

Date of Hearing: Monday, March 16, 2009

Committee: House Committee on Education

Board: Education

Person Testifying: Garrett Toguchi, Chairperson, Board of Education

Title of Bill: S.B. No. 438, Relating to Board of Education Meetings

Purpose of Bill: Authorizes the Board of Education to file any notice that specifies legislation or legislation-related agenda items no fewer than two calendar days before a meeting during the period from the convening of the Legislature in regular session to adjournment sine die of each regular session, and during any special session of the Legislature.

Board's Position: Chairperson Takumi, Vice Chairperson Berg, and members of the House Committee on Education, thank you for the opportunity to submit written testimony in **strong support** of S.B. No. 438.

As elected officials, Board of Education (Board) members recognize the importance of transparency and accountability in the public process. At the same time, as a governmental agency and as the elected statewide education policymaking board, the Board of Education must be able to carry out its business and responsibilities efficiently and effectively in serving the public.

In its "volunteer capacity," the Board oftentimes finds it difficult to meet the deadline-driven demands of the legislative session, which necessitate that Board of Education members be able to take a Board position or other action on legislation and legislation-related matters in a timely manner.

There are times when legislative hearings and deadlines, and meetings of the full Board do not necessarily coincide, thereby rendering the Board unable to take positions on legislation.

To enable the Board to participate more ably in the legislative process, we believe that it is necessary to provide the Board with some degree of flexibility in filing its notices. S.B. No. 438 provides this flexibility while establishing parameters of filing notices, to specify that this flexibility applies only to agenda items that contain legislation or legislation-related items during the time the Legislature is in session. The provisions in this bill thus ensure a reasonable degree of transparency, while enabling the Board to carry out its responsibilities efficiently and effectively in adhering to the time demands and requirements of the legislative process.

Thank you for the opportunity to submit written testimony in **strong support** of S.B. No. 438.

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
TELEPHONE: 808-586-1400 FAX: 808-586-1412
EMAIL: oip@hawaii.gov

To: House Committee on Education
From: Paul T. Tsukiyama, Director
Date: March 16, 2009, 2:00 p.m.
State Capitol, Room 309
Re: Testimony on S.B. 438
Relating to Board of Education Meetings

Thank you for the opportunity to submit testimony on S.B. 438.

The Office of Information Practices ("OIP") takes no position but offers comments and concerns on this bill, which would permit the Board of Education to give only two days' notice of a meeting, rather than the usual six days' notice, where only matters related to legislation will be discussed. OIP questions the necessity of this bill in light of current Sunshine Law provisions which already provide for allowances in notice requirements to discuss legislation.

The Sunshine Law's emergency meetings provision, section 92-8, Hawaii Revised Statutes, currently allows a board to hold a meeting on short notice to deliberate and decide how to respond to, among other things, a deadline established by a legislative body. This section would apply where a board seeks to take a position on proposed legislation before a scheduled legislative hearing. However, the board must meet the requirements set forth in section 92-8. Specifically, under current law a board seeking to have an emergency meeting to respond to proposed legislation must:

- (1) Make a written finding as to why the emergency meeting was needed;

- (2) Obtain concurrence from 2/3 of the board members and the Attorney General that the emergency meeting is appropriate;
- (3) File or post its written finding and agenda in the same places required for notice of a regular meeting, and notify persons on its mailing list as soon as practicable; and
- (4) Limit the actions taken at the meeting to those that could not wait till the date the board could have noticed a regular meeting for.

Thus, this bill allows the Board of Education to hold a short-notice meeting to discuss legislation without making the written findings or obtaining the Attorney General concurrence that it would be required to do to hold such a meeting under current law.

OIP also notes that this issue is not limited to the Board of Education. Every state and county board subject to the Sunshine Law must reconcile the Sunshine Law's six day notice period for regular meetings with the time demands of the legislative process. As stated above, the Sunshine Law's emergency meetings provision allows all boards to meet on short notice to respond to a legislative deadline, so long as the requirements contained in the provision are followed.

Thank you for the opportunity to testify.