

KATHY L. KAOHU  
County Clerk



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Deputy County Clerk

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COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
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OFFICE OF THE  
COUNTY COUNCIL

September 14, 2020

Honorable Michael J. Molina, Chair  
Governance, Ethics, and Transparency Committee  
Council of the County of Maui  
Wailuku, Hawaii 96793

Dear Chair Molina:

As requested in County Communication No. 20-448, at its meeting of September 11, 2020, the Council discharged the Governance, Ethics, and Transparency Committee from further consideration of a proposed resolution entitled "APPROVING FOR INCLUSION IN THE 2021 HAWAII STATE ASSOCIATION OF COUNTIES LEGISLATIVE PACKAGE A STATE BILL TO ALLOW VIRTUAL MEETINGS BY INTERACTIVE CONFERENCE TECHNOLOGY".

Please be informed that following this action, the Council waived the requirement of committee report. The Council then adopted Resolution No. 20-134 and filed County Communication No. 20-448. A copy of Resolution No. 20-134 is enclosed for your information.

Respectfully,

A handwritten signature in dark ink, appearing to read "Kathy L. KaoHu", written in a cursive style.

KATHY L. KAOHU  
County Clerk

/lks

Enclosure

cc: Director of Council Services

# Resolution

No. 20-134

APPROVING FOR INCLUSION IN THE 2021  
HAWAII STATE ASSOCIATION OF COUNTIES  
LEGISLATIVE PACKAGE A STATE BILL TO  
ALLOW VIRTUAL MEETINGS BY INTERACTIVE  
CONFERENCE TECHNOLOGY

WHEREAS, the Office of Information Practices has drafted much of the content in the attached proposed State bill to allow virtual meetings by “boards” subject to the Sunshine Law, including the Council; and

WHEREAS, virtual meetings promote public safety, public accessibility, and efficiency; and

WHEREAS, the Sunshine Law requires immediate termination when there is an infrastructure failure causing inability for audio communication to be maintained with all locations where the meeting by interactive conference technology is being held; and

WHEREAS, it is important that a meeting conducted by interactive conference technology be allowed to continue without the need to be adjourned when a technological failure occurs; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That the proposed State bill, attached as Exhibit “A,” to allow virtual meetings by interactive conference technology, is approved for inclusion in the 2021 Hawaii State Association of Counties Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Hawaii State Association of Counties Executive Committee.

\_\_\_\_.B. NO.\_\_\_\_

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# A BILL FOR AN ACT

RELATING TO SUNSHINE LAW BOARDS.

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

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

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

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

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

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

16 Therefore, the purposes of this Act are to: (1) expand and  
17 enhance public participation in public meetings, while  
18 protecting the health and safety of board members, staff,  
19 testifiers, observers, other participants, and the general  
20 public, by allowing boards to use interactive conference  
21 technology to conduct virtual meetings under the Sunshine  
22 Law[-]; and (2) allow a meeting conducted by interactive

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1 conference technology to continue without the need to be  
2 adjourned when a technological failure occurs."

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

5 "**§92-3.5 Meeting by interactive conference technology;**  
6 **notice; quorum.** (a) A board may hold a meeting by interactive  
7 conference technology; provided that:

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

17 (2) Board members shall be visible and audible to other  
18 members and the public during the public meetings;  
19 provided that during executive meetings from which the  
20 public has been excluded, board members shall be  
21 audible to other authorized participants and are not  
22 required to be visible;

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1       ~~[(b)]~~ (3) Any board member participating in a meeting by  
2               interactive conference technology shall be considered  
3               present at the meeting for the purpose of determining  
4               compliance with the quorum and voting requirements of  
5               the ~~[board.]~~ board;

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

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

10       (6) To preserve the executive nature of any portion of a  
11               meeting closed to the public, all participants shall  
12               confirm to the presiding officer that no unauthorized  
13               person is present or able to hear them at their remote  
14               locations, and the person organizing the interactive  
15               conference technology shall confirm that no  
16               unauthorized person has access to the executive  
17               meeting as indicated on the control panels of the  
18               interactive conference technology being used for the  
19               meeting, if applicable; and

20       (7) When practicable, boards shall record meetings and  
21               make the recording of any meeting open to the public  
22               electronically available to the public as soon as

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1           practicable after a meeting and until such time as the  
2           minutes required by section 92-9 are electronically  
3           posted on the board's website.

4           ~~[(e)]~~

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

18           [e] (c) A board holding a meeting by interactive  
19 conference technology pursuant to this section shall not be  
20 required to allow members of the public to join board members at  
21 non-public locations where board members are physically present  
22 or to identify those locations in the notice required by section



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1 92-7; provided that at the meeting, each board member shall  
2 identify who, if anyone, is present at the non-public location  
3 with the member; and provided further that the notice required  
4 by section 92-7 shall:

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

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

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

10 (B) Provide oral testimony through an internet link,  
11 telephone conference, or other means.

12 [~~f~~] (d) Notwithstanding section 92-3, a board may require  
13 members of the public attending a meeting in person to:

14 (1) Provide their names and contact information for the  
15 purpose of contact tracing; and

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

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

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

3 SECTION 3. Subsection (a) of section 92-7, Hawaii  
4 Revised Statutes, is amended to read as follows:

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

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1 section 91-2.6. The means specified by this section shall be the  
2 only means required for giving notice under this part  
3 notwithstanding any law to the contrary."

4 SECTION 4. Statutory material to be deleted is bracketed  
5 and in strikethrough. New statutory material is underscored.

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

7

8

INTRODUCED BY: \_\_\_\_\_

9

# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 20-134 was adopted by the Council of the County of Maui, State of Hawaii, on the 11th day of September, 2020, by the following vote:

MEMBERS	Alice L. LEE Chair	Keani N. W. RAWLINS- FERNANDEZ Vice-Chair	G. Riki HOKAMA	Natalie A. KAMA	Kelly T. KING	Michael J. MOLINA	Tamara A. M. PALTIN	Shane M. SINENCI	Yuki Lei K. SUGIMURA
ROLL CALL	Aye	Aye	No	Excused	Aye	Aye	Aye	Aye	Aye



COUNTY CLERK