



PUBLIC BOARDS AUDIT

August 20, 2015
Common Cause Hawaii



Common Cause Hawaii (CCHI) believes that an integral part of democracy and increasing civic participation is the public's to access to government. This includes having access to public board meetings and records, per [Hawaii's "Sunshine" Law](#) (Hawaii Revised Statutes chapter 92).¹

Hawaii's Sunshine Law, also known as the Open Meetings Law, governs the way all state and county boards operate and conduct their official business. The Sunshine Law encompasses five major areas: (1) minutes, (2) meetings & testimony, (3) closed meetings, (4) how public board/commission members conduct themselves outside of a meeting, and (5) notice and agenda.²

In order to determine how Hawaii State Boards are interpreting and complying with the Sunshine Law, CCHI has conducted an "audit" of these boards.

The Audit:

The Public Boards Audit focused on state boards, agencies, and commissions who held public meetings, as listed on the [State of Hawaii's Calendar of Events](#), held during the months of March, April, and May 2015. While the terms "board" and "agency" are often used interchangeably, this project and document utilizes the term "board", as defined by the Hawaii Revised Statutes (HRS), meaning "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."³

The audit had two phases, focusing on: 1. the notice and agenda; and 2. minutes provisions of the Sunshine Law.

Phase One: Notice and Agenda

According to the [Office of Information Practices](#) (OIP), the state board charged with administering the Sunshine Law, "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."⁴ Notices must include an "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."⁵ The OIP additionally advises that state boards must file notices with the Lieutenant Governor's office at least 6 calendar days before the meeting and that according to

¹ "Sunshine Law." Office of Information Practices. Accessed July 17, 2015. <http://oip.hawaii.gov/laws-rules-opinions/sunshine-law/>.

² "Sunshine Project: Public Board Audit." Common Cause Hawaii. Accessed July 17, 2015. <http://www.commoncause.org/states/hawaii/issues/access/sunshine-project.html>.

³ "Hawaii Revised Statutes §92-2 Definitions." Hawaii State Legislature. Accessed July 20, 2015. http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092/HRS_0092-0002.htm

⁴ "Quick Review: Sunshine Law Meeting Notice Requirements." Office of Information Practices. Accessed July 21, 2015. <http://oip.hawaii.gov/wp-content/uploads/2015/01/May15-SL-Law-Mtg-Notice-Requirements.pdf>

⁵ Ibid.



[Executive Memorandum No. 11-11](#), notices should also be posted to the State of Hawaii's Calendar of Events at the same time the "notice is posted at the Lieutenant Governor's office."⁶

In addition, HRS 92-3 requires boards to "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."⁷

The purpose of Phase One was to review each board's meeting notice and agenda as posted on the State of Hawaii's Calendar of Events, to determine the date the notice was filed, and whether or not public testimony and/or comments (oral or written) would be accepted by the board. If public testimony/comments were accepted, CCHI identified whether it accepted before or after board business as listed on the agenda. Notice and agenda review was done for all boards that held a public meeting during March-April 2015, as listed on the State of Hawaii's Calendar of Events. For May 2015, notice and agenda review was done for boards CCHI had not previously contacted in March and April (Phase Two).

Phase Two: Minutes

The OIP advises that "all Hawaii state and county boards that are subject to the Sunshine Law must keep minutes of all meetings, including executive sessions. Minutes of a public meeting must be available to the public, upon request, within 30 days after the date of the meeting. HRS § 92-9(b)."⁸

The OIP further opines that "the Sunshine Law does not require board approval of meeting minutes. Although many boards choose to approve their minutes at a subsequent meeting, the Sunshine Law still requires that minutes be made available within 30 days after a meeting, even if the board has not yet approved the minutes. If a board receives a request for minutes of a meeting held 30 or more days ago and the minutes have not been finalized, the board should provide a record of the meeting in whatever form it then exists, even if it is in draft form or in the form of notes. The board can stamp the minutes as a 'DRAFT' and let the requester know that a final version will be forthcoming later, but if 30 or more days have elapsed since the meeting, the board must provide minutes of some sort upon request."⁹

The goal of Phase Two was to obtain a copy of the minutes for each meeting as listed on the State of Hawaii's Calendar of Events between March-May 2015. CCHI first searched for a copy of the minutes on the respective board's website. If no copy was located via the website, each board was then contacted to request an electronic copy (.pdf or .doc format) of the meeting's minutes. According to the Sunshine Law, minutes must be made available to public "within 30 days after the meeting."¹⁰ Thus, inquiries for minutes by CCHI began 30 or more calendar days following the meeting date. This was done for all boards that held a meeting during March and

⁶ Ibid.

⁷ "Hawaii Revised Statutes §92-3 Open meetings." Hawaii State Legislature. Accessed August 6, 2015. http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092/HRS_0092-0003.htm

⁸ "Quick Review: Sunshine Law Requirements for Public Meeting Minutes." Office of Information Practices. Access July 20, 2015. <http://files.hawaii.gov/oip/Sunshine%20Law%20Minutes%20Quick%20Review.pdf>.

⁹ Ibid

¹⁰ "Hawaii Revised Statutes §92-9 Minutes." Hawaii State Legislature. Accessed August 7, 2015. http://www.capitol.hawaii.gov/hrscurrent/Vol02_Ch0046-0115/HRS0092/HRS_0092-0009.htm

April 2015. Since many meetings are held on a monthly basis, for meetings held during the month of May 2015, CCHI's minute inquires only included the boards that were not previously contacted. Upon beginning this project, no boards were aware that CCHI was conducting this audit.

Findings:

Phase One: Notice and Agenda

Majority of state boards do not notate the date the notice of meeting was filed ("notice date") on the notice itself or the State of Hawaii's Calendar of Events. An average of 7% of the 368 board notices reviewed notated the notice date. If the notice date was located, typically it was found on scanned copies of the original notice that was filed with the Lieutenant Governor's office, which included the Lieutenant Governor's date and time stamp of when the filing was received. Of the notices that included the filing date, an average of 87.8% were filed between 6-7 calendar days prior to the meeting, in accordance to the Sunshine Law. An average of 10% of notices were filed more than 7 calendar days prior to the meeting. *See Table 3 on page 7.*

On average a little over 55% of state boards accept some type of public testimony and/or comments (written or oral). Of those that do accept public testimony/comments, about 33% accept it exclusively before board business. This is due to the fact that many boards who accept written testimony/comments from the public set a submission deadline, typically 24 hours or more prior to the start of the meeting. Less than 10% of boards accept public testimony/comments either exclusively after board business or both before and after board business. *See Table 1 on page 6.* The procedure and deadlines to submit testimony/comments, greatly varied across all boards, which made it cumbersome to identify when citizens had an opportunity to participate.

Phase Two: Minutes

Common Cause Hawaii attempted to obtain copies of minutes for over 350 board meetings¹¹ held between March-May 2015, either by locating them on the respective board's website, or by contacting the board and requesting an electronic copy. We were able to obtain an average of 73.4% of minutes. March had the lowest rate as we were able to obtain only 62.2% of minutes. April and May had similar success rates with minutes obtained for 79.7% and 78.4% respectively. *See Table 1 on page 6.*

While CCHI was able to obtain most copies of board minutes, it was not without its challenges. The biggest obstacle was finding boards' contact information. Most meeting notices did not include contact information. Many boards did not have a website, and if they did, often there was no contact information listed. If we were able to find contact information, it was often outdated, an incorrect listing, or our request had to be forwarded multiple times to the "correct" person before someone responded. For instance, when attempting to secure a copy of the minutes for the May 31, 2015 Ko'olaupoko Aha Moku Meeting, CCHI contacted 3 members of the board to no avail. To the board's credit, contact information for board members was featured prominently on the website. However, the area representative's contact information was incorrect and while the Chair and another board member responded, they were unable to fulfill the request as they did not have a copy of the minutes.

¹¹ This number is not representative of the total number of boards, as boards may hold multiple meetings.

Once we were able to get in contact with a board, our initial request for a copy of the minutes was often denied because the minutes were unapproved and still in “draft” form. Only after citing the Sunshine Law and OIP guidelines [OPEN MEETINGS Guide to “The Sunshine Law” for State and County Boards](#) and [Quick Review: Sunshine Law Requirements for Public Meeting Minutes](#), were our requests, typically, eventually fulfilled.

Another hurdle was the inconsistent responses we received from boards. The response time to send us a copy of the requested minutes ranged from no response, a few hours or days, to a couple of months. The type of response also varied. An electronic copy of the minutes was sent via email 58.1% of the time. *See Table 5 on page 7.* However, there were boards who required us to complete the OIP’s “Request to Access a Government Record” form, to pick up the minutes in person, and/or charged fees, the amount of which also varied. Obstacles such as these prevented us from obtaining copies of a number boards’ minutes.

Differences in responses and procedures not only occurred between the various boards, but within different chapters of the same board. Chapters of the same board are located in different sites across the state, such as the Soil Water and Conservation District Program (16 chapters) or the Na Ala Hele Advisory Council (4 chapters), and often had the same inconsistent response and procedural problems listed above.

Discussion:

The majority of boards are in compliance with the notice and agenda, and minutes sections of Hawaii’s Sunshine Law (HRS 92). That said, there is still room for improvement.

1. Boards’ contact information needs to be readily available. If we want to encourage citizen participation, we should make this a standard. This would not only benefit those looking to obtain copies of minutes, but also people that may have questions or other business with a board. A solution would be for boards to include their contact information on meeting notices and agendas.
2. Contact information should also be included on the State of Hawaii’s Calendar of Events. The calendar could be a better utilized resource, by allowing boards to post their minutes in addition to their agendas. This would not only make the calendar a “one stop” resource for board information, but also be a low-cost alternative for boards that do not have a website.
3. To help address the issue of boards being unfamiliar with or unaware of the Sunshine Law, the Office of the Attorney General (AG) should either host a Sunshine Law training and/or issue an advisory opinion to all state boards, regarding the law and compliance. This is because while the OIP administers the Sunshine Law, and has issued opinions and has training videos available on its website, it is the AG who enforces it.¹² During the audit several boards refused to send CCHI a copy of “draft” minutes, before confirming with the AG that they had to comply. This was in spite of being informed of the law and OIP’s opinions. A training and/or advisory opinion from the AG would help to clarify any misunderstandings about the law and compliance.

¹² “CHAPTER 92, HAWAII REVISED STATUTES: PUBLIC AGENCY MEETINGS AND RECORDS.” Office of Information Practices. Access July 22, 2015. <http://oip.hawaii.gov/laws-rules-opinions/sunshine-law/chapter-92-hawaii-revised-statutes-public-agency-meetings-and-records/#9212>

4. A final suggestion is to have boards review their current policies regarding implementation and compliance of the Sunshine Law. An internal review could help reduce the response time when someone requests a copy of the minutes, and reduce confusion due to the different responses and procedures from each board, especially from chapters within the same board.

Conclusion

With these fixes, boards can act to ensure they are in compliance with the Sunshine Law, improve public access, increase transparency, and encourage public participation.

Table 1

| Month as of 7/16/15 | % of boards that listed date notice of meeting was filed | % of boards that accepts public testimony | % of boards that DO NOT accept public testimony | % of boards that accept testimony before business | % of boards that accept testimony after business | % of boards that accept testimony before and after business | % of boards able to obtain minutes (response to request or online) | # of boards CCHI inquired about minutes |
|--------------------------|--|---|---|---|--|---|--|---|
| March 2015 | 6.60% | 57.60% | 43.00% | 35.80% | 9.00% | 5.30% | 62.20% | 151 |
| April 2015 | 10.50% | 58.00% | 42.60% | 30.80% | 9.10% | 13.30% | 79.70% | 143 |
| May 2015 | 4.00% | 50.00% | 50.00% | 29.70% | 4.00% | 10.80% | 78.40% | 74 |
| Average % March-May 2015 | 7.00% | 55.20% | 45.20% | 32.10% | 7.40% | 9.80% | 73.40% | |

Table 2

| Month | # of boards that listed date notice of meeting was filed | # of boards that accepts public testimony | # of boards that DO NOT accept public testimony | # of boards that accept testimony before business | # of boards that accept testimony after business | # of boards that accept testimony before and after business | # of boards able to obtain minutes (response to request or online) | # of meetings CCHI inquired about minutes |
|--------------------------|--|---|---|---|--|---|--|---|
| March 2015 as of 7/16/15 | 10 | 87 | 65 | 54 | 14 | 8 | 94 | 151 |
| April 2015 as of 7/16/15 | 15 | 83 | 61 | 44 | 13 | 19 | 114 | 143 |
| May 2015 as of 7/16/15 | 3 | 37 | 37 | 22 | 3 | 8 | 58 | 74 |

Reminder: For the month of May, CCHI only inquired for minutes from boards we had not previously contacted in March or April; as many meetings are held on a monthly basis.

Table 3

| Month | % of boards that listed the date the notice of meeting was filed for all meetings | % of boards that included the notice date that filed the notice of meeting 6-7 days prior to the meeting | % of boards that included the notice date that filed the notice of meeting more than 7 days in advance |
|--------------------------|---|--|--|
| March 2015 | 6.60% | 90% | 10% |
| April 2015 | 10.50% | 73.30% | 20% |
| May 2015 | 4% | 100% | -- |
| Average % March-May 2015 | 7% | 87.80% | 10% |

Table 4

| Month | # of boards that listed the date the notice of meeting was filed | # of boards that filed the notice of meeting 6-7 days prior to the meeting | # of boards the filed the notice of meeting more than 7 days in advance |
|--------------------------|--|--|---|
| March 2015 as of 7/16/15 | 10 | 9 | 1 |
| April 2015 as of 7/16/15 | 15 | 11 | 3 |
| May 2015 as of 7/16/15 | 3 | 3 | 0 |

Table 5

| Month | # of copies of minutes obtained (response to request or online) | # of copies of minutes received via response to request | % of copies of minutes received via response to request |
|---|---|---|---|
| March 2015 | 94 | 57 | 60.60% |
| April 2015 | 114 | 55 | 48.20% |
| May 2015 | 58 | 38 | 65.50% |
| Average % minutes received March-May 2015 | -- | -- | 58.10% |

State Board Sunshine Audit as of 7/16/15

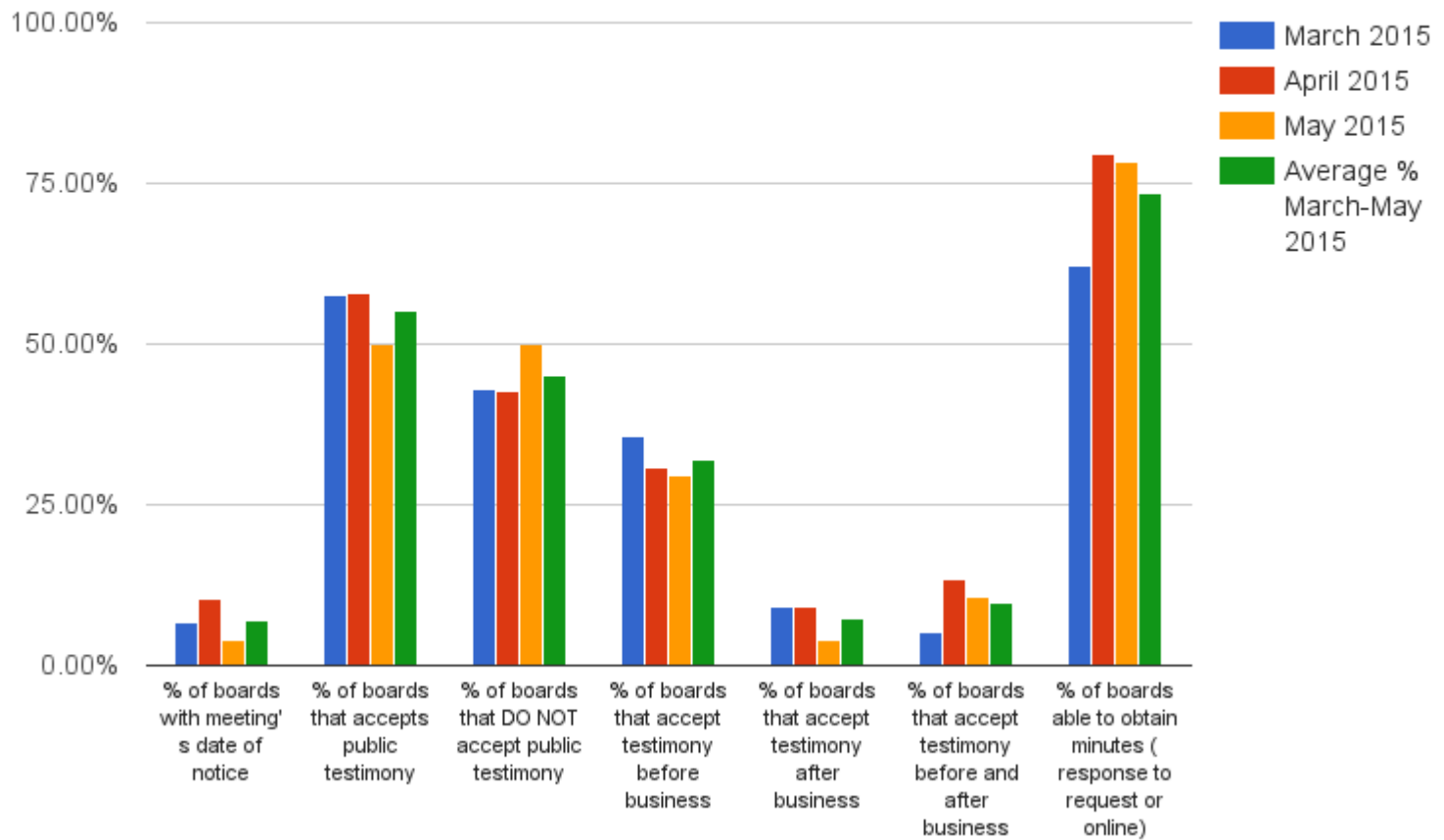


Figure 1

Sources

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