



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

August 1, 2019

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, Board legislative proposals, and legislative reports for 2020 Legislative Session

I. EXECUTIVE SUMMARY

- The proposed approach to the 2020 Legislative Session is similar to the Board of Education's ("Board") approach to the 2019 Legislative Session but expanded to be more proactive.
- In addition to establishing an ad hoc committee later in the year to engage with the Legislature during the legislative session, the proposed approach also establishes an investigative committee to develop the Board's legislative policy positions, legislative proposals, and legislative reports.
- The investigative committee would conduct its work from August 1 to November 21, 2019, and the ad hoc committee would conduct its work from October 17, 2019 through July 2020.
- Starting on legislative policy positions much earlier in the year allows the Board to consider proposing proactive changes to law through the Governor's administrative package rather than simply reacting to legislation proposed by others.
- 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 Legislative Session 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 (“2019 Legislative Ad Hoc Committee). 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.

At its December 6, 2018 general business meeting, the Board adopted policy positions supporting proposed legislation that would have advanced the Board and Department of Education’s Strategic Priorities for the 2018-2019 school year, policy positions relating to the Hawaii State Public Library System, and other general policy positions.¹ At that same meeting, the Board also established the 2019 Legislative Ad Hoc Committee to present, discuss, and negotiate its policy positions for the purposes of engaging in the 2019 Legislative Session.² The Board subsequently adopted policy positions related to charter schools at its February 7, 2019 general business meeting³ and policy positions related to early learning at its March 7, 2019 general business meeting.⁴

III. PROPOSED APPROACH FOR 2020 LEGISLATIVE SESSION

I would like to use a similar, but expanded and more proactive approach to engage the Legislature again for the 2020 Legislative Session. In addition to establishing an ad hoc committee later in the year to engage with the Legislature during the legislative session on the Board’s policy positions, I would also like to establish an investigative committee at this time, well before and in preparation for legislative session, to do the following:

¹ The policy positions the Board adopted at its December 6, 2018 general business meeting are available here:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20181206_Action%20on%20Board%20policy%20positions%202019%20legislative%20session.pdf.

² See this memorandum for more information on the 2019 Legislative Ad Hoc Committee:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20181206_Action%20on%20Ad%20Hoc%20Committee%20re%202019%20Legislative%20Session.pdf.

³ The policy positions the Board adopted at its February 7, 2019 general business meeting are available here:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190207_Action%20on%20Board%20policy%20positions%202019%20legislative%20session.pdf.

⁴ The policy positions the Board adopted at its March 7, 2019 general business meeting are available here:

http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190307_Action%20on%20Board%20policy%20positions%202019%20legislative%20session.pdf.

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 determines the Board should consider requesting statutory changes, develop, and recommend to the Board for approval, legislative proposals for the 2020 Legislative Session.
4. Identify the reports the Board is 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 are necessary to carry out the proposed work because of the differing and unique responsibilities of each and the provisions in Sunshine Law and the By-Laws of the Hawai'i State Board of Education. The Board would establish an investigative committee⁵ pursuant to Hawaii Revised Statutes ("HRS") Section 92-2.5(b)(1)⁶ because it would be responsible for investigating and presenting recommendations on the matters described above. In addition, the Board would establish an ad hoc committee⁷ pursuant to HRS Section 92-2.5(b)(2)⁸ because it would be responsible for presenting, discussing, and negotiating the Board's adopted policy positions at the Legislature.

⁵ 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."

⁶ 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[.]"

⁷ 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."

⁸ 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 table below outlines the projected timeline for this approach. Under this timeline, the investigative committee would conduct its work from August 1 to November 21, 2019, and the ad hoc committee would conduct its work from October 17, 2019 through July 2020.

Date	Activity
August 1, 2019	Board establishes investigative committee
September 5	Investigative committee presents proposed legislative policy positions to the Board
September 19	<ul style="list-style-type: none"> • Board adopts legislative policy positions • Investigative committee presents legislative proposals (i.e., draft bills), if any
October 3	<ul style="list-style-type: none"> • Board approves legislative proposals • Board establish ad hoc committee
October-December	Ad hoc committee conducts pre-session work with legislators and Superintendent
November 21	Investigative committee presents draft legislative reports and concludes its work
December 5	Board approves legislative reports
January-May 2020	Ad hoc committee tracks legislation and lobbies as appropriate
May-July	Ad hoc committee provides Governor advice on passed legislation and concludes its work

Starting on legislative policy positions much earlier in the year allows the Board to consider proposing proactive changes to law through the Governor’s administrative package rather than simply reacting to legislation proposed by others. In addition, it is another opportunity to work more closely with the Governor and Legislature, the Board’s co-policymakers for public education.

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 2020 Legislative Session. I recommend assigning Board Members Kili Namau’u, Dwight Takeno, and Bruce Voss and myself to the investigative committee, with me serving as committee chairperson.

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.”

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 2020 Legislative Session;**
 - b. Determining whether the Board needs to request any statutory changes based on the policy positions;**
 - c. Developing the Board's legislative proposals based on that determination for the 2020 Legislative Session; and**
 - d. Drafting any legislative reports due by the Board to the 2020 Legislature; and****
- 2. Designate Board Chairperson Catherine Payne and Board Members Kili Namau'u, Dwight Takeno, and Bruce Voss to serve on the investigative committee, with Board Chairperson Payne serving as chairperson.**