

JAN 25 2010

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**A BILL FOR AN ACT**

PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII  
TO MAKE THE DEPARTMENT OF EDUCATION A PRINCIPAL DEPARTMENT  
OF STATE GOVERNMENT.

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

1           SECTION 1. The purpose of this Act is to amend the  
2 Constitution of the State of Hawaii to make the department of  
3 education into a principal department of state government.

4           SECTION 2. Article V, section 6, of the Constitution of the  
5 State of Hawaii is amended to read as follows:

6                           **"EXECUTIVE AND ADMINISTRATIVE OFFICES**  
7   **AND DEPARTMENTS**

8           **Section 6.** All executive and administrative offices,  
9 departments and instrumentalities of the state government and  
10 their respective powers and duties shall be allocated by law  
11 among and within not more than twenty principal departments in  
12 such a manner as to group the same according to common purposes  
13 and related functions. The department of education shall be a  
14 principal department of state government. Temporary commissions  
15 or agencies for special purposes may be established by law and  
16 need not be allocated within a principal department.

1           Each principal department shall be under the supervision of  
2 the governor and, unless otherwise provided in this constitution  
3 or by law, shall be headed by a single executive. Such single  
4 executive shall be nominated and, by and with the advice and  
5 consent of the senate, appointed by the governor. That person  
6 shall hold office for a term to expire at the end of the term  
7 for which the governor was elected, unless sooner removed by the  
8 governor; except that the removal of the chief legal officer of  
9 the State shall be subject to the advice and consent of the  
10 senate.

11           Except as otherwise provided in this constitution, whenever  
12 a board, commission or other body shall be the head of a  
13 principal department of the state government, the members  
14 thereof shall be nominated and, by and with the advice and  
15 consent of the senate, appointed by the governor. The term of  
16 office and removal of such members shall be as provided by law.  
17 Such board, commission or other body may appoint a principal  
18 executive officer who, when authorized by law, may be an ex  
19 officio, voting member thereof, and who may be removed by a  
20 majority vote of the members appointed by the governor.

21           The governor shall nominate and, by and with the advice and  
22 consent of the senate, appoint all officers for whose election

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1 or appointment provision is not otherwise provided for by this  
2 constitution or by law. If the manner or removal of an officer  
3 is not prescribed in this constitution, removal shall be as  
4 provided by law.

5 When the senate is not in session and a vacancy occurs in  
6 any office, appointment to which requires the confirmation of  
7 the senate, the governor may fill the office by granting a  
8 commission which shall expire, unless such appointment is  
9 confirmed, at the end of the next session of the senate. The  
10 person so appointed shall not be eligible for another interim  
11 appointment to such office if the appointment failed to be  
12 confirmed by the senate.

13 No person who has been nominated for appointment to any  
14 office and whose appointment has not received the consent of the  
15 senate shall be eligible to an interim appointment thereafter to  
16 such office.

17 Every officer appointed under the provisions of this  
18 section shall be a citizen of the United States and shall have  
19 been a resident of this State for at least one year immediately  
20 preceding that person's appointment, except that this residency  
21 requirement shall not apply to the president of the University  
22 of Hawaii."

1 SECTION 3. Article XVI, section 3.5, of the Constitution of  
2 the State of Hawaii is amended to read as follows:

3 "SALARY COMMISSION

4 Section [3.5]. There shall be a commission on salaries as  
5 provided by law, which shall review and recommend salaries for  
6 the justices and judges of all state courts, members of the  
7 legislature, department heads or executive officers of the  
8 executive departments and the deputies or assistants to  
9 department heads of the executive departments as provided by  
10 law, excluding the University of Hawaii [~~and the department of~~  
11 ~~education~~]. The commission shall also review and make  
12 recommendations for the salary of the administrative director of  
13 the State or equivalent position and the salary of the governor  
14 and the lieutenant governor.

15 Any salary established pursuant to this section shall not  
16 be decreased during a term of office, unless by general law  
17 applying to all salaried officers of the State.

18 Not later than the fortieth legislative day of the 2007  
19 regular legislative session and every six years thereafter, the  
20 commission shall submit to the legislature its recommendations  
21 and then dissolve.

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1           The recommended salaries submitted shall become effective  
 2 as provided in the recommendation, unless the legislature  
 3 disapproves the entire recommendation as a whole by adoption of  
 4 a concurrent resolution prior to adjournment sine die of the  
 5 legislative session in which the recommendation is submitted;  
 6 provided that any change in salary which becomes effective shall  
 7 not apply to the legislature to which the recommendation for the  
 8 change in salary was submitted."

9           SECTION 4. Article XVI, section 4, of the Constitution of  
 10 the State of Hawaii is amended to read as follows:

**"OATH OF OFFICE**

12           **Section 4.** All eligible public officers, before entering  
 13 upon the duties of their respective offices, shall take and  
 14 subscribe to the following oath or affirmation: "I do solemnly  
 15 swear (or affirm) that I will support and defend the  
 16 Constitution of the United States, and the Constitution of the  
 17 State of Hawaii, and that I will faithfully discharge my duties  
 18 as ..... to the best of my ability." As used  
 19 in this section, "eligible public officers" means the governor,  
 20 the lieutenant governor, the members of both houses of the  
 21 legislature, [~~the members of the board of education,~~] the  
 22 members of the national guard, State or county employees who

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1 possess police powers, district court judges, and all those  
2 whose appointment requires the consent of the senate."

3 SECTION 5. Article X, section 2, of the Constitution of the  
4 State of Hawaii is repealed.

5 [~~BOARD OF EDUCATION~~

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

19 SECTION 6. Article X, section 3, of the Constitution of the  
20 State of Hawaii is repealed.

21 [~~POWER OF THE BOARD OF EDUCATION~~

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1       ~~Section 3.~~ The board of education shall have the power, as  
2 provided by law, to formulate statewide educational policy and  
3 appoint the superintendent of education as the chief executive  
4 officer of the public school system." ]

5       SECTION 7. Article XVIII, section 7, of the Constitution  
6 of the State of Hawaii is repealed.

7                   [ "~~1978 BOARD OF EDUCATION ELECTIONS~~

8       ~~Section 7.~~ Members elected to the board of education in  
9 the 1978 general election shall serve for two year terms." ]

10       SECTION 8. The question to be printed on the ballot shall  
11 be as follows:

12       "Shall the State Constitution be amended to make the  
13 department of education into a cabinet-level department,  
14 without an elected Board of Education, headed by a  
15 superintendent appointed by the governor and confirmed by  
16 the state senate, similar to other departments of state  
17 government?"

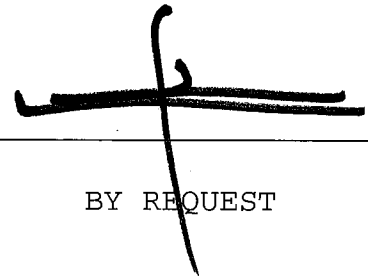
18       SECTION 9. Constitutional material to be repealed is  
19 bracketed and stricken. New Constitutional material is  
20 underscored.

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1           SECTION 10. This amendment shall take effect upon  
2 compliance with article XVII, section 3, of the Constitution of  
3 the State of Hawaii.

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6

INTRODUCED BY: \_\_\_\_\_

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BY REQUEST



**Report Title:**

Constitutional Amendment; Board of Education

**Description:**

Amends Hawaii's Constitution by making the department of education into a cabinet-level department with a superintendent appointed by the governor.

JUSTIFICATION SHEET

DEPARTMENT: Office of the Governor

TITLE: A BILL FOR AN ACT PROPOSING AMENDMENTS TO THE CONSTITUTION OF THE STATE OF HAWAII TO MAKE THE DEPARTMENT OF EDUCATION A PRINCIPAL DEPARTMENT OF STATE GOVERNMENT.

PURPOSE: To amend Hawaii's Constitution by making the Department of Education into a cabinet-level department.

MEANS: Amend article V, section 6, and article XVI, sections 3.5 and 4 of the State Constitution; repeal article X, sections 2 and 3, and article XVIII, section 7, of the State Constitution.

JUSTIFICATION: The current governance structure of public education in Hawaii has proven over the years that it is incapable of effectively managing the resources or producing the results necessary to meet the educational needs of Hawaii's children.

Accordingly, this bill amends the State Constitution in order to create an educational system with clear lines of accountability, from which students, teachers, parents, and the community at large will be able to hold government leaders accountable.

Specifically, this bill amends the State Constitution to make the Department of Education into a "principal department of state government" (i.e., a cabinet department). The State Constitution provides generally that a principal department has its leadership (whether an executive officer or a board/commission) nominated and, by and with the advice and consent of the Senate, appointed by the Governor. The intent of this measure is to lay the constitutional

groundwork for changes in statutory law that provide for a Department of Education headed by a superintendent that is appointed by Governor and confirmed by the Senate, similar to other departments of state government. Under this structure, a board of education becomes unnecessary.

Thus, this measure will make the Governor directly accountable for the condition of public education within the State, as the Governor will be held accountable for his or her selection of Superintendent, and the subsequent educational performance under that Superintendent. This will improve the State's ability to effectively and expeditiously manage educational resources and execute policies and procedures.

A companion measure is being introduced to make the necessary statutory amendments that set out the specific structural details of this new relationship between the Governor, the Superintendent, and the Department of Education. That measure would take effect upon ratification of this constitutional amendment.

Impact on the public: Increased government accountability will lead to improvements in the State's public education system, from which students, teachers, families, and the community will benefit.

Impact on the department and other agencies: Clear lines of authority in the governance structure of public education will create greater stability and allow for a more expedient execution of policies and procedures that govern the Department of Education.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: None.

OTHER AFFECTED  
AGENCIES: Department of Education, Board of Education,  
Department of Human Resources Development.

EFFECTIVE DATE: Takes effect upon compliance with article  
XVII, section 3, of the Constitution of the  
State of Hawaii.