

TESTIMONY IN SUPPORT OF THE AMENDMENTS TO THE COMMISSION BYLAWS
RELATING TO PUBLIC TESTIMONY AND THE PROMULGATION OF COMMISSION
MEETING AGENDAS

I. Introduction

My name is [REDACTED] and I am currently a third-year law student at the William S. Richardson School of Law here in Honolulu, Hawaii. I am writing in SUPPORT of the Amendments to the State Public Charter School Commission Bylaws Relating to Public Testimony and the Promulgation of the Commission's Meeting Agendas, an item set for the State Public Charter School Commission's Thursday, April 10, 2014 meeting.

Public testimony is important in the administrative rule making process, as it (1) May persuade decision-makers; (2) May allow decision-makers and the public to be better educated about the proposed action or issue at hand; and (3) It allows the decision-makers to understand how the proposed action will affect the public and community members, and assists the Commission in representing the community's interests. Under the Hawaii Administrative Rules Section 92-3, "[All] boards shall afford all interested persons an opportunity to submit data, views, or arguments in writing, on any agenda item." Further, "the boards shall also afford all interested persons an opportunity to present oral testimony on any agenda item. The boards may provide for reasonable administration of oral testimony by rule." *Id.*

II. Current Bylaws

This section will discuss the Commission's current bylaws regarding the submission of Public Testimony.

Under the current Commission's bylaws Section 7.2, there is a two-minute allotment of time for oral testimony and recommends that each person interested in testifying "should" register prior to the meeting, but registration is not required. However, the bylaws are silent on

whether this two-minute allotment of time can be yielded, designated, or otherwise transferred to another person, further the bylaws are also silent regarding the usage of media and other technology – which has caused confusion amongst testifiers and the Commission staff and amongst other issues during previous meetings.

Regarding written testimony, the current deadline for submitting written testimony under the bylaws is a “reasonable time” however as stated on every meeting agenda, the deadline is noon the day before a Commission meeting. As stated in Recommendation Submittal, the purpose behind the noon deadline was to “allow for more time for the public to provide input to the Commission.” However, it appears that such a late deadline has not been reasonable as it only allows the staff less than 24-hours to prepare for and review the submitted testimonies and has somewhat warranted the distribution of late testimonies during Commission meetings which has proven to be disruptive.

Lastly, the currently bylaws do not include an formal process for the public’s input in placing items on the Commission’s agenda, which has also appeared to cause confusion and an informal process of the Executive Director consulting with a Chairperson.

III. Proposed Amendments and Argument

In regards to the oral testimony, the Commission proposes that Section 7.2 of the Bylaws be amended to allow all interested individuals, “two minutes, or an amount of time otherwise designated by the Chairperson to provide testimony to the Commission” and that “[t]he allotted time for testimony may not be yielded, designated, or otherwise transferred to another person.” Additionally, the proposed amendments would address the issue of meeting disruptions and delay with the use of media and other technology with a policy that states, “except under extenuating circumstances, as determined by the Chairperson, . . . interested persons may only

present testimony orally or through written comments.” These proposed amendments should be passed, because they reasonably address the previous issues regarding the allotment of time and disruption by the usage of media and technology. Unless these rules are passed, the Commission may continue to experience frustration regarding the allotment of time with testifiers trying to yield time to other testifiers and disruption through the use of unplanned media and technology, which would be an inefficient usage of meeting time and discussion. Thus, I am in SUPPORT of the amendments regarding oral testimony.

However, while I am in SUPPORT of the Commission’s desire register individuals who wish to orally testify at a meeting, I recommend that the language “*should* register prior to the meeting” be amended to “*must* register prior to the meeting” in order to be consistent with the Sample Commission Meeting Procedures. In subsection 2(A) of the Sample Commission Meeting Procedures (Exhibit A), it states that “[a]ny person wishing to present oral testimony *must* register by writing is or her name...” (p.7). While some may assume that “*should*” and “*must*” are interchangeable, they are not. “*Should*,” is commonly used as particularly suitable recommendation, without mentioning or excluding others; or that a certain course of action is preferred but not necessarily required while “*must*” is used to indicate mandatory requirements. Thus, because of the room for open interpretation and ambiguity, I recommend that the policies regarding Oral Testimony Registration under Section 7.2 of the Commission bylaws be amended to “*must* register prior to the meeting” in order to be consistent with the Sample Commission Meeting Procedures.

Regarding written testimony, the Commission proposes that the deadline be amended from noon the day before a scheduled Commission meeting to two-business days prior a Commission meeting in order to provide reasonable time to the public to submit written

testimony and to staff to have reasonable time to prepare and review testimony in the Commissioner's meeting packets. I am in SUPPORT of this proposed amendment, as it provides both the staff and the public reasonable and ample time to submit testimony. While some testifiers may argue that this is an unreasonable amount of time, upon review of the testimony deadlines and requirements placed by other Administrative Agencies, unlike the Oahu Island Burial Council, which requires testimony to be submitted two-weeks before a schedule meeting, or the Office of Hawaiian Affairs, which requires testifiers to submit ten (10) copies of their testimony 48 hours prior to a schedule meeting, the Commission's proposed testimony deadline of two-business days prior to a meeting are not burdensome or costly to the public. Further, the clarification of "two *business* days" accounts for holidays and weekends, leaving staff enough time to prepare the written testimony during the work-week. Additionally, the inclusion of a policy prohibiting the distribution of written materials during a Commission meeting except under extenuating circumstances and at the discretion of the Chairperson also reasonably address the problem of late testimony being distributed and disrupting meetings.

Lastly, the proposed amendment regarding the meeting agenda merely memorializes and creates an explicit policy regarding the already current practice of the Executive Director promulgating of the meeting agenda in consultation with the Chairperson and other necessary members. Thus, I am in SUPPORT.

IV. Conclusion

I am in SUPPORT of the Amendments to the Commission Bylaws Relating to the Public Testimony and the Promulgation of Commission Meeting Agendas. The proposed amendments reasonably address the Commission's previous issues regarding public oral testimony, the usage

of electronic media and technology, the late submission of written testimony, and the absence of a policy regarding meeting agendas. Also, while I do recommend, that the Commission consider revising the registration rules for oral testimony, from “should” to “must,” I generally agree with the Commissions’ desire to register all of its oral testifiers.

If the Commission would like to contact me or has any questions regarding my testimony they may reach me at:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Thank you for your time and consideration.