



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

October 3, 2019

TO: Catherine Payne
Chairperson, Board of Education

FROM: Catherine Payne
Chairperson, Board of Education

AGENDA ITEM: Board Action on designation of Board members to an ad hoc committee (a permitted interaction group pursuant to Hawaii Revised Statutes Section 92-2.5(b)(2)), concerning 2020 Legislative Session

I. EXECUTIVE SUMMARY

- The 2019 Legislative Session ad hoc committee did valuable work by building relationships with legislators and having policy conversations with the Legislature as the Board's co-policy making counterpart.
- I recommend that the Board form a 2020 Legislative ad hoc committee to continue the Board's legislative efforts with the following members: Board Members Kili Namau'u, Dwight Takeno, and Bruce Voss as 2020 Legislative Ad Hoc Committee Members and myself, serving as 2020 Legislative Ad Hoc Committee Chairperson

II. BACKGROUND

On December 6, 2018, the Board of Education ("Board") formed an ad hoc committee concerning the 2019 Legislative Session.¹ This ad hoc committee allowed the Board to take a more active role in engaging with the Hawaii State Legislature by attending hearings, submitting testimony, and meeting with legislators, among other things. The ad hoc committee was formed to ensure compliance with Sunshine Law requirements while allowing for greater interaction between the four Board members that served on the committee and the

¹ My memorandum regarding the proposal to form this committee is available at: http://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20181206_Action%20on%20Ad%20Hoc%20Committee%20re%202019%20Legislative%20Session.pdf. The minutes for the December 6, 2018 General Business Meeting is available at: <https://alala1.k12.hi.us/STATE/BOE/Minutes.nsf/a15fa9df11029fd70a2565cb0065b6b7/ee25c8fc73efac160a25837f007a07b6?OpenDocument>

Legislature. I believe that the work of the 2019 Legislative Session ad hoc committee was valuable and helped the Board build relationships and have policy conversations with the Legislature as the Board's co-policy making counterpart.

Authority. Sunshine Law allows two or more Board Members to present, discuss, or negotiate a position the Board has adopted, provided that the Board makes the assignment and establishes the scope of each member's authority before any presentation, discussion, or negotiation takes place.² The By-Laws of the Hawaii State Board of Education allows the Board Chairperson to form an ad hoc committee for a discrete and specific purpose of interest to the Board for a definite time period or until its specific function has been completed.³ The Board must approve the charge of the ad hoc committee.

The legislative ad hoc committee is not required to report its findings at a public meeting before the full Board can discuss or act on the report, nor is it required to report after attending any meetings or hearings.⁴ However, I would like the

² Hawaii Revised Statutes, [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.”

³ 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.”

⁴ See QUICK REVIEW: Sunshine law Options to address State Legislative Issues and Measures, July 2018, available at: <https://oip.hawaii.gov/wp-content/uploads/2018/07/0106-Quick-Review-SL-legislative-options-July-2018.pdf>, which provides in pertinent part:

“Third Option: Permitted Interaction Group under Section 92-2.5(b)(2), HRS

Some boards may prefer to have more than two members involved in legislative matters. If so, a board may consider the establishment of permitted interaction group (“PIG”) under section 92-2.5(b)(2), HRS, which could consist of more than two members, so long as it is less than a quorum of the board.

Initially, the board should adopt its position or establish policy directives at a public meeting duly noticed under the Sunshine Law. The agenda item in the public meeting notice would describe the specific topic, subject matter, or legislative measure, including any bill number, if known, that the board desires to adopt a position upon or to set a policy directive in response to any legislative measure the board anticipates could be discussed during a legislative session. An additional agenda item for the public meeting should describe the PIG to be established under section 92-2.5(b)(2), HRS, including the assignment of specific board members to the PIG and the establishment of the scope of each member's authority to /present, discuss, or negotiate any position that the board had previously adopted.

legislative ad hoc committee to report regularly to the Board on its activities, similar to last year.

Ad Hoc Committee and Member Authority. As Board Chairperson, I hereby authorize the creation of the 2020 Legislative Ad Hoc Committee and appoint the following members to such committee: Board Members Kili Namau'u, Dwight Takeno, and Bruce Voss as 2020 Legislative Ad Hoc Committee Members and myself, serving as 2020 Legislative Ad Hoc Committee Chairperson. All members of the committee will have the authority to present, discuss, or negotiate any of the policy positions the Board adopted at the general business meeting today. Committee members will also be authorized to present, discuss, or negotiate any further policy positions the Board adopts for the 2020 Legislative Session or any amendments to existing policy positions for the 2020 Legislative Session. The 2020 Legislative Ad Hoc Committee Chairperson will have the further authority to call committee meetings, schedule and provide periodic reports to the Board, submit written testimony to the Legislature on behalf of the Board as approved by the Committee. The authority of the 2020 Ad Hoc Committee shall extend through and until July 31, 2020.

III. RECOMMENDATION

I recommend that the Board approve the assignment of Board Chairperson Catherine Payne and Board Members Kili Namau'u, Dwight Takeno, and Bruce Voss to a permitted interaction group formed pursuant to Hawaii Revised Statutes Section 92-2.5(b)(2), entitled "Permitted Interactions of Members" to present, discuss, or negotiate the policy positions the Board adopted at its September 19, 2019 General Business Meeting and any new or amended policy positions the Board adopts for the 2020 Legislative Session with the authority described in this memorandum through and until July 31, 2020.

A legislative PIG established under section 92-2.5(b)(2), HRS, and acting within the scope of each member's previously defined authority, would not be subject to the investigative PIG's requirements under section 92-2.5(b)(1), HRS, to initially report its findings at a public meeting before the full board could discuss or act on the report at a subsequent meeting. Nor would a legislative PIG established under section 92-2.5(b)(2), HRS, be subject to the reporting requirements of section 92-2.5(e), HRS, for attending informational meetings described in the fourth option below."