

# OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 13, 2019, 2:01 p.m.  
State Capitol, Conference Room 325

Re: Testimony on H.B. No. 411, H.D. 1  
Relating to the Board of Education

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Thank you for the opportunity to submit testimony on this bill, which would require the Board of Education to hold no less than six community meetings each year. The Office of Information Practices (OIP) has no objection to increasing the number of community meetings and takes no position on this bill, but has **concerns about a confusing exemption in the existing law from portions of the Sunshine Law, part I of chapter 92, and an alternative form of notice that appears to be based on outdated Sunshine Law notice requirements, as well as a concern that the provision as written does not actually allow for the community meetings as they are currently being conducted.** OIP recommends an amendment to the existing law to more accurately reflect the nature of the community meetings as they are currently being held and to be consistent with the Sunshine Law's treatment of similar gatherings.

On page 1 lines 14-15 of the bill is an exemption for "community meetings" held by the Board of Education from sections 92-2.5, -7, and -9, Hawaii Revised Statutes (HRS), the Sunshine Law provisions allowing "permitted interactions" for board members to discuss board business outside a meeting in

limited circumstances, requiring public notice of every meeting, and requiring a board to keep minutes. (The language also exempts community meetings from section 92-41, HRS, a provision outside the Sunshine Law requiring a government agency to give notice of a public hearing on a proposed action in every affected county. As this provision is outside OIP's jurisdiction, OIP takes no position on the exemption from it.) OIP testified to its concerns with these exemptions at the time they were created, and has continued to have concerns. However, based on discussion with the Board of Education, OIP now understands that the community meetings, as they are currently being conducted, are not actually meetings of the full Board of Education, but instead are forums in which two or three board members travel to a community to meet with community members and hear their concerns to relay to the full board. The Sunshine Law's notice and minutes requirements apply to meetings of a board, not to interactions outside a meeting among less than a quorum of board members, so the proposed exemption from those requirements is unnecessary given the nature of the "community meetings" as they are being conducted.

The exemption from section 92-2.5, HRS, however, becomes even more problematic given that the members attending a "community meeting" comprise less than a quorum of the board and thus are not technically in a meeting of the board while attending. Section 92-2.5, the "permitted interaction" provision, allows members of a Sunshine Law board to discuss board business outside a meeting in limited circumstances. The current exemption from this provision for "community meetings" arguably means that the **two or three board members discussing board business in the course of a "community meeting" are not permitted to do so under the Sunshine Law because they are neither in a board**

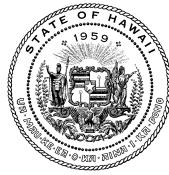
**meeting nor covered by a permitted interaction, even though this clearly was not the Legislature's intent.**

The attendance by two or three members at “community meetings” as referred to in this bill is actually very similar to the attendance of less than a quorum of board members at an informational meeting or event organized by another group as currently allowed by a permitted interaction set out in subsection 92-2.5(e), HRS. OIP recommends that this Committee rewrite the “community meetings” provision in a similar style as a Board of Education-specific permitted interaction, requiring and authorizing a set number of “community forums” to be attended by less than a quorum of board members, who will report back to the Board of Education on the public concerns and other information they learned at the community forum. OIP recommends using the phrase “community forums” instead of “community meetings” to avoid confusion as to the nature of the events. The following language (to replace bill pages 1 line 4 through 2 line 4) would accomplish that while retaining the other changes proposed by this bill:

**“§302A-1106.5 Board of education; community ~~[meetings]~~ forums.** ~~[The board shall hold not less than one community annually in each county in]~~ In addition to their regular meetings, the board shall hold no less than six community forums annually to discuss and receive input from the community on public education and public library issues~~[-]; provided that the board shall hold at least one community forum in each county.~~ The board chairperson shall designate less than a quorum of board members to attend [the] each community ~~[meetings-]~~ forum. These community ~~[meetings]~~ forums shall not be held for the purpose of formulating educational policy. The community ~~[meetings]~~ forums shall be ~~[exempt~~

~~from sections 92-2.5, 92-7, 92-9, and 92-41; provided that the board shall give written public notice of each community meeting. The meeting notice shall indicate the date, time, and place of the meeting, and shall be filed in the office of the lieutenant governor and in the board's office for public inspection six calendar days before the meeting. The notice shall also be posted at the site of the meeting.] a~~  
permitted interaction under section 92-2.5, provided that no commitment relating to a vote on a 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 at the community forum.

Thank you for the opportunity to testify.



**STATE OF HAWAII  
BOARD OF EDUCATION**  
P.O. BOX 2360  
HONOLULU, HAWAII 96804

**House Committee on Judiciary**

Wednesday, February 13, 2019  
2:01 p.m.  
Hawaii State Capitol, Room 325

**House Bill 411 HD 1, Relating to the Board of Education**

Dear Chair Lee, Vice Chair San Buenaventura, and Members of the Committee:

The Board of Education (“Board”) supports the intent of HB 411 HD 1 but has comments. HB 411 HD 1 would require the Board to hold no less than six community meetings each year, with at least one in each county, and allow public testimony on items not on a public meeting agenda.

One of the Board’s strategic priorities for the 2018-2019 school year relates to communication and engagement. The Board supports measures that 1) support informed decision-making and priority setting through thoughtful and intentional engagement with stakeholders, and 2) improve transparency and access to information to encourage an informed and engaged community of citizens.

The Board believes community meetings improve the public’s access to the Board and provide the Board with more information from the community to help in its decision-making and priority setting. This belief is reflected in its bylaws,<sup>1</sup> which already require it to hold no less than six community meetings annually, including at least one in each county, which is what this measure seeks to legislate.

As to the open forum at the end of Board meetings, whether this would result in “thoughtful and intentional engagement with stakeholders,” per the Board’s strategic priorities, is unclear. Sunshine Law would prevent Board members from discussing any concerns or issues members of the public bring up during the open forum until such concerns or issues appear on a properly noticed Board agenda. Open forums alone do not appear to significantly increase access to or engagement with the Board because members of the public would only be allowed to provide their concerns or comments to the Board; the Board would not be able to engage or respond to testifiers. Currently, members of the public are invited to provide any comments or concerns in writing at any time. This allows for direct communication with Board Members, which would

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<sup>1</sup> Available at: [http://boe.hawaii.gov/Documents/BOE%20Bylaws%20\(07-18-2017\).pdf](http://boe.hawaii.gov/Documents/BOE%20Bylaws%20(07-18-2017).pdf)

essentially have the same effect as delivering those same concerns or comments in person at an open forum, but without requiring members of the public to attend a public meeting or track the Board's meeting notices. Lastly, the Committee should note that the Board, in practice, already allows testimony at its meetings from the members of the public on topics that are not on the meeting agenda. Members of the public are not prevented from testifying on matters not on the meeting agenda and, in compliance with Sunshine Law, the Board only accepts such testimony and does not discuss it.

Thank you for this opportunity to testify on behalf of the Board.

Very truly yours,

Catherine Payne  
Chairperson, Board of Education  
Chairperson, 2019 Legislative Ad Hoc Committee

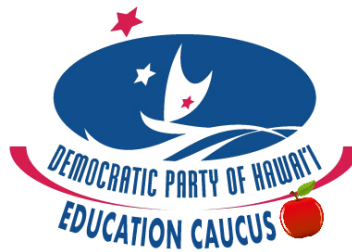
**HB-411-HD-1**

Submitted on: 2/12/2019 1:46:14 PM

Testimony for JUD on 2/13/2019 2:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Melodie Aduja	O`ahu County Committee on Legislative Priorities of the Democratic Party of Hawai`i	Support	No

Comments:



## HOUSE BILL 411, HD 1, RELATING TO THE BOARD OF EDUCATION

FEBRUARY 13, 2019 · HOUSE JUDICIARY  
COMMITTEE · CHAIR REP. CHRIS LEE

**POSITION:** Support.

**RATIONALE:** The Democratic Party of Hawai'i Education Caucus supports HB 411, HD 1, relating to the Board of Education, which requires the Board of Education to hold no less than six community meetings each year, with at least one meeting in each county; and requires the Board to include an open forum for public comments on non-agenda items at the end of each public meeting through June 30, 2024.

Education is everyone's issue. Providing a quality education to all of Hawai'i's keiki involves collaboration among multiple stakeholders, including teachers, administrators, parents, and community members. Too often, though, stakeholder concerns are silenced by the BOE, which typically holds meetings during the daytime in downtown Honolulu and only discusses matters prioritized by the Department of Education, in consultation with board members.

Offering open forums at BOE meetings would empower stakeholders beyond the DOE's administrative offices. Parents could discuss the value of new anti-bullying strategies. Teachers could detail problems with departmental testing protocols. Service providers could identify patterns of risk being seen in youth behaviors. Board members could, in turn, respond to concerns that would otherwise go unheard, fostering transparency, interagency partnerships, and community engagement to craft policies that enhance the learning experience at every level.



**HB-411-HD-1**

Submitted on: 2/12/2019 12:58:49 PM

Testimony for JUD on 2/13/2019 2:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Susan Dursin	Individual	Support	No

Comments:

I urge you to support HB411. As an interested public citizen on a topic of great importance to this state and the future of our young people, I feel that greater transparency and greater opportunity for information and participation can only strengthen education in Hawai`i. I also believe making it easier for outer island residents to take part is long overdue.

Mahalo,

Susan Dursin, Captain Cook

**HB-411-HD-1**

Submitted on: 2/11/2019 7:42:24 PM

Testimony for JUD on 2/13/2019 2:01:00 PM

<b>Submitted By</b>	<b>Organization</b>	<b>Testifier Position</b>	<b>Present at Hearing</b>
Mike Golojuch	Individual	Support	No

Comments: