

Quick Review: Sunshine Law Meeting Notice Requirements (November 2012)

For boards subject to the Sunshine Law, Part I of Chapter 92, Hawaii Revised Statutes (HRS), here is a quick review of the Sunshine Law's notice requirements for public meetings.

All Hawaii state and county boards that are subject to the Sunshine Law **must provide timely notice of all regular, special, or rescheduled meetings, and of executive meetings that are anticipated in advance**, in accordance with section 92-7, HRS. Please note that **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.

Contents: Notice **shall** include the following:

- Agenda listing all items to be considered at the meeting,
- Date of the meeting,
- Time of the meeting,
- Location of the meeting, and
- If applicable, the purpose of an executive meeting.

Filing/posting/mailing: At least **six calendar days before** non-emergency meetings, notice **shall** be:

- Filed at the Office of the Lt. Governor (state boards), or the county clerk's office (county boards),
- Filed at the board's office for public inspection,
- Posted at the meeting site (when feasible), and
- Mailed to persons requesting notification by mail.

Practice tips:

- For state executive branch boards, Executive Memorandum No. 11-11 requires that notice be posted on the State Online Calendar at <http://calendar.ehawaii.gov/calendar/html/event>, "as soon as" notice is posted at the Lt. Governor's office.
- Newspaper publication under section 1-28.5, HRS, is **not** required for Sunshine Law notices.
- There is **no** requirement in the Sunshine Law that boards maintain a list of persons who wish to receive the notice by **e-mail**. Many boards do maintain

e-mail lists and send notices by e-mail as a courtesy. Should a board fail to properly maintain its e-mail list, or to send notices by e-mail in a timely manner, there is no Sunshine Law remedy available to the e-mail recipient. Rather, the person's remedy would be to ask to be placed on the postal mailing list, for which a late mailing would carry Sunshine Law consequences. **For persons who had requested to be on a board's postal mailing list, the meeting notices should be postmarked for delivery by regular U.S. Postal service at least six calendar days before the meeting, or OIP will routinely advise the board to cancel the meeting.**

- Boards are not required by the Sunshine Law to 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, and informing those people who have asked to receive notice by e-mail.
- The Sunshine Law allows a board to **continue a meeting** when it is unable to complete an agenda by announcing a reasonable date and time for the continued meeting to those in attendance at the meeting. At the continued meeting, the discussion may only be a continuation from the original meeting, taking up discussions where the board left off. A board does not need to re-hear or accept new testimony for completed agenda items at the continued meeting. Boards need not file notices of continued meetings. If a board chooses to file a new notice stating that a prior meeting's decision-making has been continued, however, it should not place this notice on the same agenda for a new meeting, as doing so would effectively make the continued business part of a new meeting and require the board to hear additional testimony.
- Boards wishing to **change the date or time of a meeting** should cancel the original meeting and file a new notice at least six days in advance of the new date and time.
- If a board must **change the location** of a meeting on the day of the meeting (for example, the room loses air conditioning), it may start the meeting at the noticed location, and, if the location must be changed, the board may announce a continuance of the meeting shortly thereafter in the new location in accordance with section 92-7(d), HRS. A written notification of the new meeting location should be posted at the originally noticed location.
- If there is a non-emergency **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. For example, only one board must file the meeting notice with the Lt. Governor's office or County Clerk at least six calendar days before the meeting, and if feasible, post it at the meeting site on the day of the meeting. If state boards are involved, then one of the state boards could be in charge of posting the notice on the State Online Calendar. **All boards must ensure that notices are mailed to persons on their own mailing 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.

- While it is not a Sunshine Law requirement, the Disability and Communication Access Board recommends that boards include the following language on its agendas: "If you require an auxiliary aid or accommodation due to a disability, please contact (808) _____ (voice/tty) or email [the board] at _____ by [date]."

Failure to follow the Sunshine Law's notice requirements may necessitate cancelling the meeting. If the meeting nevertheless proceeds, a court may void any final action taken in violation of the Sunshine Law's notice requirements. A suit to void any final action must be commenced within 90 days of the action.

For guidance and examples on how to write an agenda, please consult OIP's [Agenda Guidance For Sunshine Law Boards](#), which is available on OIP's Sunshine Law training page at hawaii.gov/oip. OIP's website also includes a [Public Meeting Notice Checklist](#), which may be helpful in drafting and filing notices and agendas. For additional assistance, please contact OIP's attorney of the day by calling (808) 586-1400 or emailing qip@hawaii.gov.