acquired. Thus, boards must review the minutes to determine if the need for confidentiality has passed, and may be required to

disclose all or part of the executive meeting minutes in response to a UIPA request for the minutes.

RECORDINGS BY THE PUBLIC

Must a board allow a member of the public to record the meeting?

The board must allow the public to record any portion or all of an open meeting, as long as the recording does not actively interfere with the meeting.

6

SUIT TO VOID BOARD ACTION

Can a member of the public file a lawsuit for an alleged Sunshine Law violation?

Yes. When the open meetings and the notice provisions of the Sunshine Law are not complied with, any person may file a lawsuit to void the board's action within 90 days of the allegedly improper board action. An OIP determination of wrongdoing is not necessary for a lawsuit to be filed. Enforcement is in circuit court of the circuit in which the prohibited act occurred.

Under certain circumstances, the judge may grant an injunction, but the filing of a lawsuit challenging a board's action does not stay enforcement of the action. Attorneys' fees and costs may be awarded to the prevailing party.

What is the penalty for an intentional violation of the statute?

A willful violation of the Sunshine Law is a misdemeanor and, upon conviction, may result in the person being removed from the board. The Attorney General and the county prosecutor have the power to enforce any violations of the statute.

Can a board appeal an OIP decision regarding the Sunshine Law?

Yes. OIP issues decisions in response to complaints that a board violated the Sunshine Law, and also on the question of whether a particular body is a board subject to the Sunshine Law. A board may appeal an OIP decision to the courts in accordance with section 92F-43, HRS. For more information, see OIP's Guide to Appeals to the Office of Information Practices, available on the Training page at OIP's website at oip.hawaii.gov.

7**OFFICE OF INFORMATION PRACTICES****If I have additional questions about the Sunshine Law, where can I go?**

For general information on the Sunshine Law, please visit OIP's website at oip.hawaii.gov, call OIP at (808) 586-1400, or email oiip@hawaii.gov. The full text of the Sunshine Law, as well as OIP's opinions relating to various open meeting issues, are posted on the website.

Office of Information Practices
(September 2022)

Sunshine Law:
PUBLIC MEETING NOTICE CHECKLIST

1. Notice Includes:

- ☐ **Date:** In addition to the date itself, if the notice also specifies the day of the week, make sure it matches the date.
- ☐ **Time:** While the starting time must be provided, an ending time is not required.
- ☐ **Location:** All notices must list at least one physical location for the meeting. For an in-person meeting, the notice must list all locations where board members will be physically present and must state that the public can attend the meeting at any of those locations.
- ☐ For a **remote meeting using interactive conference technology (ICT)**, the link(s) allowing the public to contemporaneously view and hear the meeting and provide remote oral testimony.
- ☐ If **additional locations** (formerly known as “courtesy” locations) are being provided for the public’s convenience, specify whether the meeting will continue without the additional location if the ICT connection between the additional location and the public meeting site(s) is lost, or will be automatically recessed to restore communication.
- ☐ Board’s **electronic and postal contact information** for submission of testimony before the meeting.
- ☐ **Instructions** on how to request an auxiliary aid or service or an accommodation due to a **disability**. The Sunshine Law allows these instructions to include a reasonable response deadline; however, the requirements of other laws may differ on this point and current guidance from the State Disability and Communication Access Board (DCAB) advises against setting a firm response deadline. As explained in section 7 below, OIP does not have the authority to advise on reasonable accommodations and such questions should be directed to DCAB or a board’s own attorney.

- ☐ **Agenda** describing with reasonable specificity all matters to be considered.
- ☐ If an **executive meeting** is anticipated, the agenda describes the purpose and statutory authority in section 92-5(a), HRS, or other laws applicable to your board that allow the executive meeting. Use as much detail as possible without compromising the executive meeting's purpose.
- ☐ Optional: For a meeting **using ICT**, information about what will happen in the event of a connection failure, such as where to find **reconnection information and any necessary visual aids** online or an alternative date, time, and place for **continuation** of the meeting if the ICT connection cannot be restored.

2. Filing Notice:

- ☐ 6 calendar days prior to meeting:

Electronically post on:

- ☐ State Calendar: <http://calendar.ehawaii.gov/calendar/html/event> (State only)
- ☐ County Calendar (counties only)
- ☐ Board's website (unlike the above, this is not a legal requirement)

Physically post for public inspection in:

- ☐ Board's Office
- ☐ Site of meeting (when feasible or if meeting is canceled)

File (and keep proof of filing) with:

- ☐ Lieutenant Governor's Office (State)
- ☐ County Clerk (counties)

Mail or email to persons who requested notification of meetings (MUST be postmarked/emailed no later than 6 calendar days before the meeting):

- ☐ Postal mailing list
- ☐ Email list

3. Meeting Canceled for Late Filing of Notice:

It is suggested but not required that the board post a notice canceling the meeting at:

- ☐ Meeting site
- ☐ State Calendar: <http://calendar.ehawaii.gov/calendar/html/event> (State only)

- ☐ County Calendar (counties only)
- ☐ Anywhere else notice was previously posted, mailed, or filed such as county or board website (not a legal requirement)

4. Special Instructions for Emergency Meetings

(held less than 6 calendar days prior to meeting):

- Board must first decide to hold emergency meeting by vote of two-thirds of members to which board is entitled (include authorized but vacant positions)
- Must meet criteria in section 92-8, HRS, either:
 - when “imminent peril to the public health, safety, or welfare,” or
 - because of an “unanticipated event” and board must take action.
 - For an unanticipated event, the Attorney General must concur (even for county boards).
- ☐ File board’s findings justifying emergency meeting with emergency agenda as set forth in section 2 above (but without the 6-day notice requirement).

5. Special Instructions for Limited Meetings

- Limited meetings not open to the public may be held when a board determines it necessary to inspect a location that is dangerous or that is impracticable for public attendance.
- Must obtain concurrence from OIP’s Director.
See OIP’s *Request for the Office of Information Practices’ Concurrence for a Limited Meeting* form at www.oip.hawaii.gov/forms/.
- For county councils only: See OIP’s *Checklist and County Council’s Request to Waive Videotaping of a Meeting as Guests of a Board or Community Group* form at www.oip.hawaii.gov/forms/.
- Notice must be filed 6 days before limited meeting.
- ☐ File board’s limited meeting agenda as set forth in section 2 above.

6. Special Instructions for In-Person Meetings Involving Board Members with a Disability

- Notwithstanding the general requirements for multi-site in-person meetings in section 1 above, a “board member with a disability that limits or impairs the member’s ability to physically attend the meeting” may attend an in-person meeting via a connection by **audio and video** means from a private location (*e.g.*, home or hospital room). The specific address of the private location need not be listed on the notice, but a board member with a disability attending from a private location must generally identify the location (*e.g.*, home; hospital) and all persons present with the member.
- See OIP’s *Quick Review: Sunshine Law Requirements for In-Person Meetings held at Multiple Sites* on OIP’s [Training Page at oip.hawaii.gov](https://oip.hawaii.gov/training/).

7. Other Considerations

There are matters outside of OIP’s jurisdiction that you may wish to consider when preparing a meeting notice, such as:

- Although the Sunshine Law requires a notice to include instructions for requesting a reasonable accommodation for disabled persons (for example, provision of sign language interpreters for individuals who are deaf or hard of hearing), OIP does not have authority to advise as to what constitutes a reasonable accommodation. If you have questions about what accommodations or auxiliary aids must be provided in response to a request, you may wish to contact your board’s attorney or DCAB: website <https://health.hawaii.gov/dcab/>, telephone (808) 586-8121 (Voice or TTY), or email dcab@doh.hawaii.gov for assistance.
- Applicable statutes or administrative rules related to your board.
- For county boards, your County’s applicable charter, ordinances, or other provisions.
- Your board’s own procedural rules or policies; or instructions for the public regarding, among other things, your board’s preferred method for submission of written testimony and opportunity to provide oral testimony at the meeting (but note that the Sunshine Law does not allow all testimony to be taken at the beginning of a meeting and does not authorize setting a deadline for

submission of testimony or requiring people to register for oral testimony: a board can **request, but not require**, pre-registration or submission by a specified date).

- Whether the public can find and get into the meeting site. For example, is the meeting site large enough that someone might have trouble finding the right room? Are there improper barriers to public access such as a security checkpoint requiring attendees to show identification?

BOARD:

ADDRESS:

WEBSITE:

E-MAIL:

TELEPHONE:

FAX:

NOTICE OF CONTINUANCE OF MEETING

ORIGINALLY CONVENED ON _____, 20__, AT _____ .M.
See attached agenda for original meeting

TO BE CONTINUED TO:

DATE: _____
TIME: _____ .M.
PLACE: _____

___ Public testimony will be allowed in the manner described and on the items shown on the attached agenda as being continued.

___ Public testimony has concluded and no further testimony will be allowed on the items described in the attached agenda. The board will discuss, deliberate, decide, and/or act upon the items described in the attached agenda.

This notice has been physically posted at the following location(s):

___ Board Office

___ Meeting Site

(Optional) This notice has been electronically posted at _____.

(This notice is not subject to the filing requirements of HRS Sec. 92-7.)

Chapter 92, Hawaii Revised Statutes
PUBLIC AGENCY MEETINGS AND RECORDS

The following is an unofficial copy of Part I of chapter 92, Hawaii Revised Statutes, which is current through the 2023 legislative session, including new provisions enacted by Acts 019 and 125, SLH 2023.

PART I. MEETINGS

Section

- 92-1 Declaration of Policy and Intent**
- 92-1.5 Administration of This Part**
- 92-2 Definitions**
- 92-2.5 Permitted Interactions of Members**
- 92-3 Open Meetings**
- 92-3.1 Limited Meetings**
- 92-3.5 Meeting by Interactive Conference Technology;
Notice; Quorum**
- 92-3.7 Remote meeting by Interactive Conference
Technology; Notice; Quorum.**
- 92-4 Executive Meetings**
- 92-5 Exceptions**
- 92-6 Judicial Branch, Quasi-Judicial Boards and Investigatory
Functions; Applicability**
- 92-7 Notice**
- 92-7.5 Board Packet; Filing; Public Inspection; Notice**
- 92-8 Emergency Meetings**
- 92-9 Minutes**
- 92-10 Legislative Branch; Applicability**
- 92-11 Voidability**
- 92-12 Enforcements**
- 92-13 Penalties**

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed;
and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

§92-1.5 Administration of this part. The director of the office of information practices shall administer this part. The director shall establish procedures for filing and responding to complaints filed by any person concerning the failure of any board to comply with this part. An agency may not appeal a decision by the office of information practices made under this chapter, except as provided in section 92F-43. The director of the office of information practices shall submit an annual report of these complaints along with final resolution of complaints, and other statistical data to the legislature, no later than twenty days prior to the convening of each regular session. [L 1998, c 137, §2; am L 2012, c 176, §2]

§92-2 Definitions. As used in this part:

“Board” means any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction, or advisory power over specific matters and which is required to conduct meetings and to take official actions.

"Board business" means 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.

"Informal gathering" means a social or informal assemblage of two or more board members at which matters relating to board business are not discussed.

“Interactive conference technology” means any form of audio and visual conference technology, or audio conference technology where permitted under this part, including teleconference, videoconference, and voice over internet protocol, that facilitates interaction between the public and board members.

“Meeting” means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1976, c 212, §1; am L 2012, c 202, §1; am L 2021, c 220, §3; am L 2022, c 264, §2]

§92-2.5 Permitted interactions of members.

- (a) Two members of a board may discuss between themselves matters relating to board business to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board.
- (b) Two or more members of a board, but less than the number of members that would constitute a quorum for the board, may be assigned to:
 - (1) Investigate a matter relating to board business; provided that:
 - (A) The scope of the investigation and the scope of each member’s authority are defined at a meeting of the board;
 - (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
 - (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

- (2) Present, discuss, or negotiate any position that the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board before the presentation, discussion, or negotiation.
- (c) Discussions between two or more members of a board, but less than the number of members that would constitute a quorum for the board, concerning the selection of the board's officers may be conducted in private without limitation or subsequent reporting.
- (d) Board members present at a meeting that must be canceled for lack of quorum or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:
 - (1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;
 - (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
 - (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:
 - (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
 - (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.
- (e) Two or more members of a board, but less than the number of members that would constitute a quorum for the board, may attend an informational meeting or presentation on matters relating to board business, including a meeting of another entity, legislative hearing, convention, seminar, or community meeting; provided that the meeting or presentation is not specifically and exclusively organized for or directed toward members of the board. The board members in attendance may participate in discussions, including discussions among themselves; provided that the discussions occur during and as part of the informational meeting or presentation; provided further that no commitment relating to a vote on the matter is made or sought.

At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed that related to board business at the informational meeting or presentation.
- (f) Discussions between the governor and one or more members of a board may be conducted in private without limitation or subsequent reporting; provided that the discussion does not relate to a matter over which a board is exercising its adjudicatory function.
- (g) Discussions between two or more members of a board and the head of a department to which the board is administratively assigned may be conducted in private without limitation; provided that the discussion is limited to matters specified in section 26-35.
- (h) Where notice of the deadline to submit testimony to the legislature is

less than the notice requirements in this section, a board may circulate for approval a statement regarding a position previously adopted by the board; provided that the position previously adopted by the board, the statement to be submitted as testimony, and communications among board members about the statement, including drafts, shall be in writing and accessible to the public, within forty-eight hours of the statement's circulation to the board, on the board's website, or, if the board does not have a website, on an appropriate state or county website.

- (i) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part. [L 1996, c 267, §2; am L 2005, c 84, §1; am L 2012, c 177, §1; am L 2022, c 264, §3]

§92-3 Open meetings. Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the state constitution or as closed pursuant to sections 92-4 and 92-5; provided that the removal of any person or persons who wilfully disrupts a meeting to prevent and compromise the conduct of the meeting shall not be prohibited. The boards shall afford all interested persons an opportunity to submit data, views, or arguments, in writing, on any agenda item. The boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item; provided that the oral testimonies of interested persons shall not be limited to the beginning of a board's agenda or meeting. The boards may provide for reasonable administration of oral testimony by rule. [L 1975, c 166, pt of § 1; am L 1985, c 278, §1; am L 2022, c 264, §4]

§92-3.1 Limited meetings.

- (a) If a board determines that it is necessary to meet at a location that is dangerous to health or safety, or if a board determines that it is necessary to conduct an on-site inspection of a location that is related to the board's business at which public attendance is not practicable, and the director of the office of information practices concurs, the board may hold a limited meeting at that location that shall not be open to the public; provided that at a regular meeting of the board prior to the limited meeting:
 - (1) The board determines, after sufficient public deliberation, that it is necessary to hold the limited meeting and specifies that the location is dangerous to health or safety or that the on-site inspection is necessary and public attendance is impracticable;
 - (2) Two-thirds of all members to which the board is entitled vote to adopt the determinations required by paragraph (1); and
 - (3) Notice of the limited meeting is provided in accordance with section 92-7.
- (b) A county council may hold a limited meeting that is open to the public, as the guest of a board or community group holding its own meeting, and the council shall not be required to have a quorum of members in attendance or accept oral testimony; provided that:
 - (1) Notice of the limited meeting shall be provided in accordance with section 92-7, shall indicate the board or community group whose meeting the council is attending, and shall not be required to include an agenda;

- (2) If the board or community group whose meeting the council is attending is subject to part I, chapter 92, then that board or community group shall comply with the notice, agenda, testimony, minutes, and other requirements of part I, chapter 92;
- (3) No more than one limited meeting per month shall be held by a county council for any one board or community group;
- (4) No limited meetings shall be held outside the State; and
- (5) Limited meetings shall not be used to circumvent the purpose of part I, chapter 92.
- (c) At all limited meetings, the board shall:
 - (1) Videotape the meeting, unless the requirement is waived by the director of the office of information practices, and comply with all requirements of section 92-9;
 - (2) Make the videotape available at the next regular meeting; and
 - (3) Make no decisions at the meeting.
- (d) Each county council shall submit an annual report to the legislature no later than twenty days prior to the convening of each regular session on the effectiveness and application of limited meeting procedures provided in subsection (b), including any recommendations or proposed legislation. [L 1995, c 212, §1; am L 2008, c20, §1; am L 2014, c 221, §2; am L 2016, c 56, §1, 2]

§92-3.5 In-person meeting at multiple sites by interactive conference technology; notice; quorum.

- (a) A board may hold an in-person meeting at multiple meeting sites connected by interactive conference technology; provided that the interactive conference technology used by the board allows audio or audiovisual 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. The board may provide additional locations open for public participation but where no participating board members will be physically present. The notice required by section 92-7 shall list any additional locations open for public participation but where no participating board members will be physically present and specify, in the event one of those additional locations loses its audio connection to the meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).
- (b) Any board member participating in a meeting by interactive conference technology under this section shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.
- (c) A meeting held by interactive conference technology under this section shall be automatically recessed for up to thirty minutes to restore communication when audio communication cannot be maintained with all locations where the meeting by interactive technology is being held, even if a quorum of the board is physically present in one location. The meeting may reconvene when either audio or audiovisual communication is restored. Within fifteen

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 shall be made available either by posting on the Internet or by other means to all meeting participants, and those agenda items for which visual aids are not available for all participants at all meeting locations shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication, and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and time, then the meeting shall be automatically terminated.

- (d) Notwithstanding the other provisions of this section to the contrary, a board member with a disability that limits or impairs the member's ability to physically attend the meeting may participate in a board meeting from a location not accessible to the public; provided that the member with a disability is connected to other members of the board and the public by both visual and audio means, and the member identifies where the member is located and who, if anyone, is present at that location with the member. [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1; am L 2012, c 202, §2; am L 2021, c 220, §4]

§92-3.7 Remote meeting by interactive conference technology; notice; quorum.

- (a) A board may hold a remote meeting by interactive conference technology; provided that the interactive conference technology used by the board allows audiovisual interaction among all members of the board participating in the meeting and all members of the public attending the meeting, except as otherwise provided under this section; provided further that there is at least one meeting location that is open to the public and has an audiovisual connection. A board holding a remote meeting pursuant to this section shall not be required to allow members of the public to join board members in person at nonpublic locations where board members are physically present or to identify those locations in the notice required by section 92-7; provided that at the meeting, each board member shall state the name of any person eighteen years of age or older who is present at the nonpublic location with the member; provided further that the name of a person under the age of eighteen years shall be stated if the person has a personal business, property, or financial interest on any issue before the board at the meeting. The notice required by section 92-7 shall:
 - (1) List at least one meeting location that is open to the public that shall have an audiovisual connection; and
 - (2) Inform members of the public how to contemporaneously:
 - (A) Remotely view the video and audio of the meeting through internet streaming or other means; and
 - (B) Provide remote oral testimony in a manner that allows board members and other meeting participants to hear the testimony, whether through an internet link, a telephone conference, or other means.

The board may provide additional locations open for public participation. The notice required by section 92-7 shall list any additional locations open for public participation and specify, in the event an additional location loses

its audiovisual connection to the remote meeting, whether the meeting will continue without that location or will be automatically recessed to restore communication as provided in subsection (c).

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

- (1) The interactive conference technology used by the board shall allow interaction among all members of the board participating in the meeting and all members of the public attending the meeting;
- (2) Except as provided in subsections (c) and (d), a quorum of board members participating in the meeting shall be visible and audible to other members and the public during the meeting; provided that no other meeting participants shall be required to be visible during the meeting;
- (3) Any board member participating in a meeting by interactive conference technology shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board;
- (4) At the start of the meeting the presiding officer shall announce the names of the participating members;
- (5) All votes shall be conducted by roll call unless unanimous; and
- (6) 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.

(c) A meeting held by interactive conference technology shall be automatically recessed for up to thirty minutes to restore communication when audiovisual communication cannot be maintained with all members participating in the meeting or with the public location identified in the board's notice pursuant to subsection (a)(1) or with the remote public broadcast identified in the board's notice pursuant to subsection (a)(2)(A). This subsection shall not apply based on the inability of a member of the public to maintain an audiovisual connection to the remote public broadcast, unless the remote public broadcast itself is not transmitting an audiovisual link to the meeting. The meeting may reconvene when either audiovisual communication is restored, or audio-only communication is established after an unsuccessful attempt to restore audiovisual communication, 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 audio-only communication is established, then each speaker shall be required to state their name before making their remarks. Within fifteen 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 shall be made available either by posting on the Internet or by other means to all meeting participants, including those participating remotely, and those agenda items for which visual aids are not available for all participants shall not be acted upon at the meeting. If it is not possible to reconvene the meeting as provided in this subsection within thirty minutes after an interruption to communication and the board has not provided reasonable notice to the public as to how the meeting will be continued at an alternative date and

time, then the meeting shall be automatically terminated.

- (d) During executive meetings from which the public has been excluded, board members shall be audible to other authorized participants but shall not be required to be visible. To preserve the executive nature of any portion of a meeting closed to the public, the presiding officer shall publicly state the names and titles of all authorized participants, and, upon convening the executive session, all participants shall confirm to the presiding officer 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 shall confirm that no unauthorized person has access to the executive meeting as indicated on the control panels of the interactive conference technology being used for the meeting, if applicable. [L 2021, c 220, §2; am L 2022, c 177, § 2; am L 2023, c 125, § 1]

§92-4 Executive meetings.

- (a) A board may hold an executive meeting that is closed to the public upon an affirmative vote, taken at an open meeting, of two-thirds of the members present; provided the affirmative vote constitutes a majority of the members to which the board is entitled. A meeting closed to the public shall be limited to matters exempted by section 92-5. The reason for holding such a meeting shall be publicly announced and the vote of each member on the question of holding a meeting that is closed to the public shall be recorded and entered into the minutes of the meeting.
- (b) Any discussion or final action taken by a board in an executive meeting shall be reported to the public when the board reconvenes in the open meeting at which the executive meeting is held; provided that in describing the discussion or final action taken by the board:
 - (1) The information reported shall not be inconsistent with the purpose for which the executive meeting was convened pursuant to section 92-5, including matters affecting the privacy of individuals; and
 - (2) The board may maintain confidentiality for the information described in paragraph (1) for as long as disclosure would defeat the purpose of convening the executive meeting. [L 1975, c 166, pt of §1; am L 1985, c 278, §2; am L 2023, c 019, § 1]

§92-5 Exceptions.

- (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:
 - (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
 - (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
 - (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of 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 investigate 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 make a decision 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.
- (b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No informal gathering, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1; am L 2022, c 264, §5]

§92-6 Judicial branch, quasi-judicial boards and investigatory functions; applicability.

- (a) This part shall not apply:
- (1) To the judicial branch.
 - (2) To adjudicatory functions exercised by a board and governed by sections 91-8 and 91-9, or authorized by other sections of the Hawaii Revised Statutes. In the application of this subsection, boards exercising adjudicatory functions include, but are not limited to, the following:
 - (A) Hawaii labor relations board, chapters 89 and 377;
 - (B) Labor and industrial relations appeals board, chapter 371;
 - (C) Hawaii paroling authority, chapter 353;
 - (D) Civil service commission, chapter 26;
 - (E) Board of trustees, employees' retirement system of the State of Hawaii, chapter 88;
 - (F) Crime victim compensation commission, chapter 351; and
 - (G) State ethics commission, chapter 84.
- (b) Notwithstanding provisions in this section to the contrary, this part shall apply to require open deliberation of the adjudicatory functions of the land use commission. [L 1975, c 166, pt of §1; am L 1976, c 92, §8; am L 1985, c 251, §11; am L 1998, c 240, §6]

§92-7 Notice.

- (a) The board shall give written public notice of any regular, special, emergency, or rescheduled meeting, or any executive meeting when anticipated in advance. The notice shall include an agenda that lists all of the items to be considered at the forthcoming meeting; the date, time, and place of the meeting; the board's electronic and postal contact information for submission of testimony before the meeting; instructions on how to request an auxiliary aid or service or an accommodation due to a disability, including a response deadline, if one is provided, that is reasonable; and in the case of an

executive meeting the purpose shall be stated. If an item to be considered is the proposed adoption, amendment, or repeal of administrative rules, an agenda meets the requirements for public notice pursuant to this section if it contains a statement on the topic of the proposed rules or a general description of the subjects involved, as described in section 91-3(a)(1)(A), and a statement of when and where the proposed rules may be viewed in person and on the Internet as provided in section 91-2.6. The means specified by this section shall be the only means required for giving notice under this part notwithstanding any law to the contrary.

- (b) No less than six calendar days prior to the meeting, the board shall post the notice on an electronic calendar on a website maintained by the State or the appropriate county and post a notice in the board's office for public inspection. The notice shall also be posted at the site of the meeting whenever feasible. The board shall file a copy of the notice with the office of the lieutenant governor or the appropriate county clerk's office and retain a copy of proof of filing the notice, and the office of the lieutenant governor or the appropriate clerk's office shall timely post paper or electronic copies of all meeting notices in a central location in a public building; provided that a failure to do so by the board, the office of the lieutenant governor, or the appropriate county clerk's office shall not require cancellation of the meeting. The copy of the notice to be provided to the office of the lieutenant governor or the appropriate county clerk's office may be provided via electronic mail to an electronic mail address designated by the office of the lieutenant governor or the appropriate county clerk's office, as applicable.
- (c) If the written public notice is electronically posted on an electronic calendar less than six calendar days before the meeting, the meeting shall be canceled as a matter of law and shall not be held. The chairperson or the director shall ensure that a notice canceling the meeting is posted at the place of the meeting. If there is a dispute as to whether a notice was timely posted on an electronic calendar maintained by the State or appropriate county, a printout of the electronic time-stamped agenda shall be conclusive evidence of the electronic posting date. The board shall provide a copy of the time-stamped record upon request.
- (d) No board shall change the agenda, less than six calendar days prior to the meeting, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.
- (e) The board shall maintain a list of names and postal or electronic mail addresses of persons who request notification of meetings and shall mail or electronically mail a copy of the notice to the persons by the means chosen by the persons at their last recorded postal or electronic mail address no later than the time the agenda is required to be electronically posted under subsection (b). [L 1975, c 166, pt of §1; am L 1976, c 212, §2; am L 1984, c 271, §1; am L 1985, c 278, §4; am L 1995, c 13, §2; am L 2012, c 177, §2; am L 2014, c 68, §1; am L 2017, c 64, §2; am L 2018, c 63, §1; am L 2019, c 244, §2; am L 2021, c 220, §5]

§92-7.5 Board packet; filing; public inspection; notice. At the time the board packet is distributed to the board members, but no later than forty-eight hours before

the meeting time, the board shall also make the board packet available for public inspection in the board's office; provided that nothing in this section shall require creation of a board packet. The board shall provide notice to persons requesting notification of meetings pursuant to section 92-7(e) that the board packet is available for inspection in the board's office and shall provide reasonably prompt access to the board packet to any person upon request. The board is not required to mail board packets. As soon as practicable, the board shall accommodate requests for electronic access to the board packet.

For purposes of this section, "board packet" means documents that are compiled by the board and distributed to board members before a meeting for use at that meeting, to the extent the documents are public under chapter 92F; provided that this section shall not require disclosure of 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 public inspection required by this section. [L 2017, c 64, §1; am L 2022, c 264, §6]

§92-8 Emergency meetings.

- (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting provided that:
 - (1) The board states in writing the reasons for its findings;
 - (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
 - (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and
 - (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.
- (b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, with less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:
 - (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
 - (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
 - (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;
 - (4) Persons requesting notification on a regular basis are contacted by

- postal or electronic mail or telephone as soon as practicable; and
- (5) The board limits its action to only that action which must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- (c) For purposes of this part, an “unanticipated event” means:
- (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
 - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
 - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64 §3; am L 2019, c 244 §3]

§92-9 Minutes.

- (a) The board shall keep written or recorded minutes of all meetings. Unless otherwise required by law, neither a full transcript nor a recording of the meeting is required, but the minutes shall give a true reflection of the matters discussed at the meeting and the views of the participants. Before the removal of a recording that was maintained on a board’s website pursuant to section 92-3.7(b)(6), the board shall provide the state archives with a copy of the recording. Written minutes shall include at a minimum:
- (1) The date, time, and place of the meeting;
 - (2) The members of the board recorded as either present or absent;
 - (3) The substance of all matters proposed, discussed, or decided; and a record, by individual member, of any votes taken;
 - (4) If an electronic audio or video recording of the meeting is available online, a link to the electronic audio or video recording of the meeting, to be placed at the beginning of the minutes; and
 - (5) Any other information that any member of the board requests be included or reflected in the minutes.
- (b) The minutes shall be made available to the public by posting on the board’s website or, if the board does not have a website, on an appropriate state or county website within forty days after the meeting except where such disclosure would be inconsistent with section 92-5; provided that minutes of executive meetings may be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. A written summary shall accompany any minutes that are posted in a digital or analog recording format and shall include:
- (1) The date, time, and place of the meeting;
 - (2) The members of the board recorded as either present or absent, and the times when individual members entered or left the meeting;
 - (3) A record, by individual member, of motions and votes made by the board; and
 - (4) 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.
- (c) All or any part of a meeting, of a board may be recorded by any person in attendance by any means of reproduction, except when a meeting is closed

pursuant to section 92-4; provided the recording does not actively interfere with the conduct of the meeting. [L 1975, c 166, pt of §1; am L 2017, c 64, §4; am L 2023, c 125, § 2]

§92-10 Legislative branch; applicability. Notwithstanding any provisions contained in this chapter to the contrary, open meeting requirements, and provisions regarding enforcement, penalties and sanctions, as they are to relate to the state legislature or to any of its members shall be such as shall be from time to time prescribed by the respective rules and procedures of the senate and the house of representatives, which rules and procedures shall take precedence over this part. Similarly, provisions relating to notice, agenda and minutes of meetings, and such other requirements as may be necessary, shall also be governed by the respective rules and procedures of the senate and the house of representatives. [L 1975, c 166, pt of §1]

§92-11 Voidability. Any final action taken in violation of sections 92-3 and 92-7 may be voidable upon proof of violation. A suit to void any final action shall be commenced within ninety days of the action. [L 1975, c 166, pt of §1; am L 2005, c 84, §2]

§92-12 Enforcement.

- (a) The attorney general and the prosecuting attorney shall enforce this part.
- (b) The circuit courts of the State shall have jurisdiction to enforce the provisions of this part by injunction or other appropriate remedy.
- (c) Any person may commence a suit in the circuit court of the circuit in which a prohibited act occurs for the purpose of requiring compliance with or preventing violations of this part or to determine the applicability of this part to discussions or decisions of the public body. The court may order payment of reasonable attorney's fees and costs to the prevailing party in a suit brought under this section.
- (d) Opinions and rulings of the office of information practices shall be admissible in an action brought under this part and shall be considered as precedent unless found to be palpably erroneous.
- (e) The proceedings for review shall not stay the enforcement of any agency decisions; but the reviewing court may order a stay if the following criteria have been met:
 - (1) There is likelihood that the party bringing the action will prevail on the merits;
 - (2) Irreparable damage will result if a stay is not ordered;
 - (3) No irreparable damage to the public will result from the stay order; and
 - (4) Public interest will be served by the stay order. [L 1975, c 166, pt of §1; am L 1985, c 278, §5; am L 2012, c 176, §3]

§92-13 Penalties. Any person who wilfully violates any provisions of this part shall be guilty of a misdemeanor, and upon conviction, may be summarily removed from the board unless otherwise provided by law. [L 1975, c 166, pt of §1]

State Policy Brief

March 2017

Sunshine Laws in Higher Education

by James C. Hearn

Public colleges and universities receive substantial funding from the states and educate large proportions of their residents. State policymakers, officials, taxpayers, and the news media, therefore, have a legitimate expectation of transparency in the workings of those institutions. At the same time, states have traditionally afforded their institutions substantial governing and managerial autonomy. The public's right to know can clash with higher education's valued (and valuable) organizational traditions and principles, such as shared governance and academic freedom. At the center of this tension between transparency and autonomy lie state open-meetings and open-records laws, often termed "sunshine laws."

States began adopting such laws for their various agencies more than a century ago, but the laws proliferated and intensified in coverage during the 1950s, 60s, and 70s in the wake of numerous political and profiteering scandals. Today, the 50 states are consistent in requiring that meetings and records of all elements of state government be open to some degree, not only to the state authorities to which they report but also to concerned citizens and the news media. By restricting public agencies' freedom to deliberate, decide, implement, and evaluate in private, the laws serve to ensure that the work of governmentally supported boards and agencies is open to scrutiny. In this way, democracy is enhanced.

Although controversies and tensions are inevitable, open-meetings and open-records laws may be designed, applied, and enforced in fairly straightforward ways at agencies falling directly under state bureaucratic and financial control. With colleges and universities, however, the application of the laws can be more problematic.

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Every state has on its books sunshine laws affecting colleges and universities. The scope of these laws is broad, although some aspects dominate news media attention and legal disputes. For example, hardly a week passes without coverage in local or national news media of a fraught presidential search somewhere around the country. The extent to which such searches can be conducted effectively “in the sunlight” is hotly debated.¹ But numerous other arenas also prompt considerable attention. For example, disputes have arisen around whether the research logs of faculty members studying climate science are subject to sunshine laws,² and the extent to which universities’ athletic associations deserve special protections under the laws.³

Arguably, there is no more important governance challenge for college and university leaders than dealing effectively with what diplomat and educator Harland Cleveland termed the “trilemma” posed by sunshine laws: respecting the public’s legitimate right to know, protecting individual privacy, and serving the public good. It seems no exaggeration to suggest that institutional effectiveness depends on deftly balancing these three imperatives. With that priority in mind, this policy brief reviews the critical decisions and procedures associated with the various domains covered under open-meetings and records laws, concluding with a discussion of emerging issues relating to the laws.

The Domains of Contemporary Sunshine Laws

Contemporary open-meetings and open-records laws can encompass all areas of operations in academic institutions. The depth and breadth of the laws vary substantially by state.⁴ This diversity precludes a comprehensive discussion, but the various institutional domains covered by state sunshine laws are enumerated below, along with some critical issues and tensions regularly confronting institutional leaders in each area.

Executive Searches and Selection

If the pages of the *Chronicle of Higher Education* and *Inside Higher Ed* are any indication, presidential searches and selection constitute the most visible aspect of open-meetings and records laws in higher education. Clearly, the consideration and choice of candidates for top leadership positions are important subjects for scrutiny by policymakers, news media, and the general public. After all, conducting successful presidential searches is arguably the most important task facing boards. Yet in practice, the process raises significant questions and disputes about the openness of meetings and records.

Importantly, does full openness in search processes serve institutional effectiveness and the public interest? When search committee interviews and meetings are fully or largely open to the public, deliberation and debate may be constrained. Board members may not be as candid about reservations over a candidate, for example, not wishing to critique a candidate in an open forum.

What is more, numerous observers have noted that open campus searches deter prospective candidates already occupying high-level positions on other campuses or in other organizations. Such candidates may be perfectly positioned for an available presidency, but being publicly considered may affect their leadership effectiveness in their current positions. Those risks may “chill” applications and reduce the chances of an institution’s search ending with the best possible hire. What’s more, the prospect of being publicly rejected in a candidacy may even further contribute to prospective candidates’ hesitance to apply.

1 Iacovone (2017).

2 Schiffman (2014).

3 Bluestein (2016).

4 See Piotrowski & Borry (2010), Open Government Guide (2011), Schwing (2011).

In response to such concerns, many states have created exemptions in sunshine laws to keep executive candidates out of public view until a search's finalist stage. Such exemptions can contribute to more vigorous committee discussions and provide at least some "cover" to candidates contemplating lateral moves from one executive position to another.⁵

At the same time, however, searches conducted largely outside of the public eye may not always serve the broader public interest and may reduce public trust. Notably, sunshine exemptions for searches may prevent appropriate vetting of candidates prior to appointment. Numerous examples may be provided of the dangers of excluding names from full public consideration before appointment.⁶ A candidate who has been publically vetted and met with constituents beforehand often experiences a smoother leadership transition. At public institutions, in particular, it is important to ensure that the public and all university constituents—students, faculty, and alumni—feel involved in the process. In a recent executive search at the University of Iowa, accusations that the search committee violated open-meetings laws led to a faculty vote of no confidence in the regents.⁷

Finding a balance between protecting the board's task of selecting the best candidate for the institution and allowing others to feel involved in the process is not easy, and a failed search is costly. Ensuring adequate openness in executive searches and selection seems not only right but smart.

Human Resources

Personnel policies are covered under federal and state laws protecting individual privacy, and thus in some respects are exempted from coverage under sunshine laws. That said, numerous aspects of an individual's work and career are accessible under the laws.⁸ Many states provide easy public access to the salaries and non-university related income of institutional employees, including coaches.⁹ The tension between access to information and protection of individual privacy is nowhere more evident than in matters relating to human resources. While the privacy of students is generally well-protected from state sunshine laws,¹⁰ institutions maintain extensive, potentially disclosable personal information on employees. In agreeing to work for state-supported organizations, faculty and staff must accept some challenges to their privacy.

Academic Policy

Teaching students and expanding knowledge via research are core activities of colleges and universities, and sunshine laws affect both activities in several ways. The freedom of faculty to disseminate and pursue ideas and information untethered by political or legal constraints is enshrined in academic freedom protections that have been upheld by the courts. Nonetheless, faculty members' controversial statements and records can still become enmeshed in sunshine disputes.¹¹ In particular, the ability of faculty to pursue research in politically sensitive areas such as climate science, stem cells, or abortion may be constrained by laws that open their identities and scholarly records to broader audiences.¹²

Beyond those controversies lies a series of other personnel-related issues. For one, allowing faculty research that is still in process to be publicly accessible can result in competitive threats from scientists outside the institution (for example, from corporations). Such availability can compromise the worth to

5 Dunn (2013).
 6 Hearn and McLendon (2004).
 7 Charis-Carlson (2015).
 8 Cate and Varn (1999).
 9 Meyers (1990).
 10 McGee-Tubb (2012).
 11 Schmidt & Woodard (2011).
 12 Schiffman (2014).

faculty and the institution of any potentially patentable or licensable intellectual property developed on campus. In response, some states are acting to protect such information from public records requests.¹³

In addition, concerns arise over the effectiveness of open personnel-review processes. External scholarly reviews of the productivity of candidates for promotion and tenure are a staple element in college and university advancement processes. Some states apply highly inclusive sunshine laws to these processes. For example, the manual for promotion and tenure processes at the Ohio State University states: “The Ohio Public Records Act ... requires that public records be made available upon request. Documents generated for P&T reviews are public records. Candidates and others may request access to these documents and units must provide them.” In such cases, the effectiveness of evaluation processes may be compromised by a reluctance among outside reviewers to be frank in their written statements for candidates’ advancement files.¹⁴ The laws often apply to certain aspects of internal review processes, as well, such as the internal communications among deans and administrators conveying departmental and college-level evaluations.¹⁵

Although faculty candidates deserve protection from arbitrary, malicious, and ill-informed reviews, discouraging reviewer frankness via open records may expose reviewers to professional discomfort and bias subsequent evaluations of candidates. In the end, individual rights, as well as ultimate institutional effectiveness, can potentially be disserved by both open and closed review processes, leaving this an arena of significant tension.

Technology

It appears that states have been slow to adapt their sunshine laws to the emerging demands of “e-governance,” that is, the increasing appropriateness and necessity of providing online meeting notices and records, procedural guides for citizens, web access to meetings, and the like. Worth noting are the reverse difficulties states face in ensuring the privacy of data meriting protection, such as personal records.¹⁶ Numerous questions pertaining to technology remain unanswered in many states.

For example, to what extent does a web streaming service provide legal access to a meeting? Which emails are subject to public scrutiny? How do the laws cover “serial correspondence,” that is, forwarded emails, group emails with multiple responses, and the like? To what extent do individuals’ and institutions’ social media trails constitute covered open records under the law? How many parties to an email or Skype session constitute an effective quorum? Can a legally defined meeting take place entirely online?

Searches pose particularly difficult technological uncertainties for board members and others. Many of the search controversies noted earlier arose from a lack of knowledge or sensitivity regarding key technological ground rules. An open interview used to mean placing a candidate in a room with trustees, faculty, students, the news media, and a few others, but the advent of live streaming, recordings accessible on the web, and other technological developments raise many questions for policymakers and leaders seeking appropriate, effective search processes. As with many other aspects of sunshine laws, board members need clearer guidance on doing their work well within the rapidly evolving technological environment.

¹³ Ahlquist (2017).

¹⁴ Hearn, McLendon, and Gilchrist (2004).

¹⁵ UCLA (2003).

¹⁶ Dawes (2008), BGA-Alper Integrity Index (2013), Roeder (2013), and Svitek and Anderson, (2014).

Finances and Business Operations

State-supported colleges' and universities' ongoing, non-academic operations are largely subject to open-meeting and open-records laws. For example, public institutions have long accepted the necessity of openness of budgets and financial reporting, and most institutions' annual financial statements are easily accessible online. Nonetheless, the application of sunshine laws to certain aspects of financial and business operations can raise important issues.¹⁷

In some cases, full-disclosure rules might reveal institutions' internal priorities and strategies going into negotiations with outside parties on real estate and other investments. In other cases, openness could provide outsiders access to negotiating details for salary and benefits in the recruiting of faculty, institutional leaders, and athletic coaches. In still other situations, openness might discourage or constrain meetings with prospective donors, business partners, and political allies or foes.¹⁸ For those reason, boards have long sought legal exemptions for certain aspects of their financial and business operations.

Fundraising, Foundations, and Affiliated Enterprises

Virtually all public institutions encompass operations that lie outside of their core educational and research enterprise. Development offices, university foundations, departments of intercollegiate athletics, university hospitals, and numerous other entities fall under state sunshine laws to varying extents. Because of their unusual, and often sizable, nature relative to strictly academic entities within institutions, these affiliated efforts raise special concerns in the application of the laws.

Most universities and some smaller institutions have one or more foundations associated with them, usually organized under separate legal statutes. Typically, these foundations focus on particular areas of institutions, such as fundraising, real estate transactions, and asset and endowment management.

Whether private foundations affiliated with public institutions should be subject to open-records/open-meetings laws remains a debated legal and policy question, as it was last year in the state of Connecticut.¹⁹ To the extent that foundations are considered under the law to be public or quasi-public institutions, they can be held accountable to open-meeting and records laws. That legal responsibility, in turn, can shape their attractiveness to outside supporters such as donors and athletic boosters.²⁰ Past court cases on this question have most often been resolved by focusing on the exact nature of the relationship between a foundation and its "parent" institution—it appears that the closer that relationship, the more likely foundations are to be held to openness standards.²¹ Understanding how and to what extent their foundation is held subject to these laws is a central responsibility for board members, who must be knowledgeable about existing laws, proactive in clarifying policies about disclosure, and prepared for future challenges to their exemptions from open-records and meetings laws.²²

Fundraising more generally can also raise difficult transparency challenges for institutions. It is not unusual for controversy to arise when institutions detail the purposes or donors of newly announced campus initiatives.²³ In rare cases, courts might instruct institutions to reveal the specifics of gifts made by donors requesting anonymity.²⁴ Donors with particular political or economic viewpoints may use their donations to encourage acceptance of their perspectives on campuses.²⁵ Applying sunshine laws

17 Hearn, McLendon, and Gilchrist (2004).

18 Nicklin (1997).

19 AGB (2016).

20 Geenarghese (1996), Strout (2005).

21 Reinardy and Davis (2005).

22 McLendon and Hearn (2004).

23 Shimer (2016).

24 Joslyn (2017).

25 Mayer (2016).

to require early disclosure of gift details could lead to campus unrest, donor skittishness, and even abandonment of the initiative, but the same may be said of later disclosure. Either way, institutions and the public good could conceivably suffer.

Board Operations

Because public higher education is a major target of state spending, understanding the decision making of its leaders is a fundamental expectation for a state's citizenry. Board appointments, development, communications, and deliberations are subject to open-meetings and records laws in virtually all states. The laws facilitate not only citizens' access to board governance, but also their involvement. In this respect, the laws can increase public confidence in a state's higher education spending and leadership.

Nonetheless, unfettered access by the public and its representatives in the news media may raise some tensions. Sunshine laws' disclosure requirements can discourage individuals with sensitive career, financial, and political histories to accept appointment to a board. Once appointed to a board, trustees often suggest that the presence of news media at regular board meetings can result in "sugar coated" discussions around controversial topics.²⁶

Further, some board members express fear of exposing their ignorance on key governance topics (for example, tuition setting, hiring priorities, etc.) in front of wide audiences, and some board members express confusion over what qualifies as allowable personal communication under the laws. Those fears and uncertainties are especially apparent in states whose laws offer no exemptions for board learning opportunities, such as educational and informational retreats for board members. Anxiety and ambiguity among some members can bring disproportionate power to those who best understand the scope and details of the laws. Assertive, law-savvy board members are well-equipped to direct board deliberations and decisions in their favored directions, and other board members' uncertainties and reluctance to speak may compromise the quality of decisions.

It seems likely that sunshine laws limit the effectiveness of a boards' assessment of governance and leadership, including its own. Carrying out honest performance reviews of themselves and their chosen presidents in an open environment without unfairly airing disputes and "dirty laundry" is difficult. To avoid these concerns, boards should be provided, within reason, some exemptions for executive sessions to conduct assessments so as to provide ample opportunities for constructive interactions contributing to institutional improvement.²⁷

Finally, all of the challenges noted earlier under the technology domain apply equally to board activities, the most visible features of college and university operations. It is among board members that some of the most fraught electronic conversations can occur. Effective board members must walk a difficult path between casual banter over university life and legally actionable violations of discourse restrictions.

Continuing and Emerging Themes For Discussion

The primary goal of higher education leaders and stakeholders is, or at least should be, ensuring the effectiveness of the enterprise. Achieving success for students, advancing knowledge, and serving society all depend on establishing and maintaining conditions for efficient, fair, and wise decision making. Open-meeting and open-records laws can be central to achieving these goals at publicly supported colleges and

²⁶ McLendon and Hearn (2006).

²⁷ Reed (2013).

universities. Both board members and policymakers can contribute to the laws functioning effectively toward those ends.

For their part, *board members need to understand the strategic benefits of sunlight for their institutions.* The laws' complexities and restrictiveness can frustrate and even intimidate some board members and executives and can even constrain the very public debate the laws seek to ensure.²⁸ Yet sunshine laws are not simply arbitrary constraints on boards' freedom to function as decision makers, controllers, and overseers. Trustees' continuing commitment to faithfully following both the letter and spirit of the laws actually serves to buttress internal and external faith in the functioning and future of their institutions. By solidifying support in this way, the laws can actually maintain and create "space" for board decision making by providing boards the political good will and capital needed for making tough decisions.

In concert, *board members should aim to support and even expand information flows between institutions and external stakeholders and the news media.* Leaders often bemoan efforts by members of the public and the press to deploy the laws as heat-seeking weapons in trolling for information across wide areas of institutional functioning.²⁹ The costs to institutions of answering external requests for data and information include attorney salaries or fees, salaries for clerical staff, and expenses for record storage and reproduction. In a large state system, these costs can be formidable.

Institutions themselves can be equally guilty of "weaponization" in the reverse direction, however, by providing information in volumes or formats that can overwhelm requesters, charging too much for access to information, or delaying response times beyond reasonable expectations. Weaponization is lamentable, and it is too often a two-way street. Left unaddressed, tensions between requesters and institutions can rise to the point of hostility and ineffectiveness on both sides. Healthy information flows and interactions with external parties serve institutional effectiveness.³⁰ Maintaining cordial, understanding relations with the news media, in particular, seems especially important in this era of rising public distrust of major societal institutions.³¹

Board members also need to work vigilantly toward ensuring their deliberations welcome frank, informed, and tough decision making while simultaneously honoring the public's right to know. Sunshine laws impose highly legalized and highly public contexts on boards. The reality is that the laws can create an intimidating and difficult landscape for critical decision making. Board members sometimes express hesitancy to ask questions out of fear of appearing stupid, or hesitancy to express opinions publicly out of fear of some outsiders' reactions.³² But when boards shrink from their duties out of concern over the constraining aspects of the laws, their effectiveness is compromised. Wisdom and courage are necessary.

Of course, wise and courageous board members alone are not enough to ensure effectiveness under sunshine laws. *Policymakers and other stakeholders must understand the contradictions inherent in asking institutions to respond more quickly and efficiently to emerging economic and demographic shifts while also imposing constraints and costs on their ability to do just that.* Scrutiny of the leadership, operations, and outcomes of colleges and universities is understandable and appropriate, but that scrutiny comes with costs. For example, state policymakers are increasingly implementing outcomes-based funding approaches for their public institutions, but those approaches can impose sizable data-gathering and measurement costs as well as difficult tradeoffs with other institutional and state goals³³

28 Chaffee (2017).

29 McLendon and Hearn (2006)

30 Chaffee (2017), O'Neil and Levinson-Waldman (2012).

31 AGB (2002).

32 McLendon and Hearn (2006)

33 Hearn (2015).

Sunshine laws require boards to make key decisions under restraints on their public and private deliberations, such as refraining from discussion of board business outside of an open meeting. Policymakers should design these restraints with both efficiency and effectiveness in mind. As with any policy initiative, it is critical to examine not only sunshine laws' success in meeting their laudable goals but also the costs associated with that success. The laws need to be structured in ways that meet goals while respecting the imperative for colleges and universities to respond deftly to rapidly shifting circumstances.

Similar balance is called for in presidential searches. *Policymakers should provide boards with latitude in the openness of search processes, but should guard against potentials for abuse.* As noted earlier, fully open presidential searches can limit the range of applicants, complicate the choice of finalists, and slow hiring processes.³⁴ At the same time, secretive searches can diminish stakeholder supportiveness and bring harm to an institution's reputation and ability to attract leaders, faculty, and students.³⁵ More fundamentally, such searches run a strong risk of ending in wrong choices.³⁶ For example, given the opportunity provided by lax laws, boards may be tempted to name only one finalist and to make that announcement only after extensive discussions to ascertain the candidate's willingness to accept an offer. At their worst, such tactics can effectively close an open search process before it begins,³⁷ undermine boards' credibility, and threaten the spirit of transparency in sunshine laws. Some middle ground is essential, such as allowing a delay in the public identification of candidates until finalists are chosen. Policymakers and board members should support allowing selective lenience in the laws when they believe such latitude will ultimately enhance governance and benefit institutions.

Finally, both policymakers and board members should commit to serving the double purposes of open government laws: transparency and voice. Certainly, public institutions should be, and usually are, obliged to provide openness in their deliberations and decisions. Less considered than this informational purpose, though, is a second purpose of the laws: providing a voice for affected parties.³⁸ Open meetings must inform, but they also must work to potentially engage stakeholders' participation. Open processes always run a risk of going off-topic or even derailing, and that indeterminacy can make them distasteful to leaders committed to reaching decisions quickly and efficiently. Yet voice is to be valued in all democratic settings, and one could argue that it is especially needed in the current landscape of higher education.

Colleges and universities receive significant public funding and thus have substantial responsibilities to their stakeholders. At the same time, they must operate in a web of markets: students making enrollment choices among alternative institutions, scholars fighting to secure research funding, faculty members making employment choices among competing institutional offers, and institutions competing for prestige, rankings, and too-scarce leadership talent.

Underlying and intersecting this mixed public and private economic context are higher education's historic commitments to fairness, open debate, and serving the public good. Sunshine laws lie at this nexus of responsibilities, market demands, and value commitments. Perhaps necessarily, therefore, the laws remain a work in process in higher education. Crafting the laws appropriately for application in this special context, and working effectively within that context, require from leaders extraordinary attention and skill.

34 Barden (2010).
 35 Harris (2017).
 36 Hearn and McLendon (2004).
 37 Dunn (2013).
 38 Meijer, et al. (2010).

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February 9, 2024

DTS-2182

MEMORANDUM

TO: Committee on Governance
Board of Regents
University of Hawai'i

FROM: Laurel Loo, Chair
Committee on Governance

SUBJECT: Discussion on Possible Legislative Options to Address State
Legislative Issues and Measures

PURPOSE

The intent of Agenda Item IV.D on the Committee's February 15, 2024, meeting agenda is to discuss statutory open meeting and notification requirements that impact the Board's ability to quickly respond to matters before the Legislature involving the Board or university governance taking into account our previous conversations on board communications and legislative advocacy under Agenda Item IV.C.

BACKGROUND:

One of the major impediments for the Board to address legislative matters in a timely fashion is Hawai'i's Sunshine Law which, among other things, includes a six-day meeting notice requirement prior to conducting a meeting to discuss a legislative measure. Since the Board generally meets once a month, there are limited options to timely notice a meeting for the purposes of discussing the adoption of legislative testimony or the Board's position on an issue prior to a legislative hearing on the matter. Further details on this issue can be found in the Office of Information Practices' (OIP) publications, *QUICK REVIEW: Sunshine Law Options to Address State Legislative Issues and Measures (Revised August 2022)* and *Open Meetings Guide to "The Sunshine Law" for State and County Boards* (specifically pp. 29-30).

Under limited circumstances as set forth in [Section 92-2.5, Hawai'i Revised Statutes \(HRS\)](#), Hawai'i's Sunshine Law does afford board members with an opportunity to discuss board business outside a meeting. Some of the permitted interactions that

might be useful to the Board as it relates to the submittal of legislative testimony are noted below.

POSSIBLE COURSES OF ACTION:

OIP has opined that permitted interactions that are most useful in developing or adopting positions on legislative measures are as follows:

- (1) Allowing two members of a board to discuss board business between themselves so long as no commitment to vote is made or sought and the two members do not constitute a quorum of their board (Section 92-2.5(a), HRS);
- (2) Allowing a board to assign less than a quorum of its membership to present, discuss, or negotiate any board position that the board had previously adopted at a meeting (Section 92-2.5(b)(2), HRS);
- (3) Allowing less than a quorum of board members to attend a legislative hearing (or other “informational meeting”) and report their attendance at the next board meeting (Section 92-2.5(e), HRS);
- (4) Circulating a statement regarding a position previously adopted by the board for approval provided that certain requirements under Section 92-2.5(h), HRS are met;
- (5) Delegating the responsibility for drafting and submitting legislative testimony to two board members or staff; and
- (6) Conducting an emergency meeting pursuant to Section 92-8(b), HRS, to discuss an unanticipated legislative issue or measure requiring full board action so long as specific conditions are adhered to (although this is not a preferred option per OIP).

In the alternative, an investigative permitted interaction group similar to those the Board has previously formed under Section 92-2.5(b)(1), HRS, may be formed to address legislative matters. However, use of this type of permitted interaction group would require at least three meetings to be held prior to a decision being rendered which would prohibit any quick decisions being made about positions to be taken on legislation.

Attachments:

Section 92-2.5, HRS
Section 92-8, HRS

§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of 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 investigate 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 make a decision 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.

(b) In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified in subsection (a). No informal gathering, permitted interaction, or electronic communication shall be used to circumvent the spirit or requirements of this part to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power. [L 1975, c 166, pt of §1; am L 1985, c 278, §3; gen ch 1985; am L 1996, c 267, §3; am L 1998, c 48, §1; am L 1999, c 49, §1; am L 2022, c 264, §5]

Attorney General Opinions

Subsection (a)(1) is applicable only when a specific individual is involved. Att. Gen. Op. 75-11.

Even if there is no quorum, meeting to discuss official business may be prohibited unless sunshine law followed. Att. Gen. Op. 85-27.

Subsection (a)(2) and §92-9 read together permit board and commission members to disclose some matters deliberated or decided in executive session, but they cannot disclose matters which would be inconsistent with subsection (a)(2), i.e., matters affecting privacy of individuals under consideration for hire, and they must maintain this confidentiality for as long as disclosure would defeat purpose of convening the executive meeting. Att. Gen. Op. 94-1.

Law Journals and Reviews

2013 Law and Administrative Rules Governing Appeal Procedures of Hawaii's Office of Information Practices. 36 UH L. Rev. 271 (2014).

Case Notes

Although §92-2.5(a) does not expressly preclude city council members from engaging in serial one-on-one conversations, when council members engaged in a series of one-on-one conversations relating to a particular item of council business, under subsection (b), the spirit of the open meeting requirement was circumvented and the strong policy of having public bodies deliberate and decide its business in view of the public was thwarted and frustrated. 117 H. 1 (App.), 175 P.3d 111.

In a suit deciding whether disclosure of county council executive session minutes was required, circuit court properly found that both chapter 92F and this chapter applied; if the meeting met an exception to the open meeting requirements put forth in this chapter, such as an exception enumerated in this section, the council was not required to disclose the minutes of that meeting to the public; if the meeting did not fall under such an exception, the council was required to disclose the minutes pursuant to §92-9 and §92F-12. 120 H. 34 (App.), 200 P.3d 403.

Where it was clear from the county council executive session minutes that the county attorney consulted with the council consistently and at

length throughout the executive session regarding the procedure to follow in conducting an investigation of the county police department and that the council's consultation with the attorney largely concerned the ramifications of the sunshine law on the council's investigation -- a legal question, the council was justified in closing the meeting to the public in executive session. 120 H. 34 (App.), 200 P.3d 403.

Where the county council executive session conversation consisted of either direct communication between the council members and the county attorney or communication among council members that flowed from consultation with the county attorney, the attorney-client portions of the executive session were so intertwined with other portions of the executive session that redacting the privileged portions and disclosing the remainder of the minutes was impractical. 120 H. 34 (App.), 200 P.3d 403.

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§92-8 Emergency meetings. (a) If a board finds that an imminent peril to the public health, safety, or welfare requires a meeting in less time than is provided for in section 92-7, the board may hold an emergency meeting; provided that:

- (1) The board states in writing the reasons for its findings;
- (2) Two-thirds of all members to which the board is entitled agree that the findings are correct and an emergency exists;
- (3) An emergency agenda and the findings are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply; and
- (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable.

(b) If an unanticipated event requires a board to take action on a matter over which it has supervision, control, jurisdiction, or advisory power, within less time than is provided for in section 92-7 to notice and convene a meeting of the board, the board may hold an emergency meeting to deliberate and decide whether and how to act in response to the unanticipated event; provided that:

- (1) The board states in writing the reasons for its finding that an unanticipated event has occurred and that an emergency meeting is necessary and the attorney general concurs that the conditions necessary for an emergency meeting under this subsection exist;
- (2) Two-thirds of all members to which the board is entitled agree that the conditions necessary for an emergency meeting under this subsection exist;
- (3) The finding that an unanticipated event has occurred and that an emergency meeting is necessary and the agenda for the emergency meeting under this subsection are electronically posted pursuant to section 92-7(b), filed with the office of the lieutenant governor or the appropriate county clerk's office, and posted in the board's office; provided further that the six calendar day requirement for filing and electronic posting shall not apply;
- (4) Persons requesting notification on a regular basis are contacted by postal or electronic mail or telephone as soon as practicable; and

- (5) The board limits its action to only that action that must be taken on or before the date that a meeting would have been held, had the board noticed the meeting pursuant to section 92-7.
- (c) For purposes of this part, an "unanticipated event" means:
- (1) An event which members of the board did not have sufficient advance knowledge of or reasonably could not have known about from information published by the media or information generally available in the community;
 - (2) A deadline established by a legislative body, a court, or a federal, state, or county agency beyond the control of a board; or
 - (3) A consequence of an event for which reasonably informed and knowledgeable board members could not have taken all necessary action. [L 1975, c 166, pt of §1; am L 1996, c 267, §4; am L 2017, c 64, §3; am L 2019, c 244, §3]

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