



LATE

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

Senate Committee on Education

Friday, February 5, 2021
3:00 p.m.
Via Videoconference
Hawaii State Capitol, Room 229

Senate Bill 467, Relating to the Board of Education

Dear Chair Kidani, Vice Chair Kim, and Members of the Committee:

The Board of Education ("Board") appreciates the intent of SB 467 but has comments. SB 467 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.

This measure is substantively identical to SB 2664 SD1 HD1 from the 2020 Legislative Session, and the Board offers similar testimony. Legislative committees also heard two similar measures last session, SB 587 (a carryover bill from the 2019 Legislative Session) and HB 2510 (the companion to SB 2664). The Board reviewed the testimony submitted on all three bills, which we reference and address in our comments below.

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 making community forums permitted interactions under Sunshine Law

As previously noted, the Board reviewed the testimony submitted for similar measures from past sessions, and we feel the testimony from two organizations deserve further attention and discussion.

First, testimony from the Office of Information Practices (“OIP”) on SB 587 during the 2019 Legislative Session noted that HRS Section 302A-1106.5 contains “a confusing exemption from portions of Sunshine Law.” In its testimony on the same measure during the 2020 Legislative Session, OIP recommended amending the measure to mirror the language in HB 2510 and SB 2664, which would have made community forums permitted interactions under HRS Section 92-2.5 and presumably clarify for OIP the applicability of Sunshine Law to the Board’s community forums.

However, the second testimony we would like to highlight, from the Civil Beat Law Center for the Public Interest (“Civil Beat Law Center”) on both HB 2510 and SB 2664 during the 2020 Legislative Session, raises concerns about making community forums permitted interactions. Specifically, the Civil Beat Law Center notes that by designating community forums as permitted interactions, this measure would eliminate the requirements of the Board to provide written public notice of the community forum, open the forum to the public, and accept testimony from all interested persons. The Board is dedicated to thoughtful and intentional engagement with stakeholders and improving transparency and access to information, and it would like to find a way to address the concerns raised by the Civil Beat Law Center.

The Board believes it is possible to reconcile both the concern from OIP about the unclear applicability of Sunshine Law to community meetings and the Civil Beat Law Center’s concerns about the transparency and access of community meetings to the public while maintaining the Board’s operational flexibility in executing these meetings. Each kind of permitted interaction under HRS Section 92-2.5 has its own set of conditions. Therefore, a reasonable solution is to designate community meetings/forums as permitted interactions, as this bill currently does, and expand the conditions of that kind of permitted interaction to address transparency and access concerns raised by the Civil Beat Law Center. To this end, **the Board’s recommended amendments to the relevant portions of HRS Section 302A-1106.5 (starting from line 10 in this bill) are as follows:**

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 board chairperson shall designate board members to attend [the] each community [meetings.] forum. These community [meetings] forums shall not be held for the purpose of formulating education policy. The community [meetings] forums shall be [exempt from sections 92-2.5, 92-7, 92-9, and 92-41; provided that the board shall give written public notice of each community meeting. The meeting notice shall indicate the date, time, and place of the meeting, and shall be filed in the office of the lieutenant governor and in the board’s office for public inspection six calendar days before the meeting. The notice shall also be posted at the site of the meeting.]~~ a permitted interaction under section 92-2.5; provided that:

- (1) The board shall give a written public notice that indicates the date, time, and place of each community forum; provided that the notice shall be subject to the same posting and filing requirements of board meeting notices, pursuant to section 92-7(b);
- (2) Community forums shall be open to the public and all persons shall be permitted to attend; provided that the removal of any person or persons who wilfully disrupts a community forum to prevent and compromise the conduct of the community forum shall not be prohibited;
- (3) The board shall afford all interested persons an opportunity to submit data, views, or arguments, in writing or in person, on any public education or public library issues at each community forum;
- (4) No commitment relating to a vote on a matter is made or sought at any community forum; and
- (5) At the next duly noticed meeting of the board, the board members shall report their attendance and the matters presented and discussed at each community forum.”

Here are highlights of the key differences between our proposal above and the current version of this bill:

- The above proposal removes the amendment that would allow only less than a quorum of Board members to attend a community forum. 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 the proposal above adds an additional safeguard by prohibiting Board

members attending community forums from making commitments relating to votes on matters.

- The above proposal keeps the requirement of a written public notice but subjects the notice to the same posting and filing requirements for other meeting notices rather than outdated posting and filing requirements.
- The above proposal ensures community forums are open to the public and attendees have an opportunity to share their views by using similar language found in HRS Section 92-3, which sets similar requirements for other public meetings.

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 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, sweeping flourish at the end.

Very truly yours,

Catherine Payne
Chairperson, Board of Education
Chairperson, 2020 Legislative Ad Hoc Committee

OFFICE OF INFORMATION PRACTICES

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To: Senate Committee on Education

From: Cheryl Kakazu Park, Director

Date: February 5, 2021, 3:00 p.m.
Via Videoconference

Re: Testimony on S.B. No. 467
Relating to the Board of Education

Thank you for the opportunity to submit testimony on this bill, which would require the Board of Education to hold community forums attended by less than a quorum of its members, which would be considered a permitted interaction under part I of chapter 92, the Sunshine Law. The Office of Information Practices (OIP), which has testified on versions of this measure in previous years, has no concerns regarding this bill as introduced.

Thank you for the opportunity to testify.



ADA

HAWAII

AMERICANS FOR DEMOCRATIC ACTION

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P.O. Box 23404
Honolulu
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February 3, 2021

TO: Chair Kidani and members of EDU Committee

RE: SB 467 Relating to the Board of Education

Support for hearing on Feb. 5

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 SB 467 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





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SENATE COMMITTEE ON EDUCATION
Friday, February 5, 2021, 3 pm, State Capitol Room 229
SB 467
Relating to the Board of Education

TESTIMONY

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

Chair Kidani and Committee Members:

The League of Women Voters of Hawaii supports the intent of SB 467. The Sunshine Law restricts board quorums from discussing subjects which are not listed on their meeting agenda. SB 467 will provide many more opportunities for the public to ask the BOE to schedule public concerns on future BOE meeting agenda. However, the League notes that the Sunshine Law does not actually prevent the BOE from voluntarily doing anything proposed in SB 467.

Thank you for the opportunity to submit testimony.

THE CIVIL BEAT
LAW CENTER FOR THE PUBLIC INTEREST

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Senate Committee on Education
Honorable Michelle N. Kidani, Chair
Honorable Donna Mercado Kim, Vice Chair

**RE: Testimony Commenting on S.B. 467,
Relating to the Board of Education**

Hearing: February 5, 2021 at 3:00 p.m.

Dear Chair and Members of the Committee:

My name is Brian Black. I am the Executive Director of the Civil Beat Law Center for the Public Interest, a nonprofit organization whose primary mission concerns solutions that promote government transparency. Thank you for the opportunity to submit comments on S.B. 467. **The Law Center would support the amendments recommended by the Board of Education (BOE) in testimony last year on the prior version of this bill [S.B. 2664] as more consistent with the stated intent of these community forums than the current bill.**

This bill modifies the application of the Sunshine Law to BOE community forums. Under existing law, BOE must: (1) provide written public notice that the forum will be held (although no specific agenda is required); (2) open the community forum to the general public; and (3) accept testimony from all interested persons.

By designating the community forum as a permitted interaction under HRS § 92-2.5, this proposal will eliminate all of those requirements. In broad terms, a “permitted interaction” exempts the designated meeting from the Sunshine Law – usually imposing alternative requirements to protect the public interest. **Here, the current version of the bill would authorize BOE to hold a “community forum” without any notice to the public, completely outside the public eye, and restrict who is permitted to offer views.** That result does not seem consistent with the previously stated purpose to have the BOE “discuss and receive input from the community on public education and public library issues” or the desire stated in 2020 Committee Report No. 2366 to “increase the engagement of stakeholders on the neighbor islands” or in Committee Report No. 1021-20 to “provid[e] greater access to the Board of Education.”

Thank you again for the opportunity to provide comments on S.B. 467.

SB-467

Submitted on: 2/3/2021 11:48:14 AM

Testimony for EDU on 2/5/2021 3:00:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
cheryl B.	Individual	Support	No

Comments:

SUPPORT.