
A BILL FOR AN ACT

PROPOSING A CONSTITUTIONAL AMENDMENT TO ESTABLISH THE DEPARTMENT OF EDUCATION AS A POLITICAL SUBDIVISION HEADED BY THE BOARD OF EDUCATION AND TO AUTHORIZE THE BOARD TO ASSESS TAXES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Quality education for the children of Hawaii
2 remains a priority of the State. All interested parties must
3 work together to guarantee that Hawaii's children have the right
4 tools and a safe environment to enable them to become educated,
5 productive individuals. An educated citizenry and skilled
6 workforce are key components of any modern society, but are
7 especially crucial when society needs to reestablish its
8 economic vitality.

9 In recent years, Hawaii's public education system has
10 undergone numerous changes, yet the public perception is that
11 graduation from a public high school in Hawaii does not
12 guarantee that children will become educated citizens or skilled
13 workers. Currently, the education system has goals, objectives,
14 and performance standards, but few assessments and little
15 acceptance of responsibility for improving student performance.
16 Each year, we read of pronouncements by the department of



1 education that it is on the right track, yet the reading scores
2 of Hawaii's students remain among the lowest in the nation.

3 The board of education and the department of education
4 clamor for increased levels of funding. This advances the
5 inaccurate perception that the legislature is providing
6 insufficient funds to the department of education and,
7 therefore, is responsible for the inefficiencies and
8 ineffectiveness of the educational system.

9 Nothing could be further from the truth. While it is the
10 responsibility of the legislature to provide funds to the
11 department of education, it is incumbent on the legislature to
12 balance the needs of the State against limited resources. Even
13 under these circumstances, the legislature has increased the
14 department of education's budget to a level that represents
15 approximately one-third of the general fund budget. In
16 addition, each governor has attempted to preserve the department
17 of education's budget to the detriment of other programs of
18 state government. However, the result remains the same as
19 Hawaii students continue to score among the lowest in reading
20 across the country.

21 It is obvious that the State is at a crossroads with regard
22 to education. It is no longer a funding issue, it is an issue



1 of responsibility and accountability for the delivery of an
2 educational system that ensures that every child will be
3 competent to fulfil the basic requirements of society.

4 It is time to develop and support a concept that provides
5 for a dedicated source of funding for education similar to that
6 provided for the tourism industry. Providing the department
7 with a separate means of financing would guarantee the
8 availability of resources necessary to provide quality
9 educational opportunities, both for students and teachers.

10 Through this Act and the statutory amendments proposed in
11 H.B. No. , the legislature promotes a basic philosophy to
12 reform the governance of a statewide education system by
13 delineating clear lines of authority and responsibility in all
14 fiscal matters, policy issues, and managerial oversight. This
15 Act and the statutory amendments proposed in H.B. No. make
16 the department of education a political subdivision headed by
17 the board of education that is separate and apart from state
18 government but still subject to the general laws of the State.

19 In order to finance this new political subdivision, the
20 department of education will be allowed to assess an education
21 excise tax. The department will be responsible for raising the



1 necessary revenues and expending funds in a manner that benefits
2 the educational system.

3 Through this systemic change, the legislature believes that
4 existing resources will be utilized more efficiently and
5 effectively. The department of education will be solely and
6 directly accountable to the public, with regard to performance,
7 expenditure, and accountability in the educational system. The
8 legislature notes that many school districts on the mainland
9 have their own taxing power. The legislature believes that
10 having this authority will make the department of education more
11 accountable and responsive to the tax paying public.

12 This Act achieves these objectives by providing more fiscal
13 autonomy to the department of education.

14 SECTION 2. Article X of the Constitution of the State of
15 Hawaii is amended by adding three new sections to read as
16 follows:

17 **"DEPARTMENT OF EDUCATION; POLITICAL SUBDIVISION; BONDS**

18 **Section 1.4.** The department of education shall be a
19 political subdivision headed by the board of education, which
20 shall enact ordinances and govern the political subdivision in a
21 manner similar to other political subdivisions of the State.
22 The department shall have all of the functions, powers and



1 duties necessary to provide for the establishment, support and
 2 control of the statewide public education system not including
 3 police powers. The department of education shall be separate
 4 and apart from the rest of state government but shall be subject
 5 to the general laws of the State.

6 The department of education may issue general obligation
 7 bonds for the payment of the principle and interest of which the
 8 full faith and credit of the political subdivision is pledged
 9 and, unless otherwise indicated, includes reimbursable general
 10 obligation bonds. All bonds and other instruments of
 11 indebtedness issued by the department of education shall be
 12 subject to article VII, sections 12 and 13. For the purposes of
 13 determining the department's debt ceiling, the department of
 14 education shall follow the provisions of article VII, section
 15 13. Fees, payments, income, excluding federal funds, and
 16 education excise tax revenues shall be considered general fund
 17 revenues of the department. The department of education shall
 18 be responsible for the payment of all principle and interest on
 19 general obligation bonds issued by the State and outstanding for
 20 the direct benefit of the public school system on the effective
 21 date of this section.

POWERS OF TAXATION



1 Section 3.4. The department of education shall exercise all
2 functions, powers and duties relating to assessing an education
3 excise tax. The education excise tax shall be limited to the
4 retail sale of tangible personal property. The adoption of an
5 education excise tax and the establishment or change in the tax
6 rate shall require a two-thirds vote of the members to which the
7 board of education is entitled.

STATEWIDE LAWS

8
9 Section 7. This article shall not limit the power of the
10 legislature to enact laws of statewide concern."

11 SECTION 3. Article XVIII of the Constitution of the State
12 of Hawaii is amended by adding a new section to read as follows:

"DEPARTMENT OF EDUCATION; POLITICAL SUBDIVISION

13
14 Section 7.1. The amendments made to article VII, sections 7
15 and 10, article VIII, section 3, and article X, sections 2 and 3
16 changing the functions, powers and duties of the board of
17 education and making the department a political subdivision
18 shall become operational on July 1, 2011.

19 The department of education shall contract with the
20 department in the executive branch responsible for collecting
21 taxes to collect education excise taxes for the board until
22 July 1, 2018. The executive department shall be reimbursed for

1 direct and indirect costs in collecting education excise tax
2 revenues for the board."

3 SECTION 4. Article VII, section 7, of the Constitution of
4 the State of Hawaii is amended to read as follows:

5 "COUNCIL ON REVENUES

6 Section 7. There shall be established by law a council on
7 revenues which shall prepare revenue estimates of the state
8 government, except for the department of education, and shall
9 report the estimates to the governor and the legislature at
10 times provided by law. The estimates shall be considered by the
11 governor in preparing the budget, recommending appropriations
12 and revenues, and controlling expenditures. The estimates shall
13 be considered by the legislature in appropriating funds and
14 enacting revenue measures. All revenue estimates submitted by
15 the council to the governor and the legislature shall be made
16 public. If the legislature in appropriating funds or if the
17 governor in preparing the budget or recommending appropriations
18 exceeds estimated revenues due to proposed expenditures, this
19 fact shall be made public, including the reasons therefor.

20 The council on revenues shall also prepare revenue
21 estimates for the department of education and shall report the
22 estimates to the board of education at the times provided by



1 law. The estimates shall be considered by the board of
2 education in preparing its budget, recommending its
3 appropriations and revenues and controlling its expenditures.
4 All revenue estimates submitted by the council to the board of
5 education shall be made public. If the board of education in
6 preparing the budget or recommending expenditures exceeds
7 estimated revenues due to the board's proposed expenditures,
8 this fact shall be made public, including the reasons therefor."

9 SECTION 5. Article VII, section 10, of the Constitution of
10 the State of Hawaii is amended to read as follows:

11 **"AUDITOR**

12 **Section 10.** The legislature, by a majority vote of each
13 house in joint session, shall appoint an auditor who shall serve
14 for a period of eight years and thereafter until a successor
15 shall have been appointed. The legislature, by a two-thirds
16 vote of the members in joint session, may remove the auditor
17 from office at any time for cause. It shall be the duty of the
18 auditor to conduct post-audits of the transactions, accounts,
19 programs and performance of all departments, offices and
20 agencies of the State, the department of education and [~~its~~]
21 other political subdivisions[~~7~~] of the State, to certify to the
22 accuracy of all financial statements issued by the respective



1 accounting officers and to report the auditor's findings and
2 recommendations to the governor [~~and~~], to the legislature and to
3 the board of education at such times as shall be provided by
4 law. The auditor shall also make [~~such~~] additional reports and
5 conduct [~~such~~] other investigations as may be directed by the
6 legislature."

7 SECTION 6. Article VIII, section 3, of the Constitution of
8 the State of Hawaii is amended to read as follows:

9 **"TAXATION AND FINANCE**

10 **Section 3.** The taxing power shall be reserved to the
11 State, except so much thereof as may be delegated by the
12 legislature to the political subdivisions, including the
13 department of education under article X, section 3.4 and except
14 that all functions, powers and duties relating to the taxation
15 of real property shall be exercised exclusively by the counties,
16 with the exception of the county of Kalawao. The legislature
17 shall have the power to apportion state revenues among the
18 several political subdivisions."

19 SECTION 7. Article X, section 2, of the Constitution of
20 the State of Hawaii is amended to read as follows:

21 **"BOARD OF EDUCATION**



1 **Section 2.** There shall be a board of education composed of
2 members who shall be elected in a nonpartisan manner by
3 qualified voters, as provided by [~~law~~] ordinance of the board
4 of education, from two at-large school board districts. The
5 first school board district shall be comprised of the island of
6 Oahu and all other islands not specifically enumerated. The
7 second school board district shall be comprised of the islands
8 of Hawaii, Maui, Lanai, Molokai, Kahoolawe, Kauai and Niihau.
9 Each at-large school board district shall be divided into
10 departmental school districts, as may be provided by [~~law~~]
11 ordinance of the board of education. There shall be at least
12 one member residing in each departmental school district. The
13 Hawaii State Student Council shall select a public high school
14 student to serve as a nonvoting member on the board of
15 education."

16 SECTION 8. Article X, section 3, of the Constitution of
17 the State of Hawaii is amended to read as follows:

18 **"POWER OF THE BOARD OF EDUCATION**

19 **Section 3.** The board of education shall have the power[~~7~~
20 ~~as provided by law~~], to formulate statewide educational policy
21 and appoint the superintendent of education as the chief
22 executive officer of the public school system. The board of



1 education shall have jurisdiction over the internal organization
2 and management of the department of education and the statewide
3 system of public schools and shall exercise its jurisdiction in
4 a manner consistent with general laws.

5 **GENERAL FUND EXPENDITURE CEILING**

6 Notwithstanding any other provision to the contrary, the
7 board of education shall establish a general fund expenditure
8 ceiling that shall limit the rate of growth of general fund
9 appropriations, excluding federal funds received by the general
10 fund of the department of education, to the estimated rate of
11 growth of the State's economy, as provided by law. No
12 appropriations by the department in excess of this ceiling shall
13 be authorized by the board of education, unless the board of
14 education, by a two-thirds vote of the members to which the
15 board of education is entitled, sets forth the dollar amount and
16 the rate by which the ceiling will be exceeded and the reasons
17 therefor."

18 SECTION 9. The question to be printed on the ballot shall
19 be as follows:

20 "Shall:

21 (1) The powers, functions, and duties of the board of
22 education to manage and control the public school



1 system be independent of legislative and gubernatorial
2 review so that the department of education is a
3 political subdivision; and

4 (2) The board of education be allowed to impose an
5 education excise tax?"

6 SECTION 10. Constitutional material to be repealed is
7 bracketed and stricken. New constitutional material is
8 underscored.

9 SECTION 11. The amendments made to article VII, article
10 VIII, article X, and article XVIII in this Act shall take effect
11 upon compliance with article XVII, section 3, of the
12 Constitution of the State of Hawaii.

13

INTRODUCED BY: 

JAN 27 2009



Report Title:

Hawaii State Constitution; Tax; DOE; Political Subdivision

Description:

Proposes amendments to the state constitution to establish the department of education as a political subdivision headed by the board of education. Authorizes the board to enact an education excise tax.

