

**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 587, Senate Draft 2, 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 587 SD2 but has comments. SB 587 SD2 would: (1) require the Board to hold at least six community meetings each year in each county to receive public input on public education and public library issues; (2) allow community meetings to be held for the purpose of formulating educational policy; (3) change community meeting exemptions from Sunshine Law; and (4) require the Board to video record community meetings and make video recordings available.

Legislative committees have heard two similar measures this session, HB 2510 and SB 2664, companions to each other. The Board has reviewed the testimony submitted on all three bills, which we reference and address in our comments below.

Comments on requirement of at least six community meetings 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

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)

so is not clear to the Board. Still, if the Legislature feels it is necessary, the Board does not oppose.

Comments on formulation of educational policy at community meetings

The Board welcomes more flexibility in making community meetings more productive, meaningful, and useful for the public and the Board. While we are unsure of the original intent of the restriction preventing the use of community meetings to formulate educational policy, we surmise it was to protect the public from the Board enacting new policies without such contemplated policies first appearing on a public agenda and encourage transparency and access in policymaking, which the Board supports. Please note that, in practice, the Board does not act, nor do individual Board members commit to vote, on or any matters at community meetings regardless of whether they relate to educational policy or not.

The Board believes that it is possible to maintain transparency while increasing access as related to policymaking by removing this restriction, as this measure currently does, and replacing it with other requirements and restrictions, as described at the end of this testimony. By removing this restriction, the Board could potentially use community meetings to involve the public and interested stakeholders more in the review and development of educational policies, thereby increasing public access to policymaking.

Comments on requiring video recording of community meetings

The Board has concerns about the practicality and costs of video recording community meetings. In practice and in purpose, the Board's community meetings are much different from its business meetings. The Board uses community meetings to engage with and better understand the views of community stakeholders on particular topics of interest while the Board uses business meetings to conduct its regular business, including acting on important matters that the public may have weighed in on at a community meeting.

The Board has been refining how it conducts community meetings. 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. Recently, community meetings have had at least a portion (if not the majority) of the meeting dedicated to group discussion as a way to encourage more direct and informal interaction between Board members and attendees and actively engage more attendees. Video recording a community meeting that uses this format would not achieve the intent of this measure, as concurrent group discussions would render all discussions inaudible in a recording, thus making the audio recording pointless. Further, the visual of groups of huddled people would likely provide little value to the public. The Board believes reporting on a community meeting at the Board's next business meeting, as is the current practice, is a sufficient action for public disclosure and transparency purposes, especially considering the lack of Board action at community meetings.

Going forward, we expect our community meetings to use this format more often. 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 anything the Board is able to achieve at its business meetings, and the Board looks forward to working with more community stakeholders and holding more of these types of community meetings.

As a final comment on the video recording requirement, such recordings would be an additional cost to the Board. This measure currently does not have an appropriation attached to fund this new mandate. The Board does not support legislation that creates additional duties and responsibilities for the Board without appropriating adequate, commensurate resources to accomplish such duties and responsibilities.

Comments on changing exemptions to 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 this measure last legislative session noted that HRS Section 302A-1106.5 contains “a confusing exemption from portions of Sunshine Law.” In its testimony on this measure this session, OIP recommended amending the measure to mirror the language in HB 2510 and SB 2664, which would make community meetings permitted interactions under HRS Section 92-2.5 and presumably clarify for OIP the applicability of Sunshine Law to the Board’s community meetings.

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 meetings permitted interactions. Specifically, the Civil Beat Law Center notes that designating community meetings as permitted interactions would eliminate the requirements of the Board to provide written public notice of the community meeting, open the meeting 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 as permitted interactions 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 10 in this bill) are as follows:

~~"The community meetings 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:

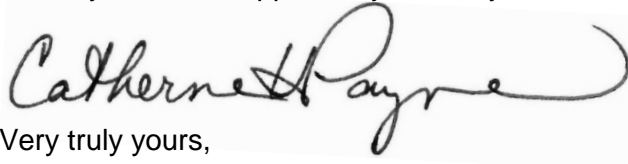
- (1) The board shall give a written public notice that indicates the date, time, and place of each community meeting; provided that the notice shall be subject to the same posting and filing requirements of board meeting notices, pursuant to section 92-7(b);
- (2) Community meetings shall be open to the public and all persons shall be permitted to attend; provided that the removal of any person or persons who wilfully disrupts a community meeting to prevent and compromise the conduct of the community meeting 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 meeting;
- (4) No commitment relating to a vote on a matter is made or sought at any community meeting; 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 meeting."

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

- As discussed above, the Board supports removing the restriction prohibiting the formulation of educational policy at community meetings. However, to ensure transparency and to codify the Board's practices, the proposal above adds a safeguard by prohibiting Board members attending community meetings from making commitments relating to votes on matters. This safeguard prevents the Board from taking action at a community meeting, which it can potentially do now under current law.

- The above proposal keeps the requirement of a written public notice but more clearly subjects the notice to the same posting and filing requirements for other meeting notices rather than outdated posting and filing requirements.
- The above proposal removes the video recording requirement, as discussed above, and requires Board members to report at the next Board meeting, as is current practice.

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

A handwritten signature in black ink, reading "Catherine Payne". The signature is fluid and cursive, with the first name "Catherine" and last name "Payne" clearly distinguishable.

Very truly yours,

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

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To: House Committee on Lower & Higher Education

From: Cheryl Kakazu Park, Director

Date: March 11, 2020, 2:00 p.m.
State Capitol, Conference Room 309

Re: Testimony on S.B. No. 587, S.D. 2
Relating to the Board of Education

Thank you for the opportunity to submit testimony on this bill, which would require the Board of Education to hold no fewer than two community meetings each year. The Office of Information Practices (OIP) takes no position on this bill, but had previously testified to express concern about a confusing exemption from portions of the Sunshine Law, part I of chapter 92, and an alternative form of notice based on outdated Sunshine Law notice requirements. As these past issues have been addressed, OIP does not have any remaining concerns about the bill in its current form.



SENATE BILL 587, SD 2, 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 587, SD 1, relating to the Board of Education, which requires that the Board of Education hold at least two community meetings each year in each county to receive public input on public education and public library issues; removes restriction on community meetings to allow the meetings to be held for the purpose of formulating educational policy. Exempts community meetings from certain requirements; and requires the Board of Education to video record community meetings and make video recordings available.

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-587-SD-2

Submitted on: 3/10/2020 12:12:20 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
John Bickel	Americans for Democratic Action	Support	No

Comments:

Good public policy including education policy requires input from a range of stakeholders. This would improve the process.

SB-587-SD-2

Submitted on: 3/9/2020 2:45:36 PM

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

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

Support