

COUNCIL OF THE COUNTY OF MAUI
GOVERNANCE, ETHICS, AND
TRANSPARENCY COMMITTEE

September 25, 2020

Committee
Report No. _____

Honorable Chair and Members
of the County Council
County of Maui
Wailuku, Maui, Hawaii

Chair and Members:

Your Governance, Ethics, and Transparency Committee, having met on August 25, 2020, and September 8, 2020, makes reference to County Communication 19-26, from Council Chair Kelly T. King, relating to the Maui County Council Legislative Package.

Your Committee notes each year the Council may compile a package of proposals and priorities to be presented to the State Legislature.

Your Committee further notes it previously reported on the 2021 Maui County Council Legislative Package through Committee Report 20-111. At its meeting of September 11, 2020, the Council adopted Resolutions 20-130, 20-131, 20-132, and Resolution 20-133, cumulatively approving four proposed State bills for inclusion in the 2021 Maui County Council Legislative Package.

As noted in Committee Report 20-111, at its meeting of August 25, 2020, your Committee discussed a proposed resolution from Councilmember Tamara Paltin relating to meetings by interactive conference technology, and a proposed resolution from Council Chair Alice L. Lee relating to virtual meetings. Your Committee deferred acting on the proposals to allow a consolidated proposal amending the Sunshine Law be prepared and transmitted to Committee.

By correspondence dated September 2, 2020, your Committee Chair transmitted a revised proposed resolution entitled "APPROVING FOR INCLUSION IN THE 2021 MAUI COUNTY COUNCIL LEGISLATIVE PACKAGE A STATE BILL TO ALLOW VIRTUAL MEETINGS BY INTERACTIVE CONFERENCE TECHNOLOGY."

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The purpose of the revised proposed resolution is to approve for inclusion in the 2021 Maui County Council Legislative Package a revised proposed State bill, attached to the revised proposed resolution as Exhibit "A," entitled "A BILL FOR AN ACT RELATING TO SUNSHINE LAW BOARDS."

The purpose of the revised proposed State bill is to amend the State statute on public agency meetings, colloquially known as the Sunshine Law, to:

- allow Sunshine Law "boards," including the county councils, to more freely use interactive conference technology to conduct virtual meetings under the Sunshine Law; and
- allow a meeting conducted by interactive conference technology to continue without the need to be adjourned when a technological failure occurs.

Your Committee notes the Council and its standing committees have been conducting virtual meetings using interactive conference technology, allowing Councilmembers to participate from their offices or residences, for the last six months. Meetings of this type, which ensure public safety and government efficiency, are made possible only through the Governor's temporary partial suspension of the Sunshine Law because of the COVID-19 pandemic. Your Committee supported the need to amend the Sunshine Law to continue to allow virtual meetings using interactive conference technology, as it has shown to be an effective tool to continue meetings of a board in an open, transparent manner, while ensuring the health and safety of all participants.

Your Committee agreed to amend the proposed resolution to ensure the attached proposed State bill is consistent with legislation proposed by the State Office of Information Practices on its website, dated August 6, 2020.

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Your Committee voted 9-0 to recommend adoption of the revised proposed resolution. Committee Chair Molina, Vice-Chair Rawlins-Fernandez, and members Hokama, Kama, King, Lee, Paltin, Sinenci, and Sugimura voted "aye."

Your Committee is in receipt of a revised proposed resolution incorporating your Committee's recommended revisions.

Your Governance, Ethics, and Transparency Committee RECOMMENDS that Resolution _____, attached hereto, entitled "APPROVING FOR INCLUSION IN THE 2021 MAUI COUNTY COUNCIL LEGISLATIVE PACKAGE A STATE BILL TO ALLOW VIRTUAL MEETINGS BY INTERACTIVE CONFERENCE TECHNOLOGY," be ADOPTED.

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This report is submitted in accordance with Rule 8 of the Rules of the Council.

A handwritten signature in black ink, appearing to read "Michael J. Molina", is written over a horizontal line.

MICHAEL J. MOLINA, Chair

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Resolution

No. _____

APPROVING FOR INCLUSION IN THE 2021
MAUI COUNTY COUNCIL 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 Maui County Council Legislative Package; and
2. That certified copies of this Resolution be transmitted to the Governor of the State of Hawaii, the President of the State Senate, the Speaker of the State House of Representatives, the County’s delegation to the State Legislature, and the Mayor of the County of Maui.

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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 Law;
22 and (2) allow a meeting conducted by interactive conference

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1 technology to continue without the need to be adjourned when a
2 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 [§] (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