

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

Senate Committee on Judiciary

Tuesday, March 30, 2021
9:50 a.m.

Via Videoconference

House Bill 608, House Draft 2, Senate Draft 1, Relating to the Board of Education

Dear Chair Rhoads, Vice Chair Keohokalole, and Members of the Committee:

The Board of Education ("Board") appreciates the intent of HB608 HD2 SD1 but has comments. HB608 HD2 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; (3) require an open forum at the end of each public Board meeting to afford attendees to testify on matters not on the agenda; and (4) eliminate the superintendent of education as a voting member constituting the public employer for the purpose of negotiating a collective bargaining agreement with personnel of the Department of Education

The Board 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.

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)

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.

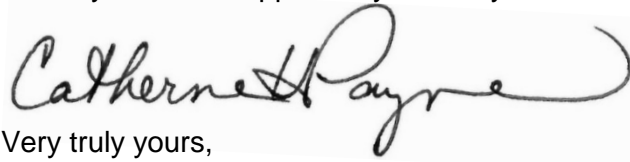
Currently, the Board invites members of the public to provide any comments or concerns in writing at any time. This allows for direct communication with Board members, which essentially has the same effect as delivering those same concerns or comments in person at an open forum but without requiring 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 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 initial "C" and a long, sweeping tail.

Very truly yours,

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

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: March 30, 2021, 9:50 a.m.
Via Videoconference

Re: Testimony on H.B. No. 608, H.D. 2, S.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** confusingly overlaps with the requirements for a Sunshine Law meeting while not actually being treated as a meeting. 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 this bill, the BOE is 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 17-20 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 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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SENATE COMMITTEE ON JUDICIARY
Tuesday, March 30, 2021, 9:50 am, State Capitol Videoconference
HB 608, HD 2, SD 1
Relating to the Board of Education

TESTIMONY

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

Chair Rhoads and Committee Members:

The League of Women Voters of Hawaii opposes HB 608, HD 2, SD 1 because of Constitutional concerns. Article III, Section 14 of the Hawaii State Constitution provides “Each law shall embrace but one subject which shall be expressed in its title.” Part I and Part 2 of HB 608, HD 2, SD 1 address two unrelated subjects, and the subject of Part II is not consistent with the bill’s title. The subject of Part I of HB 608, HD 2, SD 1 is the use of community forums and board meetings to expand public input to the Board of Education. The subject of Part II of HB 608, HD 2, SD 1 is whether the Superintendent of Education can vote during negotiation of collective bargaining agreements with bargaining units 5 and 6. The title of this bill is “Relating to the Board of Education”.

Thank you for the opportunity to submit testimony.



AMERICANS FOR DEMOCRATIC ACTION

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MAILING ADDRESS

P.O. Box 23404
Honolulu
Hawaii 96823

March 26, 2021

TO: Chair Rhoads and members of Judiciary Committee

RE: HB 608 HD 2 SD1 Relating to the Board of Education

Support for hearing on March 30

Americans for Democratic Action is an organization founded in the 1950s by leading supporters of the New Deal and led by Patsy Mink in the 1970s. We are devoted to the promotion of progressive public policies.

We support HB 608 HD2 SD1 as we support a more open Board of Education. Since the advent of the appointed Board, we have noticed fewer opportunities for the public to communicate with the Board. This bill would require community forums and require a forum in each county. The Department of Education is so large; we need this bill to make it more responsive to the public.

Thank you for your favorable consideration.

Sincerely,
John Bickel, President





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

LATE

Date: 03/30/2021

Time: 09:50 AM

Location: 3/30/2021 9:50 AM

Committee: Senate Judiciary

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: HB 0608, SD1 RELATING TO THE BOARD OF EDUCATION.

Purpose of Bill: Requires the board of education to hold no less than six community forums annually, with at least one forum in each county. Requires the board to include an open forum for public comments on non-agenda items. Requires a report to the legislature on implementing open forums. Eliminates the superintendent of education as a voting member constituting the public employer for the purpose of negotiating a collective bargaining agreement with personnel of the department of education. Effective 7/1/2050. (SD1)

Department's Position:

The Hawaii State Department of Education ("Department") respectfully opposes Part II of HB 608, HD2, SD1 which incorporates SB 810, SD1 into the current measure and eliminates the Superintendent of Education as a voting member for purposes of negotiating collective bargaining agreements for Bargaining Unit 05 (teachers) and Bargaining Unit 6 (educational officers). Bargaining Unit 05 consists of over 13,000 Department employees (teachers, counselors, librarians) and Bargaining Unit 06 includes nearly 1,000 Department employees serving as educational leaders (Principals, Vice Principals and educational officers) throughout the Department.

Eliminating the Superintendent from the collective bargaining team will have negative consequences and is inconsistent with the manner in which the other Bargaining Units and their employers operate during collective bargaining. Furthermore, the Superintendent of Education is responsible for the day-to-day operations of the Department and understands the impacts the collective bargaining agreements will

have on daily operations at the school, complex and state level functions at the Department.

Currently, the Superintendent, in consultation with the Office of Collective Bargaining, Department of Human Resource Development, Department of Budget and Finance, and the Department of the Attorney General Employment Law Division, mitigates collective bargaining impacts and its effect on other bargaining units, otherwise known as the whipsaw effect.

The Superintendent provides fundamental operational insight at the bargaining table that impacts approximately 23,000 salaried employees in nine (9) bargaining units (1, 2, 3, 4, 5, 6, 9, 10 and 13) throughout its statewide system across four (4) counties to understand and evaluate union demands.

The Superintendent oversees three (3) distinct personnel systems -- certificated personnel, civil service personnel, and support services personnel -- whose employees serve a traditional 12-month work schedule (similar to other public employer jurisdictions) and a 10-month work schedule that is aligned to the official school calendar.

The Board of Education, whose role is to establish education policies for the Department, works collaboratively with the Superintendent and expects the Department to carry out Board policies and to operate the Department effectively and efficiently. Because the collective bargaining agreements prescribe wages, hours and other conditions of work, the Superintendent must be actively involved as a participant and voting member of the negotiations process and have a voice and a vote on mandatory subjects of bargaining.

The Superintendent also has a Labor Relations Office whose role is to address grievances as a result of perceived or actual violations of the collective bargaining agreements. Without a vote at the table, the Superintendent will have less opportunity to influence the agreement, which may negatively impact disputes over the contract after it is approved.

The Department strongly believes the best option is to maintain the current language of Section 89-6(d)(3), Hawaii Revised Statutes, which includes the Superintendent with a seat at the bargaining table and provides an equitable balance that facilitates fair collective bargaining negotiations.

Thank you for the opportunity to provide testimony for HB 608, HD2, SD1.

The Hawai'i State Department of Education is committed to delivering on our promises to students, providing an equitable, excellent, and innovative learning environment in every school to engage and elevate our communities. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.