

**HB2376**

**HD3 SD1**



**EXECUTIVE CHAMBERS**  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of  
**Linda L. Smith**  
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Before the  
**SENATE COMMITTEE ON JUDICIARY & GOVERNMENTAL OPERATIONS**

Wednesday, March 31, 2010, 11:15 AM  
State Capitol, Room 016

**HB 2376 HD3 SD1**

Chair Taniguchi, Vice Chair Takamine, and members of the Committee:

HB 2376 HD3 SD1 proposes a constitutional amendment to require the Governor to appoint the voting members of the Board of Education, with the advice and consent of the Senate, from pools of qualified candidates presented to the Governor by the Board of Education Candidate Nomination Commission, as provided by law. The companion measure to this bill is HB 2377 HD3 SD1 which makes the statutory changes necessary to effectuate this constitutional change.

The Administration **opposes** these bills because they have the appearance of education reform, but merely make changes to the way in which Board of Education members are selected that actually create more layers and less transparency in the selection process. These bills do not address the critical issue of creating direct accountability for public education in Hawaii. For example, establishing a Candidate Nomination Commission would create another layer of bureaucracy to an already opaque governance system and move the State further away from increasing accountability for the condition of public schools. Look at the results of the current

Selection Council for the Board of Regents that has resulted in candidates with little background in education or knowledge of managing a multi-million dollar operation.

There were many bills introduced this legislative session to change Hawaii's public education system. These measures were introduced primarily in response to the inability of State leaders under the existing school system to comprehensively improve public education. The publicly-elected Board of Education, which is supposed to represent the will of Hawaii's citizens, is presently incapable of adequately responding to the public's clear and repeated request to restore school instructional days. The system used to select Board of Education members is broken, as is the public education system created by the current Board. Creating clear lines of authority will create greater stability and allow for a more expedient execution of policies and procedures that govern the Department of Education.

The Administration recommends that the Committee amend these measures by adopting the approach and language contained in the Administration-sponsored bills, S.B. 2705 and 2706.

The first bill, S.B. 2706, gives Hawaii voters the opportunity to decide whether or not to amend the State Constitution to repeal the publicly-elected Board of Education and establish the Department of Education as a cabinet-level department. These constitutional changes lay the groundwork to restructure the State's public education system in which the Department of Education is headed by a superintendent that is appointed by the next Governor and confirmed by the Senate. The proposed question to be placed on the ballot is:

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

We strongly urge the Committee to adopt key provisions that would make the next Governor directly accountable for the condition of public education within the State, by authorizing the next Governor to appoint the DOE Superintendent directly. This change would create a system of clear accountability because the Governor would be held accountable for his or her selection of the Superintendent, and the subsequent educational performance under that Superintendent. Under this structure, the functions and duties of the Board of Education are transferred to the Superintendent with final decision-making resting with the Governor. If the Committee wants to reform and improve public education within our State, adoption of this amendment is absolutely necessary.

The second bill, S.B. 2705, makes the statutory amendments necessary to effectuate the new governance system proposed in S.B. 2706. The bill's key provisions are:

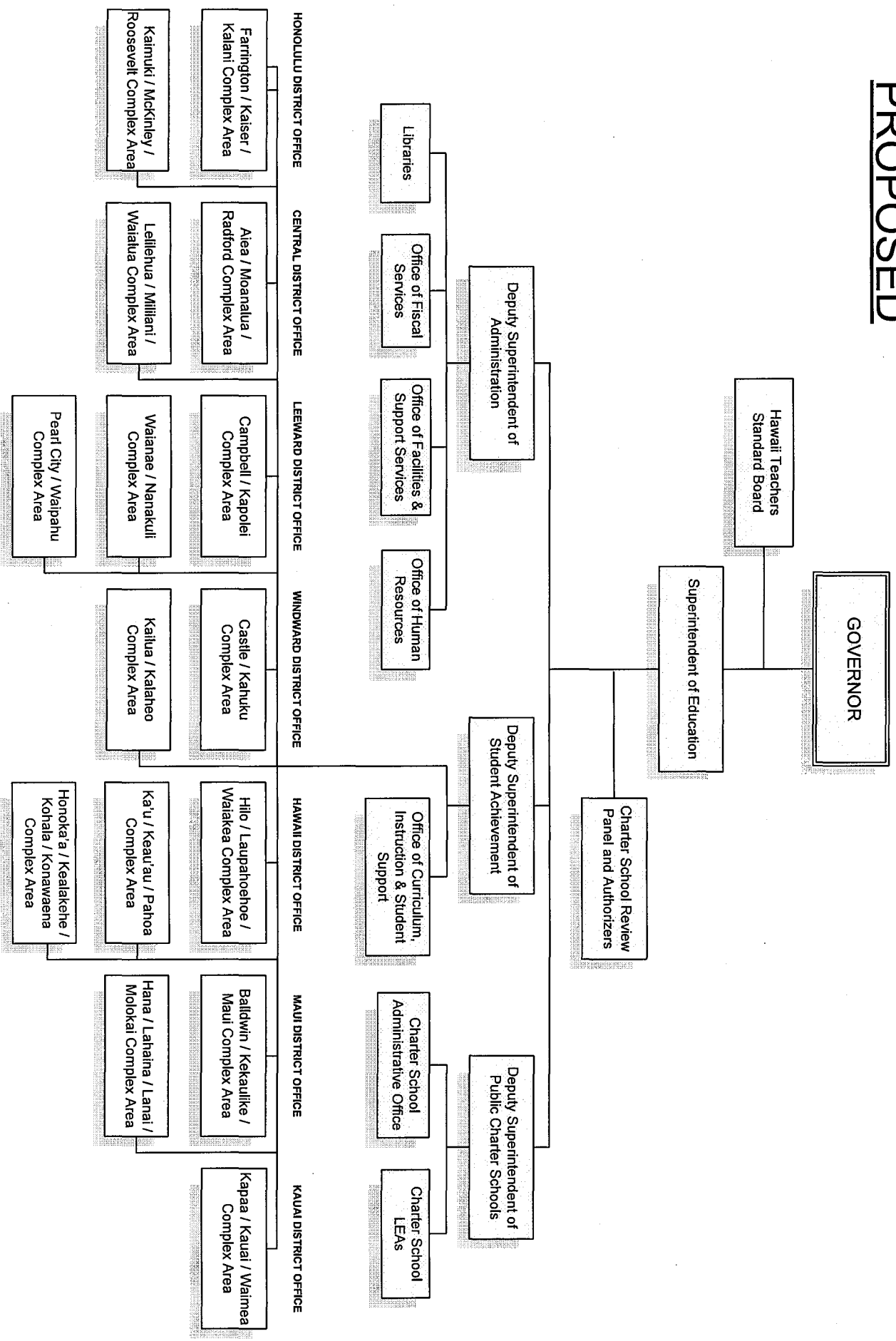
1. Repeals the powers and duties of the publicly-elected Board of Education and transferring most of these duties to the Superintendent of Education. For example, the Superintendent will have the authority to adopt administrative rules.
2. Authorizes the Governor to appoint the Superintendent of Education with the advice and consent of the Senate, which will align with the current process for selecting all other state department heads.
3. Authorizes the Superintendent to appoint three deputy directors. One deputy will be assigned to oversee the management of school administration, which will include the state libraries, fiscal services, facilities, and human resources. One deputy will focus on the department's efforts to improve student achievement through managing curriculum and providing students with the necessary support to improve student performance. One deputy will oversee the Charter School Administrative Office and facilitate development of public charter schools.

These changes will improve the State's ability to effectively manage its educational resources and execute policies and procedures. More importantly, it also creates a school system in which parents, teachers, students, and the public at large will

be able to hold the governor, as the State's chief executive as provided by law, directly accountable for the condition of public education within the State.

Therefore, we strongly urge the committee to adopt the language in S.B. 2705 and 2706, in lieu of the provisions in the bills being heard today. A proposed organizational chart for the Department of Education and suggested bill language are attached for the Committee's review. Thank you for the opportunity to provide testimony on these measures.

# PROPOSED



Date of Hearing: Wednesday, March 31, 2010

Committee: Senate Committee on Judiciary and  
Government Operations

Agency: Garrett Toguchi, Chairperson, Board of Education

Title of Bill: H.B. No. 2376, H.D. 3, S.D. 1, Proposing Amendments to the  
Hawaii Constitution Relating to the Board of Education

Purpose of Bill: Proposes an amendment to Article X, Section 2, of the Hawaii State  
Constitution to provide for a Board of Education whose voting  
members are appointed by the governor, with the advice and  
consent of the senate, from pools of qualified candidates presented  
to the governor by the Board of Education Candidate Nomination  
Commission.

Board's Position: Chairperson Taniguchi, Vice Chairperson Takamine, and members  
of the Senate Committee on Judiciary and Government Operations,  
thank you for the opportunity to submit comments on H.B. No.  
2376, H.D. 3, S.D. 1.

The Board of Education (Board) opposes H.B. No. 2376, H.D. 3,  
S.D. 1, which proposes a constitutional amendment to provide for a  
Board of Education whose voting members are appointed by the  
governor, with the advice and consent of the senate, from pools of  
qualified candidates presented to the governor by the Board of  
Education Candidate Nomination Commission, as provided by law.

Under this bill, Hawaii's elected Board of Education, *whose members are determined by the voters* of our State, would be replaced with an appointed board, *whose members would be determined by the governor*.

A Board of Education that is appointed by the governor would centralize educational decision-making too largely in the Executive Branch. Under H.B. No. 2376, H.D. 3, S.D. 1, educational decision-making would be weighted heavily under the governor, with Board members falling under the governor's direction and appointment. Under such a governance structure, a Board member would have but one constituent: the governor who appoints the Board member to office.

An appointed board would be partisan in nature, subject to the political affiliation of the governor at that particular time. An appointed board would also be beholden to the governor, the appointing authority, with the governor having varying degrees of influence over his or her appointed members in driving educational decisions and policy.

The voting public understands only too well the ramifications of



placing Board of Education members under the appointing authority of a single individual. For example, had Hawaii's elected Board of Education been a governor-appointed board under Governor Linda Lingle, it is likely that teachers and other employees would have been furloughed 36 days each year under the Governor Lingle's initial proposal.

It is also important to note that a board that is *appointed* by the governor is inclined to be in lock-step with the governor. Thus, a *governor-appointed* Board of Education under our current governor would find itself having to support and advocate Governor Lingle's proposal to make the release of funds to end Furlough Fridays contingent upon the passage of an unrelated matter: the passage of a constitutional amendment that would allow the governor to appoint the superintendent. An *elected Board of Education*, however, is accountable to the public and is not beholden to the appointing authority of the governor.

Unlike an appointed board, elected Board of Education members are nominated in a *nonpartisan* primary election and are elected in a *nonpartisan* general election. A nonpartisan elected board assures independence in appointing a superintendent, without the

trappings of political party affiliation.

An elected board is representative of a diverse cross section of viewpoints and individuals who are reflective of our communities.

An elected board offers varying viewpoints that are discussed and hashed out publicly to form a Board position on policy and other educational matters. The great thing about an elected board is that anyone who meets the residency and candidate requirements, is a registered voter, and does not hold any other public state or county government office, can run for a seat on the state Board of Education. Former legislators, school administrators, teachers, a police chief, attorneys, social workers, a military officer, business executives, and others from diverse and varied professional backgrounds and experiences have all served or serve on our elected board.

The Board believes that direct citizen control over education is essential to ensure that all members of our community have a say, a voice, and a vote as to who represents them on their state education board. Under an elected governance structure, voters assert their right to determine who serves them on their Board of Education. Voters also have the ability to elect Board of Education

members out of office.

Changing the Board of Education from an elected board to an appointed board is no panacea for the challenges facing education in our State. There is no evidence that a shift to an appointed board will be more effective, or accountable, or improve student achievement. In fact, while the federal Race to the Top Fund grant advances educational reform in four specific areas: (1) adopting standards and assessments for student success; (2) building data systems that measure student growth and success; (3) recruiting, developing, rewarding, and retaining effective teachers and principals; and (4) turning around our lowest-achieving schools, the grant competition does not suggest an appointed board governance structure.

Educational improvements are a continuous process that occurs over time. Educational improvements occur when our educational system, schools, and classrooms are supported with adequate resources, a strong curricula, effective teachers, and other direct learning supports and resources to help children learn. These supports will have the strongest and most direct impact on student learning and achievement.

Education should be supported by all decision-makers and important stakeholders involved in education: the Board, the Superintendent, the Governor, the Legislature, and the community. Responsibility and accountability must be shared by all involved.

Lastly, state boards have always been regarded as critical to insuring education as a state function, with the responsibilities of state boards reflecting two deeply-held educational values: the lay governance of education and the separation of educational policymaking from partisan politics.

We ask the Legislature to entrust the public with the power to vote for their Board of Education members, as the public does in electing its governor and legislators. Education is everyone's business, not just a few.

Thank you for the opportunity to submit comments in opposition to this measure.



Wednesday, March 31, 2010  
11:15 a.m.  
Conference Room 016

TESTIMONY TO  
THE SENATE COMMITTEE ON JUDICIARY AND GOVERNMENT  
OPERATIONS

RE: HB 2376 (HD3, SD 1) – Proposing Amendments To The Hawai'i  
Constitution Relating To The Board Of Education

Dear Chair Taniguchi, Vice-Chair Takamine and Members of the Committee:

Hawai'i's Children First is strongly supportive of the intent of HB 2376. We believe the time is ripe to give the community an opportunity to decide whether Board of Education candidates should be appointed.

Under our state constitution, the Board of Education is charged with the responsibility for statewide policymaking. Policies governing minimum instruction time; criteria for hiring, licensing, training, evaluating, and rewarding teachers and principals; standards, assessments, and curriculum; and the manner in which resources are distributed among schools - these are just a few areas within the province of the BOE and examples of policies that impact the quality of education.

An ambitious reform agenda has been outlined by the BOE and the DOE in connection with the state's "Race to the Top" application. The reforms include:

- Revisiting union contracts to revise performance evaluation, tenure, and other complex and sensitive subjects;
- Developing a comprehensive student support system;

- Instituting a data system that aligns with Common Core Standards and tracks student growth and achievement;
- Implementing measures to close the achievement gap and turnaround troubled schools, such as through zones of school innovation; and
- Ensuring equitable school funding, including for charter schools.

The DOE also has plans to revamp its outdated human resource system and the associated processes affecting its tens of thousands of employees.

Given the size and scope of the proposed reforms, as well as the length of time it will take to implement the reforms, our public education system needs improved governance to help lead and oversee that change. With a system that appoints board members, we can expect:

- Greater accountability – the governor becomes more accountable for the state of public schools;
- Increased attention by the Executive Branch on education and a clear incentive for the governor to take more ownership in the system due to the governor’s role in selecting Board of Education members;
- Better screening of candidates – a process that helps to ensure the selection of the most highly qualified individuals, such as individuals exhibiting good judgment and expertise in education policy, school leadership, teaching and other relevant subject areas, such as business;
- A more cohesive Board of Education that is less subject to electoral politics and special interests; and
- Improved structural alignment that will be more conducive to reform.

A governance system with an appointed state board is well-tested. Most state boards (35) are appointed. Based on our analysis of the governance structures of other states and NAEP scores, eight of the top ten state boards in terms of NAEP achievement are appointed. On balance, states with appointed boards have performed better in terms of achievement and quality of education.

Some seek to prevent HB 2376 from advancing. They argue for the status quo at a time when the community is calling for improvements to public education.

In connection with their opposition, they assert a number of arguments. They argue that electing members makes the BOE more accountable to the electorate. However, a Star-Bulletin/KITV 4 News poll in 2002 indicated that 69% of those polled did not have enough information about candidates to make a good choice. In the last BOE election (2008), 470,498 “blank votes” were cast. For those that do vote, it is commonly accepted that many people vote based on name recognition or simply because a candidate may have a similar background, instead of voting based on the candidates’ views and qualifications.

Opponents argue that a system of electing candidates is better for the community. Not every government service should be led by persons that are elected. Positions for judges, executive cabinet members, advisory commissions and the Board of Regents for the University of Hawai‘i are examples of appointed positions. When it comes to selecting those charged with governing public education, we believe the focus should be on identifying the most qualified Board of Education members to ensure that effective education policies are in place.

They argue that appointing board members would make public education more political. Yet, a system that selects its members by popular election is inherently political. With the election of BOE members traditionally being accompanied by weak voter participation, the composition and operation of the BOE is especially susceptible to entrenched and special interests.

We have high hopes that the future of public education in Hawai‘i will place the needs of children first. Implementing an appointed Board of Education is an important step on the road to re-focusing our priorities and instituting many other important reforms. Thus, we strongly urge the Committee to pass HB HB 2376.

Thank you for your commitment to public education and your time and consideration on this important issue.