

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

House Committee on Lower & Higher Education

Wednesday, March 11, 2020
2:00 p.m.
Hawaii State Capitol, Room 309

Senate Bill 2664, Senate Draft 1, Relating to the Board of Education

Dear Chair Woodson, Vice Chairs Hashem and Quinlan, and Members of the Committee:

The Board of Education ("Board") appreciates the intent of SB 2664 SD1 but has comments. SB 2664 SD1 would: (1) rename "community meetings" to "community forums" and require the Board hold at least six community forums each year, with at least one in each county, to discuss and receive public input on public education and public library issues; (2) make these forums permitted interactions under Hawaii Revised Statutes ("HRS") Section 92-2.5; and (3) require an open forum at the end of each public Board meeting to afford attendees to testify on matters not on the agenda.

Legislative committees have heard two similar measures this session, SB 587 (a carryover bill from last session that crossed over to the House) and HB 2510 (the companion to SB 2664). The Board has reviewed the testimony submitted on all three bills, which we reference and address in our comments below.

Please note that our testimony uses "community meeting" and "community forum" interchangeably. The Board does not have a preference on either term, although we note that it is common for people to confuse a general business meeting the Board holds at site outside of its offices as a community meeting under HRS Section 302A-1106.5 and vice versa.

Comments on requirement of at least six community forums each year

One of the Board's strategic priorities for the 2019-2020 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. The Board has codified this belief in its bylaws,¹ which require it to hold no less than six community meetings annually, including at least one in each county.

The current draft of this measure seeks to legislate what the Board has already codified in its own policies. Also codifying this policy in statute seems duplicative, and the rationale for doing so is not clear to the Board. Still, if the Legislature feels it is necessary, the Board does not oppose.

The Board, however, does have concerns about a suggestion from this Committee, as noted in its committee report on HB 2510, the companion of this measure, to “specifically require community forums to be held on the islands of Maui, Molokai, and Lanai, rather than only generally requiring forums in the County of Maui.” The Board believes being accessible to all communities, no matter how remote, is important. In some instances, a community meeting in a unique, remote community like Molokai, Lanai, or Niihau (which this Committee’s suggestion did not contemplate) is the most effective way to engage the community on a particular issue. However, in many other instances the Board should address or redirect community issues in other more appropriate ways.

In this regard, the Board does not believe it is effective nor a good use of time and resources, especially considering the added logistical challenges when holding community meetings in remote areas, to require annual community meetings in specific remote communities. The Board advocates for holding community meetings in each county every year while allowing the Board to identify the specific communities it thinks would benefit most from the community meetings, which statute currently provides.

Comments on making community forums permitted interactions under Sunshine Law

As previously noted, the Board reviewed the testimony submitted for this measure and related measures, and we feel the testimony from two organizations deserve further attention and discussion.

First, testimony from the Office of Information Practices (“OIP”) on SB 587 last legislative session noted that HRS Section 302A-1106.5 contains “a confusing exemption from portions of Sunshine Law.” In its testimony on the same measure this session, OIP recommended amending the measure to mirror the language in HB 2510 and SB 2664, which would make community forums permitted interactions under HRS Section 92-2.5 and presumably clarify for OIP the applicability of Sunshine Law to the Board’s community forums. Note that in previous testimony, the Board misunderstood the proposed statutory amendment to mean that community meetings would be subject to the requirements of a permitted interaction group, pursuant to HRS Section 92-2.5(b), which would add burdensome procedural requirements and reduce the inherent flexibility of community meetings. OIP has since clarified for us that the proposal would make community forums their own type of permitted interaction without the procedural requirements of other kinds of permitted interactions.

¹ Available at: [http://boe.hawaii.gov/Documents/By-Laws%20\(amended%202019-07-18\).pdf](http://boe.hawaii.gov/Documents/By-Laws%20(amended%202019-07-18).pdf)

However, the second testimony we would like to highlight, from the Civil Beat Law Center (“Civil Beat Law Center”) for the Public Interest on both HB 2510 and SB 2664, raises concerns about making community forums permitted interactions. Specifically, the Civil Beat Law Center notes that by designating community forums as permitted interactions, this measure would eliminate the requirements of the Board to provide written public notice of the community forum, open the forum to the public, and accept testimony from all interested persons. The Board is dedicated to “thoughtful and intentional engagement with stakeholders” and “improv[ing] transparency and access to information,” per its strategic priorities, and it would like to find a way to address the concerns raised by the Civil Beat Law Center.

The Board believes it is possible to reconcile both the concern from OIP about the unclear applicability of Sunshine Law to community meetings and the Civil Beat Law Center’s concerns about the transparency and access of community meetings to the public while maintaining the Board’s operational flexibility in executing these meetings. Each kind of permitted interaction under HRS Section 92-2.5 has its own set of conditions. Therefore, a reasonable solution is to designate community meetings/forums as permitted interactions, as this bill currently does, and expand the conditions of that kind of permitted interaction to address transparency and access concerns raised by the Civil Beat Law Center. To this end, the Board’s recommended amendments to the relevant portions of HRS Section 302A-1106.5 (starting from line 11 in this bill) are as follows:

“The board chairperson shall designate board members to attend ~~[the]~~ each community ~~[meetings-]~~ forum. These community ~~[meetings]~~ forums shall not be held for the purpose of formulating education 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:

- (1) The board shall give a written public notice that indicates the date, time, and place of each community forum; provided that the notice shall be subject to the same posting and filing requirements of board meeting notices, pursuant to section 92-7(b);
- (2) Community forums shall be open to the public and all persons shall be permitted to attend; provided that the removal of any person or persons who wilfully disrupts a community forum to prevent and compromise the conduct of the community forum shall not be prohibited;

- (3) The board shall afford all interested persons an opportunity to submit data, views, or arguments, in writing or in person, on any public education or public library issues at each community forum;
- (4) No commitment relating to a vote on a matter is made or sought at any community forum; and
- (5) At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed at each community forum.”

Here are highlights of the key differences between our proposal above and the current version of this bill:

- The above proposal removes the amendment that would allow only less than a quorum of Board members to attend a community forum. The Board does not believe limiting the number of Board members who can attend a community forum provides any benefit; rather, it hampers the Board's ability to meet the purposes of community forums in some instances. Current law already prohibits the Board from formulating policy at community meetings, and the proposal above adds an additional safeguard by prohibiting Board members attending community forums from making commitments relating to votes on matters.
- The above proposal keeps the requirement of a written public notice but subjects the notice to the same posting and filing requirements for other meeting notices rather than outdated posting and filing requirements.
- The above proposal ensures community forums are open to the public and attendees have an opportunity to share their views by using similar language found in HRS Section 92-3, which sets similar requirements for other public meetings.

Comments on requiring an open forum at the end of each Board meeting

The Board recently piloted the open forum concept at a couple of its meetings. The Board held a “community open forum” at the end of its March 7 and May 2, 2019, general business meetings and received comments from five individuals in total. The Board found that open forums at the end of Board meetings do not result in “thoughtful and intentional engagement with stakeholders” or “improve[d] transparency and access,” per the Board’s strategic priorities.

Open forums alone do not appear to increase access to or engagement with the Board because while members of the public can provide their concerns or comments to the Board, the Board is not be able to engage or respond to testifiers. Sunshine Law prevents Board members from discussing any concerns or issues members of the public bring up during open forums until such concerns or issues appear on a properly noticed Board agenda. In the Board’s pilot, this

surprised some members of the public who attended the open forum with the assumption that they could have a conversation with the Board.

Currently, the Board invites members of the public to provide any comments or concerns in writing at any time. This allows for direct communication with Board members, which 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.

Further, your 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. The Board's presiding officers do not prevent members of the public from testifying on matters not on a meeting agenda and, in compliance with Sunshine Law, the Board only accepts such testimony and does not discuss it. This is essentially the same effect of an open forum. In addition, at the end of every community meeting, Board members ask attendees if they have any issues or concerns to discuss (other than the specific topic of the community meeting) and invite them to share. Community meetings tend to be more productive for members of the public because they can have a conversation with Board members, unlike Board meetings.

While the Board does not necessarily oppose mandatory open forums at the end of Board meetings, the Board has significant doubts about these open forums producing the results this bill intends based on its recent experience. The Board believes continuously improving the execution of community meetings/forums and exploring other ways to engage members of the public better serve of intentions of this bill.

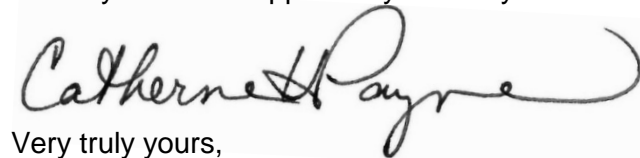
For example, starting this school year, the Board has been taking a different approach to its community meetings by making a concerted effort to invite community stakeholders to partner with the Board in developing these meetings. The table below shows the recent community meetings and the topics covered.

Date	Location	Topic	Board Members	Attendees	Agenda, Meeting Material, and Testimony
06/24/2019	Leilehua High School Library, 1515 California Avenue, Wahiawa, Hawaii 96786	Discuss the use and regulation of herbicides and pesticides on our school campuses.	Board Chairperson Catherine Payne	58	http://boe.hawaii.gov/Meetings/Notices/Pages/June-24,-2019-Honolulu-Board-Community-Meeting.aspx
10/25/2019	Queen Liliuokalani Building, Room 404, 1390 Miller Street, Honolulu, Hawaii 96813	How Hawaii's business community can partner with our K-12 and higher education systems to advance and strengthen career pathways and readiness.	Board Chairperson Catherine Payne and Board Members Kaimana Barcarse, Margaret Cox, Kili Namau'u, and Dwight Takeno	50	http://boe.hawaii.gov/Meetings/Notices/Pages/October-25%2c-2019-Honolulu-Board-Community-Meeting.aspx
11/07/2019	Waiwai Collective, 1110 University Avenue, #100, Honolulu, Hawaii 96826	How strategic plan indicators can be a powerful tool to advance student progress.	Board Chairperson Catherine Payne and Board Members Kaimana Barcarse, Margaret Cox, Kili Namau'u, and Bruce Voss	40	http://boe.hawaii.gov/Meetings/Notices/Pages/November-7%2c-2019-Honolulu-Board-Community-Meeting.aspx

Date	Location	Topic	Board Members	Attendees	Agenda, Meeting Material, and Testimony
11/20/2019	Ke Kula Kaiapuni 'o Ānuenue 2528 10th Avenue, Cafeteria Honolulu, Hawaii 96813	Share your Hawaiian immersion concerns and solutions and other general concerns. Board Members want to understand how we can be supportive of the immersion community and what we can learn about immersion education in the public schools.	Board Chairperson Catherine Payne and Board Members Kaimana Barcarse, Margaret Cox, Nolan Kawano, Kili Namau'u, and Dwight Takeno	80	http://boe.hawaii.gov/Meetings/Notices/Pages/November-20%2c-2019-Honolulu-Board-Community-Meeting.aspx
02/04/2020	University of Hawaii Maui College 310 West Kaahumanu Avenue, Science Building, Kahului, Hawaii 96732	Share your Hawaiian immersion concerns and solutions and other general concerns. Board Members want to understand how we can be supportive of the immersion community and what we can learn about immersion education in the public schools.	Board Chairperson Catherine Payne and Board Members Kaimana Barcarse, and Kili Namau'u	100	http://boe.hawaii.gov/Meetings/Notices/Pages/February-4,-2020-Maui-County-Board-Community-Meeting-(Kahului).aspx
03/05/2020	Queen Liliuokalani Building, Room 404, 1390 Miller Street, Honolulu, Hawaii 96813	Share your questions and concerns about the Hawaii State Department of Education Strategic Plan ("2030 Promise Plan") and share other general concerns.	Board Chairperson Catherine Payne, Board Vice Chairperson Brian De Lima, and Board Members Kaimana Barcarse, Nolan Kawano, Kili Namau'u, Dwight Takeno, and Bruce Voss	20	http://boe.hawaii.gov/Meetings/Notices/Pages/March-5,-2020-Honolulu-Board-Community-Meeting.aspx

The community stakeholders select the topic that they want to discuss and the location and time of the meeting. The Board works with them to tailor the meeting format to meet their needs and meeting goals. Communities have responded positively to these meetings with more people attending than ever before. Moreover, the attendees have actively participated in the discussions and engaged with Board members rather than simply observe. The Board finds this kind public engagement to be far more effective than an open forum, and the Board looks forward to working with more community stakeholders and holding more of these types of community meetings.

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



Very truly yours,

Catherine Payne
Chairperson, Board of Education
Chairperson, 2020 Legislative Ad Hoc Committee

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House Committee on Lower & Higher Education
Honorable Justin H. Woodson, Chair
Honorable Mark J. Hashem, Vice Chair
Honorable Sean Quinlan, Vice Chair

**RE: Testimony Commenting on S.B. 2664 S.D. 1,
Relating to the Board of Education**
Hearing: March 11, 2020 at 2:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit comments on S.B. 2664 S.D. 1. **The Law Center would support the amendments recommended by the Board of Education (BOE) in testimony before the Senate Judiciary committee as more consistent with the stated intent of these community forums than the current bill.**

This bill modifies the application of the Sunshine Law to BOE community forums. Under existing law, BOE must: (1) provide written public notice that the forum will be held (although no specific agenda is required); (2) open the community forum to the general public; and (3) accept testimony from all interested persons.

By designating the community forum as a permitted interaction under HRS § 92-2.5, this proposal will eliminate all of those requirements. In broad terms, a “permitted interaction” exempts the designated meeting from the Sunshine Law – usually imposing alternative requirements to protect the public interest.¹ **Here, the current version of the bill would authorize BOE to hold a “community forum” without any notice to the public, completely outside the public eye, and restrict who is permitted to offer views.** That result does not seem consistent with the stated purpose to have the BOE “discuss and receive input from the community on public education and public

¹ BOE initially opposed a “permitted interaction” designation because “[i]t is difficult to see how *adding the formal and procedural requirements* of a permitted group to community meetings would improve transparency or access to information.” The bill, however, does not designate community forums as an “investigatory permitted interaction” under HRS § 92-2.5(b)(1) – a designation that would increase requirements on BOE; this bill exempts the community forums from any of the public participation requirements.

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library issues” or the desire stated in Committee Report No. 2366 to “increase the engagement of stakeholders on the neighbor islands.”

Thank you again for the opportunity to provide comments on S.B. 2664 S.D. 1.



SENATE BILL 2664, SD1, RELATING TO THE BOARD OF EDUCATION

MARCH 11, 2020 · HOUSE LOWER AND HIGHER
EDUCATION COMMITTEE · CHAIR REP. JUSTIN H.
WOODSON

POSITION: Support.

RATIONALE: The Democratic Party of Hawai'i Education Caucus supports SB 2664, SD1, relating to the Board of Education, which requires the Board of Education to hold no less than six community forums annually, with at least one forum in each county and requires the Board to include an open forum for public comments on non-agenda items.

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.

Hosting additional community meetings on neighbor islands would increase stakeholder feedback from residents of remote communities. Big Island parents and teachers could discuss the impact of the Kilauea eruption on local schools, for example, and assist board members in creating strategies to mitigate the effects of vog on classroom climates. That said, we **note that the BOE may require additional funding for travel to fulfill this measure's requirements.**

SB-2664-SD-1

Submitted on: 3/9/2020 2:46:32 PM

Testimony for LHE on 3/11/2020 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	Yes

Comments:

Support that the will be more accessible to community.