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To: Senate Committee on Judiciary

From: Cheryl Kakazu Park, Director

Date: February 25, 2022, 9:30 a.m.
State Capitol, Via Videoconference

Re: Testimony on S.B. No. 2334, S.D. 1
Relating to the Board of Education

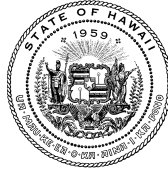
Thank you for the opportunity to submit testimony on this bill, which would require the Board of Education (BOE) to hold no less than six community forums annually, with at least one forum in each county; to include an open forum for public comments on non-agenda items at BOE meetings; and to report on the open forum to the legislature. The Office of Information Practices (OIP) offers **comments in support** of this bill that would improve an existing permitted interaction.

In addition to increasing the number of community forums to be held annually, this bill would amend an existing provision making exceptions to the Sunshine Law for the BOE's community forums by (1) limiting the number of BOE members in attendance to less than a quorum, and (2) fixing several technical issues with the existing language by making BOE members' attendance a permitted interaction under the Sunshine Law rather than a meeting exempted from various Sunshine Law requirements. The permitted interaction would cover attendance at a community forum by BOE members so long as the BOE posts notice of the date, time, and place of each forum, the forums are open to the public and allow members

of the public to offer their views on matters within the BOE's authority, no commitment to vote is made or sought at the forum, and the members' attendance at the form is reported at the next BOE meeting.

The proposed permitted interaction provides clear standards for how BOE members can hold community forums consistent with the Sunshine Law, and it does not present the potential conflicts with or confusion over the Sunshine Law's requirements that the existing language does. Thus, while OIP takes no position on the issue of whether the BOE should be required to hold community forums or how frequently, **OIP believes the proposed amendment creating a permitted interaction for holding a community forum is an improvement over the existing language.**

Thank you for considering OIP's testimony.



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

Senate Committee on Judiciary

Friday, February 25, 2022
9:30 a.m.
Via Videoconference

Senate Bill 2334, 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”) respectfully provides **comments** on SB 2334 SD 1, which 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) establish these forums as permitted interaction groups under Hawaii Revised Statutes (“HRS”) Section 92-2.5 with certain conditions; (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) require the Board to report to the 2023 Legislature on its efforts to amend its policies to include an open forum at the end of its meeting agenda.

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.

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 making community forums permitted interactions under Sunshine Law

The Board appreciates that this bill's introducers clearly reviewed comments in testimony from the Board, the Office of Information Practices, and open government advocates on similar bills from previous legislative sessions to propose permitted interaction approach to community forums. We believe this will address the concerns raised by all parties on similar iterations of this measure.

The Board, however, requests one important amendment. **We ask that the committee remove the amendment to limit community forums to “less than a quorum of board members” (page 1, lines 10-11).**

The Board does not believe limiting the number of Board members who can attend a community forum provides any benefit; rather, it hampers the Board's ability to meet the purposes of community forums in some instances. Current law already prohibits the Board from formulating policy at community meetings, and this measure adds an additional safeguard by prohibiting Board members attending community forums from making commitments relating to votes on matters. In short, community forums allow the public to engage in a conversation with the Board, and often communities want to engage with more than just a segment of the Board. A regular Sunshine Law meeting is not effective for this purpose (which is why the Board does not believe the open forums that this bill contemplates would fulfill their intent, as explained later in this letter).

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**

¹ See Section 6.4 of the Board's bylaws, available here: [https://boe.hawaii.gov/Documents/Bylaws%20\(amended%202021-07-15\).pdf](https://boe.hawaii.gov/Documents/Bylaws%20(amended%202021-07-15).pdf).

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, 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 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, in the 2019-2020 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.

If the committee still feels it is necessary to require open forums, we request technical changes to the measure for clarity. Specifically, we ask that the committee either insert a sunset date for Section 2 of the bill if the requirement is to be temporary or change Section 2 to codify the requirement in statute rather than session law if it is to be a longstanding.

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

Sincerely,

A handwritten signature in cursive script that reads "William N. Arakaki". The signature is written in black ink and is positioned above the printed name and title.

Bill Arakaki

Chairperson, Board of Education 2022 Legislative Ad Hoc Committee



SENATE COMMITTEE ON JUDICIARY
Friday, February 25, 2022, 9:30 am, Videoconference
SB 2334, SD1
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 supports SB2334, SD1. We support an opportunity for public input at ad hoc community forums and at the end of BOE meetings.

Thank you for the opportunity to submit testimony.