



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

November 19, 2020

TO: Board of Education

FROM: Catherine Payne
Chairperson, Board of Education

AGENDA ITEM: Action on designation of Board members to an investigative committee (a permitted interaction group pursuant to Hawaii Revised Statutes Section 92-2.5(b)(1)), concerning Board policy positions and legislative reports for 2021 Legislative Session

I. EXECUTIVE SUMMARY

- The proposed approach to the 2021 Legislative Session is similar to the Board of Education's ("Board") approach to the 2020 Legislative Session with an investigative committee that would develop the Board's legislative policy positions and legislative reports and an ad hoc committee that would engage with the Legislature during legislative session.
- The investigative committee would conduct its work from November 19 to December 3, 2020, and the ad hoc committee would conduct its work from December 17, 2020 through July 2021.
- It is too late to propose changes to law through the Governor's administrative package.
- The recommendation is to establish and designate Board members to an investigative committee tasked with the duties described in this memorandum.

II. BACKGROUND

The Board increased its engagement with the Legislature during the 2019 and 2020 Legislative Sessions through the adoption of legislative policy positions and formation of an ad hoc committee that represented the Board before the Legislature on its adopted policy

positions. Legislators and the Governor appeared to appreciate the Board's presence and engagement, and the Board was able to make its policy positions on a number of important legislative measures known to the Legislature and the public in an efficient and effective manner.

Last year, at its August 1, 2019 general business meeting, the Board expanded its approach to be more proactive in engaging the Legislature for the 2020 Legislative Session by establishing an investigative committee in advance of an ad hoc committee.¹ The Board tasked the investigative committee to do the following:

1. Develop, and recommend to the Board for approval, legislative policy positions for the 2020 Legislative Session;
2. Based on the policy positions recommended to and subsequently adopted by the Board, determine whether the Board should consider requesting any statutory changes;
3. If the investigative committee determined the Board should consider requesting statutory changes, develop, and recommend to the Board for approval, legislative proposals for the 2020 Legislative Session; and
4. Identify the reports the Board was required to submit to the Legislature prior to the 2020 Legislative Session and develop, and recommend to the Board for approval, the required legislative reports.

Note that two distinct committees were necessary to carry out the proposed work because of the differing and unique responsibilities of each and the provisions in Sunshine Law and the Board's bylaws. The Board established an investigative committee² pursuant to Hawaii Revised Statutes ("HRS") Section 92-2.5(b)(1)³ because it was responsible for investigating and presenting recommendations on the matters described above. In addition, the Board

¹ See this memorandum:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190801_Action%20on%20Investigative%20Committee%20concerning%202020%20Legislative%20Session.pdf.

² The By-Laws of the Hawaii State Board of Education, Article V, Section 5.6, provides:

"Investigative Committees. The Board, as provided by law, may designate two or more Board members, but less than the number of members that would constitute a quorum of the Board, to investigate matters concerning Board business. The Board members designated by the Board are required to report their resulting findings and recommendations to the entire Board at a properly noticed meeting."

³ HRS Section 92-2.5(b)(1) provides as follows: "[t]wo or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to . . . [i]nvestigate a matter relating to the official business of their board; provided that:

- (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;
- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
- (C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board[.]"

established an ad hoc committee⁴ pursuant to HRS Section 92-2.5(b)(2)⁵ because it was responsible for presenting, discussing, and negotiating the Board's adopted policy positions at the Legislature.

On September 19, 2019, the Board adopted the investigative committee's recommendations for policy positions for the 2020 Legislative Session.⁶ The committee did not recommend seeking statutory changes or submitting legislative proposals. On December 5, 2019, the Board adopted the investigative committee's recommendations concerning legislative reports for the 2020 Legislative Session. The only legislative report was the Board's annual report on charter schools.⁷

III. DISCUSSION

As the Board's previous approach served it well last year, it makes sense to adopt a similar approach to the 2021 Legislative session. However, this time around, it is too late in the year to propose changes to statute through the Governor's administrative package, although I will note that the investigative committee did not propose any such changes last year.

The table below outlines the projected timeline for this approach. Under this timeline, the investigative committee would conduct its work from November 19 to December 3, 2020,

⁴ The By-Laws of the Hawaii State Board of Education, Article V, Section 5.5, provides:

"Ad Hoc Committees. The Board Chairperson may, as circumstances warrant, authorize the creation of an ad hoc committee for a discrete and specific purpose of interest to the Board and shall appoint all members and officers of such ad hoc committee(s). The Board shall approve the charge of any ad hoc committee. Such committee may be created for a definite time period or until its specific function has been completed, but shall not exist longer than one year from the date of authorization unless specifically authorized by its charge."

⁵ HRS Section 92-2.5(b)(2) provides as follows: "[t]wo or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to . . . [p]resent, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation."

⁶ The investigative committee's recommended policy positions for the 2020 Legislative Session are attached as Exhibit A to this memorandum:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190919_Action%20on%20Investigative%20Committee%20concerning%20Board%202020%20legislative%20policy%20positions.pdf. The Board subsequently amended these policy positions on February 20, 2020 (see this memorandum:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20200220_Action%20on%20Board%20Policy%20Positions%20-%20Authorizer%20system.pdf; and this memorandum: http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/HR_20200220_Action%20on%20Board%20Policy%20Positions%20-%20Superintendent%20evaluation.pdf).

⁷ The investigative committee's recommended annual report on charter schools is attached as Exhibit 1 to this memorandum:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_12052019_Action%20on%20Investigative%20Committee%20concerning%20Board%202020%20legislative%20reports%20%28annual%20charter%20school%20report%29.pdf.

and the ad hoc committee would conduct its work from December 17, 2020 through July 2021.

Date	Activity
November 19, 2020	Board establishes investigative committee
December 3	Investigative committee presents proposed legislative policy positions and draft legislative reports to the Board and concludes its work
December 17	<ul style="list-style-type: none"> • Board adopts legislative policy positions and approves legislative reports • Board establish ad hoc committee
December 2020-January 2021	Ad hoc committee conducts pre-session work with legislators and Superintendent
January-May 2021	Ad hoc committee tracks legislation and lobbies as appropriate
May-July	Ad hoc committee provides Governor advice on passed legislation and concludes its work

IV. RECOMMENDATION

I recommend the Board establish an investigative committee tasked with the duties described in this memorandum, and at a later Board meeting, establish an ad hoc committee to engage with the Legislature during the 2021 Legislative Session. I recommend assigning Board Members Lynn Fallin, Kili Namau‘u, and Bruce Voss and myself to the investigative committee, with me serving as committee chairperson.

Proposed Motion

Move to:

- 1. Establish an investigative committee (a permitted interaction group pursuant to Hawaii Revised Statutes Section 92-2.5(b)(1)) tasked with:**
 - a. Developing the Board’s legislative policy positions for the 2021 Legislative Session; and**
 - b. Drafting any legislative reports due by the Board to the 2021 Legislature; and**
- 2. Designate Board Chairperson Catherine Payne and Board Members Lynn Fallin, Kili Namau‘u, and Bruce Voss to serve on the investigative committee, with Board Chairperson Payne serving as chairperson.**