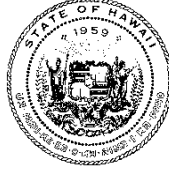


DAVID Y. IGE
GOVERNOR



BRUCE VOSS
CHAIRPERSON

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

July 14, 2022

TO: Board of Education

FROM: Bruce Voss
Chairperson, Board of Education

AGENDA ITEM: Board 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 2023 Legislative Session and 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 2023 Legislative Session

I. EXECUTIVE SUMMARY

- The proposed approach to the 2023 Legislative Session is similar to the Board of Education's ("Board") approach to past legislative sessions but expanded to be more proactive, similar to the Board's approach in 2020.
- In addition to establishing an ad hoc committee to engage with the Legislature during the legislative session, the proposed approach establishes an investigative committee to develop the Board's legislative policy positions, legislative proposals, and legislative reports.
- This approach allows the Board to be proactive with the Legislature, Department of Education ("Department"), and other stakeholders rather than simply reacting to legislation proposed by others.

- The recommendation is to authorize and appoint Board members to an investigative committee and an ad hoc committee tasked with the duties described in this memorandum.

II. BACKGROUND

Since the 2019 Legislative Session, the Board has formed an ad hoc committee, which has 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 mechanism ensures compliance with Sunshine Law requirements while allowing greater interaction between the Board members that serve on the committee and the Legislature. The work of past legislative ad hoc committees allowed the Board 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.

For the 2020 Legislative Session, the Board adopted and expanded and more proactive approach to engage the Legislature and established an investigative committee in addition to an ad hoc committee. The investigative committee essentially prepared the Board for the legislative session by recommending legislative policy positions, determining whether the Board should request statutory changes, and drafting any required legislative reports.¹

The Board did not repeat the expanded approach for the 2021 and 2022 Legislative Sessions due to disruptions from the COVID-19 pandemic and other pressing priorities.

III. DISCUSSION

The Board should consider implementing a process similar to the expanded approach it used to engage the Legislature for the 2020 Legislative Session. Even though the Legislature is in session for only part of the year, legislative policymaking is a year-round process when factoring in planning, engagement, and other preparation, and the Board should be having policy conversations with

¹ For more information, see Board Chairperson Catherine Payne's memorandum dated August 1, 2019, available here: https://boe.hawaii.gov/Meetings/Notices/Meeting%20Material%20Library/GBM_20190801_Action%20on%20Investigative%20Committee%20concerning%202020%20Legislative%20Session.pdf.

the Governor and Legislature as the Board's education co-policymakers throughout the year.

Authority. 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 the Sunshine Law and the Bylaws of the Hawai'i State Board of Education ("Bylaws"). The Sunshine Law allows two or more members (but no more than four) to investigate a matter relating to the official business of the Board,² and the Bylaws allow the Board to form an investigative committee for this purpose.³ The Board must define the scope of the investigative committee. The Sunshine Law also allows two or more members (but no more than four) 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.⁴ The Bylaws allow the Board 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.⁵ The Board must approve the charge of the ad hoc

² Section 92-2.5(b)(1), Hawaii Revised Statutes ("HRS"), provides, "Two 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[.]"

³ Section 5.9 of the Bylaws, entitled "Investigative Committees," provides:

"The Board, as provided by Section 92-2.5(b)(1), HRS, may designate two or more Board members, but less than the number of members that would constitute a quorum of the Board, to an Investigative Committee to investigate matters concerning Board business. The Board shall designate a Committee Chairperson and define the scope of the Investigative Committee. The Investigative Committee members are required to report their resulting findings and recommendations to the entire Board at a properly noticed meeting."

⁴ Section 92-2.5(b)(2), HRS, provides, "Two 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."

⁵ Section 5.8 of the Bylaws, entitled "Ad Hoc Committees," provides:

"The Board 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, including a Committee Chairperson, of such Ad Hoc Committee. The Board shall approve the charge of any Ad Hoc Committee. An Ad Hoc 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."

committee. This memorandum describes the responsibilities envisioned of investigative committee and ad hoc committee below.

Investigative Committee Scope and Member Authority. The scope of work for the investigative committee, which will be known as the 2023 Legislative Investigative Committee, is as follows:

1. Consult with legislators, the Department, education agencies, and other key stakeholders on education policy priorities;
2. Determine whether the Board should consider requesting any statutory changes, and if so, develop, and recommend to the Board for approval, legislative proposals for the 2023 Legislative Session;
3. Vet and recommend to the Board for approval any legislative proposals from the Department to be included in the Governor's administrative package for the 2023 Legislative Session;
4. Develop, and recommend to the Board for approval, legislative policy positions for the 2023 Legislative Session; and
5. Identify the reports the Board is required to submit to the Legislature prior to the 2023 Legislative Session and develop, and recommend to the Board for approval, the required legislative reports.

Investigative committee members have the authority to independently or collectively investigate the matters described in the above scope, but only the committee as a whole may determine the committee's findings and recommendations. The 2023 Legislative Investigative Committee Chairperson has the further authority to call committee meetings and schedule and provide periodic reports to the Board.

Ad Hoc Committee Charge and Member Authority. The charge of the ad hoc committee, which will be known as the 2023 Legislative Ad Hoc Committee, is to present, discuss, and negotiate the policy positions to be adopted by the Board for the 2023 Legislative Session through and until Governor's last veto deadline for the 2023 Legislative Session, but in no event later than July 31, 2023. All members of the committee have the authority to present, discuss, or negotiate any of the policy positions the Board adopts, and subsequently amends, for the 2023 Legislative Session. The 2023 Legislative Ad Hoc Committee Chairperson has the further authority to call committee meetings, schedule and provide periodic reports to the Board, and submit written testimony to the Legislature on behalf of the Board as approved by the Committee or delegate such authority to a fellow ad hoc committee member.

Timeline. The table below outlines the projected timeline for this approach. Under this timeline, the investigative committee would conduct its work from July 14 to November 18, 2022, and the ad hoc committee would conduct its work from November 19, 2022 through July 2023.

| Date | Activity |
|-------------------|--|
| July 14, 2022 | Board establishes investigative and ad hoc committees |
| July–November | Investigative committee conducts pre-session work with legislators, Department, other Executive Branch departments and agencies, and other stakeholders on determining legislative policy priorities and proposals |
| September 15 | Investigative committee presents legislative proposals (<i>i.e.</i> , draft bills), if any |
| October 20 | Board approves legislative proposals |
| November 18 | Investigative committee presents proposed legislative policy positions and draft legislative reports to the Board and concludes its work |
| November–December | Ad hoc committee conducts pre-session work with legislators and the Department |
| December 15 | Board adopts legislative policy positions and approves legislative reports |
| January-May 2023 | 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

Based on the forgoing, I recommend the Board authorize the creation of an investigative committee and an ad hoc committee tasked with the duties described in this memorandum. I recommend appointing Board Members Bill Arakaki, Shanty Asher, Makana McClellan, and myself to both the investigative committee and the ad hoc committee, with Board Member Arakaki serving as committee chairperson of both.

Proposed Motion: “Moved to:

- 1. Authorize the creation of an investigative committee as a permitted interaction group pursuant to Hawaii Revised Statutes Section 92-**

- 2.5(b)(1) with the scope and authority defined in Board Chairperson Voss's memorandum dated July 14, 2022;**
- 2. Authorize the creation of the 2023 Legislative Ad Hoc Committee as a permitted interaction group formed pursuant to Hawaii Revised Statutes Section 92-2.5(b)(2) with the charge and authority defined in Board Chairperson Voss's memorandum dated July 14, 2022; and**
 - 3. Appoint Board Chairperson Voss and Board Members Arakaki, Asher, and McClellan as members of the investigative committee and the ad hoc committee, with Board Member Arakaki serving as chairperson of both committees."**