

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

House Committee on Judiciary & Hawaiian Affairs

Wednesday, March 3, 2021
2:00 p.m.
Via Videoconference
Hawaii State Capitol, Room 325

House Bill 608, House Draft 1, Relating to the Board of Education

Dear Chair Nakashima, Vice Chair Matayoshi, and Members of the Committee:

The Board of Education ("Board") appreciates the intent of HB608 HD1 but has comments. HB608 HD1 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.

The Board appreciates that the House Committee on Education accepted the Board's specific recommended amendments to this measure regarding community forums as permitted interactions under Sunshine Law. We believe these changes make this measure clearer and better conformed to its intent. The Board, however, still has comments on requiring at least six community forums each year and requiring an open forum at the end of each Board meeting.

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 sites 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

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.

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

The Board piloted the open forum concept at a couple of its meetings in 2019. 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 improved transparency and access.

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 has 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.

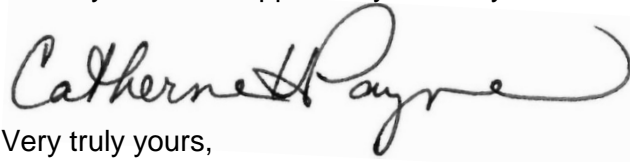
While the Board does not necessarily oppose mandatory open forums at the end of Board meetings, **the Board has significant doubts about these open forums producing the results this bill intends based on its recent experience.** The Board believes continuously

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)

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, last school year, the Board took 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 community stakeholders selected the topic that they wanted to discuss and the location and time of the meeting. The Board worked with them to tailor the meeting format to meet their needs and meeting goals. Communities responded positively to these meetings with more people attending than ever before. Moreover, the attendees 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. The Board looks forward to working with more community stakeholders and figuring out how to hold more of these types of community meetings under the current conditions.

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

A handwritten signature in black ink that reads "Catherine Payne". The signature is written in a cursive style with a large, sweeping flourish at the end.

Very truly yours,

Catherine Payne
Chairperson, Board of Education
Chairperson, 2021 Legislative Ad Hoc Committee

OFFICE OF INFORMATION PRACTICES

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To: House Committee on Judiciary & Hawaiian Affairs

From: Cheryl Kakazu Park, Director

Date: March 3, 2021, 2:00 p.m.
Via Videoconference

Re: Testimony on H.B. No. 608, H.D 1
Relating to the Board of Education

Thank you for the opportunity to submit testimony on this bill, which would require the Board of Education (BOE) to hold community forums and would set requirements for those community forums to qualify as a permitted interaction under the Sunshine Law. The Office of Information Practices (OIP) takes no position on the requirement to hold community forums, but **has concerns that the permitted interaction as set out in the H.D. 1 confusingly overlaps with the requirements for a Sunshine Law meeting** while not actually being treated as a meeting, **and it is not clear what is gained by having community forums attended by a majority of board members be governed by a special set of permitted interaction standards instead of being simply run as a meeting. To avoid disputes over the meaning of the proposed amendments, OIP offers its services to prepare appropriate language once the Committee's intent is made clear.**

Under the permitted interaction set out by the H.D. 1, the BOE is still required to file a notice following the same Sunshine Law standards for holding a meeting, which are found at HRS section 92-7. Those standards include an agenda

listing all items the board will consider at the meeting, which means that the BOE members would be barred from considering issues not listed on the filed agenda for a community forum. But if the purpose of the community forum is to allow members of the public to speak to board members about whatever is on their minds, having a limited list of topics board members can discuss would seem contrary to that purpose and likely to result in frustration for members of the public who wish to speak with board members about a different topic, especially given that members of the public are expressly permitted to raise any education or library issue at a community forum.

The proposed permitted interaction has other features that are similar to but not the same as regular Sunshine Law meeting requirements, potentially resulting in a complaint requiring OIP or a court to interpret exactly how they differ, such as the new requirement on page 2, lines 16-20 to hear from members of the public in a way that somewhat differs from the Sunshine Law's meeting testimony requirement.

Since the Board of Education has expressed in its previous testimony that it does not believe legislation is necessary to codify its existing practice of holding community forums, OIP defers to the BOE's preference to continue holding these forums under the existing provisions of the Sunshine Law rather than to create a new statute requiring and setting different and possibly conflicting standards for them. Should this Committee nevertheless prefer to codify the practice, OIP would be happy to work with the BOE and the Committee to determine what form of permitted interaction would best balance the BOE's needs with the public interest, which may entail changing the requirement in the H.D. 1 that the BOE's discussion at such forums be limited to topics listed on its filed agenda.

Thank you for considering OIP's concerns.



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HOUSE COMMITTEE ON JUDICIARY & HAWAIIAN AFFAIRS
Wednesday, March 3, 2021, 2 pm, State Capitol Room 325
HB 608, HD 1
Relating to the Board of Education

TESTIMONY

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

Chair Nakashima and Committee Members:

The League of Women Voters of Hawaii supports HB 608, HD 1. HB 608, HD 1 will provide many more opportunities for the public to ask the BOE to schedule public concerns on BOE meeting agenda.

However, the League notes that:

- the BOE still will have discretion over which subjects to include on BOE meeting agenda and
- the Sunshine Law restricts a BOE quorum from making decisions concerning subjects not included on their meeting agenda.

Thank you for the opportunity to submit testimony.

HB-608-HD-1

Submitted on: 3/2/2021 7:17:58 PM

Testimony for JHA on 3/3/2021 2:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Susan Pcola_Davis	Individual	Support	No

Comments:

Comments:

I STRONGLY SUPPORT THIS BILL.

To keep members of the public aware of discussions at community forums, 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.

Although the BOE has made major improvements for oral testimony at their meetings, there has not been an open forum at the end of its meeting agenda to afford all interested persons an opportunity to present oral testimony on any matter not on the agenda.

In the past, I have submitted suggestions for agenda items that are not on the upcoming meeting agenda nor any following meeting agendas. These suggestions are based on membership to various social media groups.

This is a must do! This is not a hard nut to crack. It would not have been necessary had the BOE accepting public recommendations for agenda items. A written report to the legislature no later than twenty days prior to the convening of the regular session of

2022 on its efforts ACTIONS on any policy under the BOE that now includes an open forum at the end of its meeting agenda to afford all interested persons an opportunity to present oral testimony on any matter not on the agenda.