

SB2763

SD1

OFFICE OF INFORMATION PRACTICES

STATE OF HAWAII
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To: Senate Committee on Judiciary and Labor

From: Cheryl Kakazu Park, Director

Date: February 20, 2014 at 10:30 a.m.
State Capitol, Conference Room 016

Re: Testimony on S.B. No. 2763, S.D. 1
Relating to the Board of Education

Thank you for the opportunity to submit testimony on this bill. The Office of Information Practices (“OIP”) is commenting to express concerns regarding this bill, which would require the Board of Education (“BOE”) to allow public testimony at any meeting on items that are not on its agenda but are within its authority.

In order to promote government transparency and allow for public participation, the Sunshine Law (Part I of HRS Chapter 92) requires boards to provide notice of its meetings and accept all written and oral testimony on every item on its agenda. **If an item is not on its agenda, board members cannot discuss, deliberate or decide that item.** A board may choose to have an **open forum** during a meeting at which members of the public can speak to any topic within the board’s authority, but a board is not required to do so; and if the board does choose to allow an open forum, **its members must be careful not to actually engage in any discussion of issues that are not on its agenda but are raised by the public during the open forum.**

Without proper notice on an agenda as required by the Sunshine Law, the general public would have no reliable means of knowing what subjects will be discussed during a meeting. Because the public has not necessarily been given notice of items that arise during the open forum, **interested persons may not be at the meeting to hear what others have to say about the issue or to present their views on the issue.** For example, a person interested in curricular reform might learn only after the fact that the BOE had heard extensive public testimony on adoption of a new curriculum during the open forum at a meeting that was supposed to be devoted to discussion of the unrelated issue of school bus contracting.

The open forum could also be used by people to intentionally subvert the spirit of the Sunshine Law. As another hypothetical, a developer could pack the audience with its supporters to speak during an open forum in favor of developing a school site, even if the matter was not listed on the agenda and the rest of the community had no notice that it would be discussed. The same could be done by opponents of a particular curriculum matter, without giving supporters notice that extensive testimony would be presented during the open forum.

OIP notes that the Committee on Education amended the bill to clarify that the open forum period would be at the end of each BOE meeting. While placing the open forum at the end of the meeting might result in some attrition in the number of people attending the meeting, the amendment would not in any way cancel out the BOE's obligation to hear all testimony on any issue raised by any person during the open forum. Under this bill, the BOE still have to listen to all comments made during the open forum, even if it could not discuss, deliberate, or decide non-agenda items at that meeting. Additionally, the BOE could still draw Sunshine Law complaints alleging that it illegally considered an issue not on its

agenda by hearing testimony on that issue as required by this bill, which places it between a rock and a hard place in trying to comply with the law.

Moreover, this bill could make it difficult for the BOE to conduct its necessary business and to schedule what issues it will consider at which meeting, because the board would be obligated to hear all public testimony on any issue within its authority that is raised by any person, even if the matter was not on the properly noticed agenda. Currently, a board that draws large numbers of testifiers can control its schedule and the focus and length of its meetings by selecting the items to include on its agenda for a given meeting. For example, a board may devote a full day meeting to a single high-interest item that is expected to draw a large amount of testimony, and then schedule a shorter meeting on another date with an agenda that includes several minor issues but not the high-interest one.

If the general public cannot count on being provided with proper notice of the items that will be discussed during open forums or a reliable estimate of the length and timing of meetings, transparency and participation in government may actually suffer as people lose interest in attending the BOE's meetings.

Finally, OIP notes that the Committee on Education amended this bill to place the open forum requirement in session law rather than statute and to clarify that the open forum would be at the end of each BOE meeting, but OIP does not believe that those amendments would change the legal effect of this bill in any significant way.

Because of the potential erosion of public participation and government transparency, as well as the administrative challenges this bill as proposed would present, OIP recommends that the bill be amended to remove Part II of the bill on page 2, lines 4 through 18.

Thank you for considering our testimony.



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COMMITTEE ON JUDICIARY AND LABOR

Thursday, February 20, 2014, 10:30 a.m., Room 016
S.B. 2763, SD1 RELATING TO THE BOARD OF EDUCATION
TESTIMONY

Douglas Meller, Legislative Committee, League of Women Voters of Hawaii

Chair Hee, Vice-Chair Shimabukuro, and Committee Members:

The League of Women Voters of Hawaii supports the intent of SB 2763 SD 1 to require the Board of Education to have an “open forum” at the end of its meeting agenda to allow the public to submit proposals for future agenda items.

The full Board would have the option, by publishing appropriate advance public notice in a Board agenda, to schedule full discussion and action on topics raised during the “open forum” of previous Board meetings.

We urge you to pass this bill. Thank you for the opportunity to submit testimony.



S E A C
Special Education Advisory Council
919 Ala Moana Blvd., Room 101
Honolulu, HI 96814
Phone: 586-8126 Fax: 586-8129
email: spin@doh.hawaii.gov

February 20, 2014

**Special Education
Advisory Council**

Ms. Ivalee Sinclair, *Chair*
Ms. Martha Guinan, *Vice
Chair*

Ms. Brendelyn Ancheta
Dr. Tammy Bopp
Dr. Robert Campbell
Ms. Deborah Cheeseman
Ms. Annette Cooper
Ms. Shari Dela Cuadra-Larsen,
liaison to the Superintendent
Ms. Jenny Gong
Ms. Gabriele Finn
Ms. Tami Ho
Ms. Barbara Ioli
Ms. Valerie Johnson
Ms. Deborah Kobayakawa
Ms. Bernadette Lane
Ms. Shanelle Lum
Ms. Dale Matsuura
Ms. Stacey Oshio
Ms. Zaidarene Place
Mr. Kenneth Powell
Ms. Barbara Pretty
Ms. Kau'i Rezentes
Ms. Melissa Rosen
Dr. Patricia Sheehey
Mr. Tom Smith
Ms. Lani Solomona
Dr. Daniel Ulrich
Ms. Amy Weich
Ms. Cari White
Ms. Susan Wood

Jan Tateishi, Staff
Susan Rocco, Staff

Senator Clayton Hee, Chair
Committee on Judiciary and Labor
State Capitol
Honolulu, HI 96813

RE: SB 2763, SD 1 - Relating to the Board Education

Dear Chair Hee and Members of the Committee,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), **supports** SB 2763, SD 1 that requires the Board of Education to allow public testimony on items not on a public meeting agenda, if certain requirements are met.

Our monthly SEAC meetings include a standing agenda item for public input, and we see this practice benefiting not only members of the public (most notably parents of students with disabilities) who wish to bring issues to our attention, but also our Council members. The input we receive educates us regarding current challenges facing individual students and educators in the field, and often leads to the discovery of systemic issues impacting large groups of students or school personnel.

The practice of offering time for open testimony is also in keeping with the stated intent in the Hawaii State Department and Board of Education Strategic Plan to improve internal and external communication, so that the Department, the Board and all education stakeholders can all work together in support of student success. We believe this is only possible by offering two-way communication.

SEAC also holds that in order for the Board to receive meaningful input from various stakeholders, including families and community members, there must be clear and timely notification of a variety of options for two-way communication. In a previous hearing on this bill in the Senate Committee on Education, Board Chair Don Horner



Testimony on SB 2763, SD 1
February 20, 2014
Page 2

commented on a number of opportunities for public input developed by the Board that are not evident on the Board's website, and therefore not widely known by interested members of the public, including SEAC.

Thank you for the opportunity to provide testimony. Should you have any questions or concerns, please do not hesitate to contact me.

Respectfully,

Ivalee Sinclair, Chair

February 19, 2014

JDL – Senate Committee on Judiciary and Labor
Hawai'i State Senate
JDLtestimony@capitol.hawaii.gov



re: **Testimony In Support of SB2763 with an Amendment for Statutory Requirement**

Aloha JDL Committee Members,

I ask that the JDL Committee amend SB2763 by making public forums at Board of Education meetings a statutory requirement in order to preserve the intent of The Sunshine Laws (per HRS §92-1) to open up board processes to public scrutiny and participation.

It is very important that the public be permitted to raise issues of concern regarding Department of Education Policy that is regulated by the Board of Education at BOE meetings. This is the only way to assure that the public's concerns can be delivered to all BOE members (participation) and recorded in the public record (scrutiny).

I have read the testimony submitted to the Senate EDU committee by the Board of Education and the Office of Information Practices. I have additional information which may be helpful in understanding why a statutory change is appropriate and necessary.

RELEVANCE TO SUNSHINE LAWS

§92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy - the discussions, deliberations, decisions, and action of governmental agencies - shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
- (2) The provisions requiring open meetings shall be liberally construed; and
- (3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings. [L 1975, c 166, pt of §1]

I would like to address some of the statements made in the 02-07-14 testimony on SB2763 from the Office of Information Practices and the Board of Education.

OIP: *A board may choose to have an open forum during a meeting at which members of the public can speak to any topic within the board's authority, but a board is not required to do so;*

This statement is precisely why Hawai'i needs a statutory requirement that the Board of Education provide an open forum to hear community concerns. Public voices are being silenced; important issues

are not able to be aired openly for public scrutiny and participation to occur. Minority opinions are easily silenced when the opportunity for the public to voice their concerns is not a statutory requirement.

OIP: *If an item is not on its agenda, board members cannot discuss, deliberate or decide that item.*

A regularly-scheduled, required agenda item of “Public Forum” does not have to involve BOE discussion, deliberation or decision, only listening. A Public Forum is merely a process by which the people can publicly address the entire Board and have their concerns entered into public record. Issues raised in a public forum of this format would not be a violation of Sunshine Laws. Considering that existing statutes require the provisions of open meeting to be construed liberally, the Sunshine Laws should not be interpreted so narrowly that they exclude the public from expressing its concerns openly before the Board.

It is my hope that concerns raised during a public forum will eventually become BOE agenda items that will open to Board discussion, deliberation, and decision.

OIP: *This bill could make it difficult for the BOE to conduct its necessary business and to schedule what issues it will consider at which meeting, because the board would be obligated to hear all public testimony on any issue within its authority that is raised by any person, even if the matter was not on the properly noticed agenda.*

I disagree with the OIP’s narrow scope of BOE necessary business. I believe it is part the Board of Education’s business to hear from the public on issues involving public education policy. If the people truly are vested with decision-making power, and the BOE is open to public participation, then the only viable and reasonable method of protecting the public's interest is the right to voice their concerns at Board meetings and have their testimony entered into the public record.

Besides, what is wrong with requiring that this Governmental agency hear from any person on any issue under its authority. Is that a fundamental principal of democracy – the right to address the government and request redress? Are the Sunshine Laws, as written or interpreted, a hindrance to open public communication or a pathway to public involvement?

OIP: *Additionally, the BOE could draw Sunshine Law complaints alleging that it illegally considered an issue not on its agenda by hearing testimony on that issue as required by this bill, which places it between a rock and a hard place in trying to comply with the law.*

The OIP had already included in its testimony, “A board may choose to have an open forum during a meeting at which members of the public can speak to any topic within the board’s authority,” indicating that it is not a violation of the Sunshine Laws to have a “Public Forum.” If the original text of SB2763 became a statutory requirement, any complaints about Sunshine Law violations because the BOE allowed the public to speak on issues of their choosing would be dismissed per this statute.

BOE MEETINGS

BOE: *We have conducted 15 evening community meetings throughout the state which is nearly double the number of meetings required by law.*

BOE Community meetings are not subject to the reporting requirements and public scrutiny that board meetings are, and this is a problem. Whatever public commentary that arises at a community meeting is lost forever if the attending board members wish to ignore it. Not all Board members attend community meetings so any testimony given there is delivered to only a few members of the Board.

These community meetings are few and far between (once a year in most communities and more than 90 miles from some locations); they offer a member of the public the opportunity for *only* 2 minutes of public comment for an entire year. In the last 12 months I attended BOE community meetings in Honolulu and Hilo. The majority of the time in these meetings was spent on presentations and reports I could have read about on the DOE web site, or topics already covered in Board meetings. There was 20 minutes of children singing at the Honolulu meeting. That was cute, but it didn't give the community much of a voice. I was allowed to ask one question in Honolulu, and even though there were less than 7 questions from the public allowed at that meeting, and no one else wanted to speak, I was not allowed to ask a second question. In Hilo, I was given my two minutes, a thank you for speaking, and that was the end of it. No public record. No follow up. The systemic censorship of public concerns is alarming.

At the Hilo meeting several librarians testified about the need for librarians in every school. One attendee bought a big sheet cake for the event and had it inscribed with "*Declaration for the Right to Libraries.*" Before the meeting even started, someone in authority had cut out the inscription (see picture). This petty act of censorship speaks volumes of how much public voices are silenced in the public education system.



**Censorship at BOE 11/21/13
Community Meeting**

BOE: *Our nine volunteer Board members have visited over 200 schools and attended over 400 community stakeholder meetings throughout the state. Additionally, the Board has held 169 committee and board meetings. All meeting have been open to the public and the meeting agenda allows for public testimony at the beginning of the meetings and prior to action items on the agenda.*

Regardless of the quantity of meetings, if the Board chair or any BOE committee chair wishes to exclude an item from an agenda, it will never have a chance to be voiced publicly before the Board nor be recorded in a public record anywhere.

BOE: *The board has expanded the opportunity for the public to send emails to the Board via the website as well as make phone calls to the Board office. All complaints are shared with all Board members and require a response within specific guidelines.*

There are no published guidelines regarding responses to email correspondence sent to the BOE. In the past 18 months I sent several requests that topics be added to the agenda so they may be opened for discussion, yet I received no more response other than a computer-generated verification of receipt. When I do receive a response, very often the author of the correspondence is not identified, and I have no idea who is making the statements.

BOE: *The BOE/DOE established an independent "hotline" for members of the public to anonymously express concerns. These are all recorded and an audit trail has been established.*

First, the existence of this "hotline" has not been widely advertised to the public. Second, the response time to a concern I submitted took more than 6 months to be concluded and the resolution was no more than quoting a policy that addressed my concerns about nepotism. Third, the scope of issues addressed by the hotline is limited to internal investigation of potential violations of existing statutes and regulations and does not allow for unaddressed or new issues to be reported or presented to the Board. During discussion of the hotline at the 2/4/14 BOE Audit Committee meeting in an agenda item described as, "*Presentation/Committee action on the Department of Education's Internal Audit Plan*

Quarterly Update October 1, 2013 – December 32, 2013” DOE representative Denise Yoshida was unable at that time to provide a report qualifying what the reported concerns were even though the hotline has been operational for almost a year. There are no public records of what the concerns have been about (even on a general level).

BOE: *Also, to allow for concerns or recommendations to be expressed in private from parents, employees and general public, our Board has established "chair office hour".*

Meeting privately with the Board chair denies citizens the opportunity to address all the Board members regarding important issues. I took advantage of a chair office hour with the express purpose of finding out how I could get issues of concern onto BOE agendas. The BOE Chair’s response was, “*You can’t. I don’t work for you.*”

BOE: *Additionally, we have added to the permanent Board agenda, a monthly Complex Area presentation with specific metrics and performance data so that each Board meeting allocates time for our 15 community complexes to specifically discuss their individual issues with the Complex Area Superintendent (“CAS”). This allows any community member to come and testify on any subject within their school complex with the CAS and senior DOE staff as well as the Board members present.*

This does not allow the public the opportunity to address the BOE on issues regarding state DOE and BOE policy. The agenda item is specifically limited to the Complex Area Superintendent’s report.

It is crucial for the JDL to understand that every single method of public participation described by the BOE presents a barrier to legitimate public concerns having a place to be aired before the entire BOE and entered into public record if the BOE chooses to exclude topics from agenda items. Under this system, minority opinions are systematically silenced.

Research has shown that community involvement builds better schools. I believe these findings because the school system of my youth in the state of New Jersey had a very active PTA, an involved community, and an approachable Board of Education that regularly held meetings where the public truly had a voice. In 20 years that school system, fueled by active community involvement, evolved from a 1-room school house with no indoor plumbing to one of the best school systems in the entire state. From my personal experience and that of many others in Hawai‘i, the corollary is also true: barriers to community involvement are deleterious to school functioning and performance.

Please support democracy and make it a statutory requirement that the Board of Education have a public forum added to its regularly-scheduled meetings (approx. twice a month), or at the very least, once a month.

Mahalo,



Vanessa Ott

From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: icalkins@hawaii.rr.com
Subject: Submitted testimony for SB2763 on Feb 20, 2014 10:30AM
Date: Wednesday, February 19, 2014 1:58:04 AM
Attachments: [DEMOCRATIC PARTY BLACKMAIL.odt](#)

SB2763

Submitted on: 2/19/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| IRA CALKINS | Individual | Support | Yes |

Comments: IRA CALKINS GOVERNMENTAL RESEARCHER 730 Captain Cook Ave Unit 426 Honolulu, Hawaii 96813-2161 CORPORATION BLACKMAIL Is the Democratic Party a Corporation? Is blackmail unlawful? The Democratic Party Line has taken away the voice of the people in the making of laws. Taxation with out representation in Hawaii. It appears the State Legislators are being blackmailed in to voting the Democratic party line, or else the Democratic Party will not support the Legislator in all state wide elections. It does not matter what the tax payers thinks, the Democratic Party line lays down the law on all bills before the Legislature. The chairman's in all committee meetings has a predisposed script to follow that the Speaker of the House, and the Speaker of the Senate has given the Committee Chairs to follow, to instruct the committee members how to vote on a any given measures, all Bills in all committees of the State of Hawaii Legislature. It is determined ahead of time by the Democratic Party members how a committee member will vote when staying with in the party line on any given Bill in the State of Hawaii Legislature, Democracy has been taken away from the tax payers in the State of Hawaii. Is the Democratic Party a Corporation? Is blackmail unlawful? Ira Calkins Honolulu 4696434 or 3498667 FAX 808-545-4707 Washington D.C. 202-697-9782

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From: mailinglist@capitol.hawaii.gov
To: [JDLTestimony](#)
Cc: jbickel15@yahoo.com
Subject: Submitted testimony for SB2763 on Feb 20, 2014 10:30AM
Date: Wednesday, February 19, 2014 8:53:33 AM

SB2763

Submitted on: 2/19/2014

Testimony for JDL on Feb 20, 2014 10:30AM in Conference Room 016

| Submitted By | Organization | Testifier Position | Present at Hearing |
|---------------------|---------------------|---------------------------|---------------------------|
| John Bickel | Individual | Support | No |

Comments: As an educator, I feel the Board of Education has become less connected to the public since it became an appointed Board. Opening up the meetings to public comment and testimony would help. Public education is one of the most important functions of government. Let do all we can to provide its leaders with more information and viewpoints as it makes decisions. Thank you for reading my testimony.

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