

**HB 2377,  
HD3, SD1  
Testimony**



**EXECUTIVE CHAMBERS**  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of  
**Linda L. Smith**  
Senior Policy Advisor to the Governor

Before the  
**SENATE COMMITTEE ON WAYS & MEANS**

Wednesday, March 31, 2010, 9:30 AM  
State Capitol, Room 211

**HB 2377 HD3 SD1 RELATING TO EDUCATION**

Chair Kim, Vice Chair Tsutsui, and members of the Committee:

HB 2377 HD3 SD1 makes the statutory changes necessary to implement the constitutional amendment proposed in the companion bill, HB 2376 HD3 SD1, which authorizes 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 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 higher 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?"*

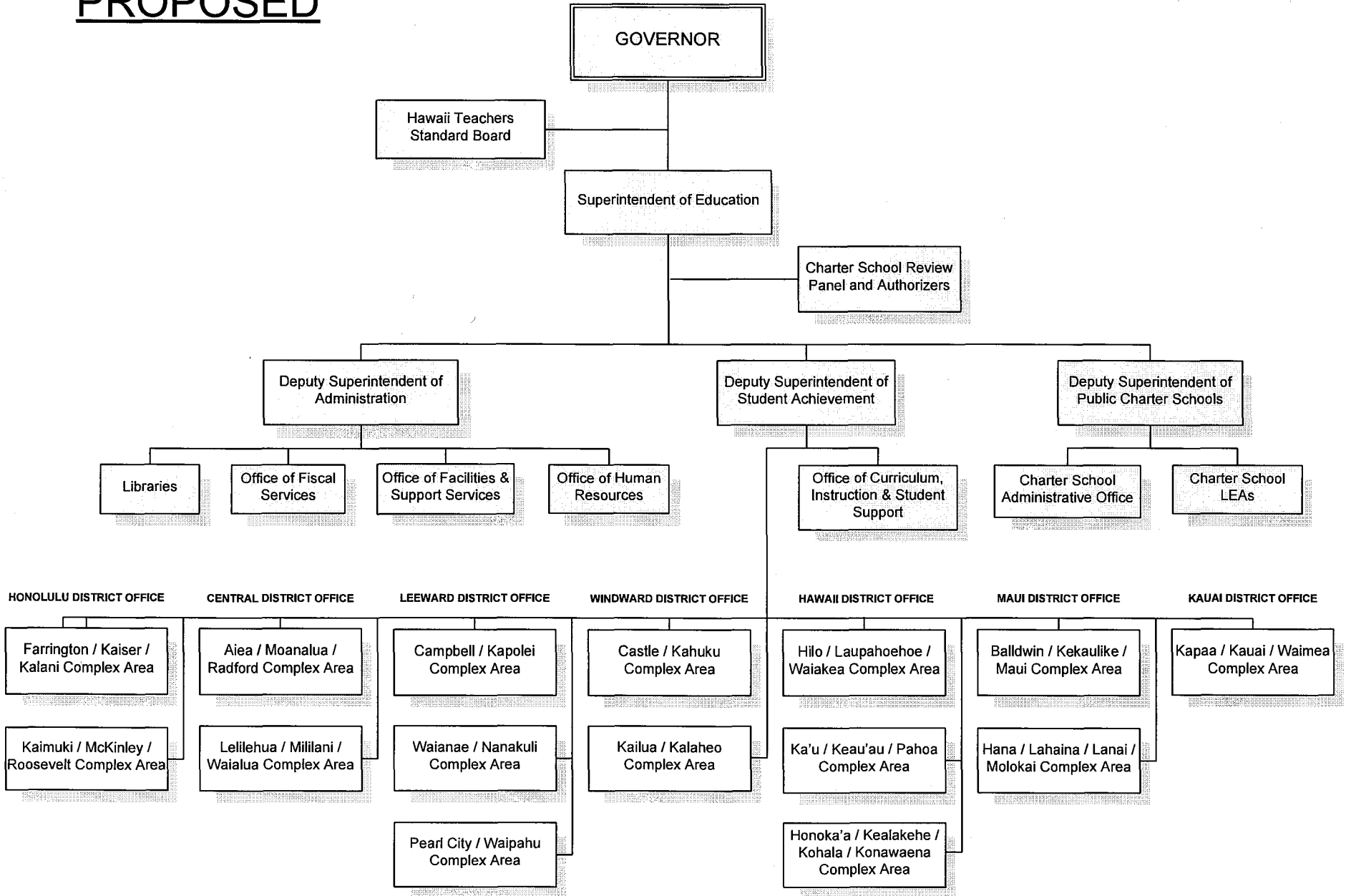
We strongly urge the Committee to adopt key provisions that would make the next Governor directly accountable for the condition of public education within the State, by authorizing the next Governor to appoint the DOE Superintendent directly. This change would create a system of clear accountability 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

# PROPOSED



Date of Hearing: Wednesday, March 31, 2010

Committee: Senate Committee on Ways and Means

Agency: Garrett Toguchi, Chairperson, Board of Education

Title of Bill: H.B. No. 2377, H.D. 3, S.D. 1, Relating to Education

Purpose of Bill: Implements, upon ratification, the constitutional amendment that provides 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. Among other things, this bill: (1) Creates a nine voting-member Board that is 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; (2) Specifies that there shall be one nonvoting member on the Board who is a public high school student who is selected by the Hawaii State Student Council; (3) Creates the Board of Education Candidate Nomination Commission to establish criteria for qualifying, screening, and presenting candidates for membership to serve on the board, to the governor; and presents the names of candidates to the governor.

Board's Position: Chairperson Kim, Vice Chairperson Tsutsui, and members of the Senate Committee on Ways and Means, thank you for the

opportunity to submit comments on H.B. No. 2377, H.D. 3, S.D. 1.

The Board of Education (Board) opposes H.B. No. 2377, H.D. 3, S.D. 1, which is enabling legislation to allow the governor to appoint the voting members of the Board, 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.

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 of Education, *whose members would be determined by the governor*.

A board that is appointed by the governor would centralize educational decision-making too largely in the Executive Branch. Under H.B. No. 2377, 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 the Board of Education 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 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 of Education Candidate Nomination Commission established under H.B. No. 2377, H.D. 3, S.D. 1 is an attempt to broaden the one-person/one-governor appointment process for selecting individuals to serve on the Board of Education. Similar to the University of Hawaii Board of Regents Candidate Advisory Council established in law, the creation of the Board of Education Candidate Nomination Commission reflects recognition by the Legislature and the public's desire of the need to minimize sole control and sole decision-making by one person, i.e., the governor, over the appointment of individuals to serve on our public institutions. The establishment of these nonpartisan citizen advisory groups is an acknowledgement of the heed taken and political nature of entrusting the governor, a sole individual, to appoint individuals to serve on our K-12 *and* higher education institutions. Direct citizen control through an *elected* board, not an *appointed* Board of Education, is the best way to ensure fairness, independence, and public participation and involvement in education.

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 you 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  
9:30 a.m.  
Conference Room 211

TESTIMONY TO  
THE SENATE COMMITTEE ON WAYS AND MEANS

RE: HB 2377 (HD3, SD 1) – Relating to Education

Dear Chair Kim, Vice-Chair Tsutsui and Members of the Committee:

Hawai'i's Children First is strongly supportive of the intent of HB 2377. We believe the time has come for changing the way we select Board of Education candidates from a system of electing members to a system that appoints them.

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 2377 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 2377.

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





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**Testimony to the Senate Committee on Ways and Means**

**Wednesday, March 31, 2010**

**9:30 a.m.**

**Conference Room 211**

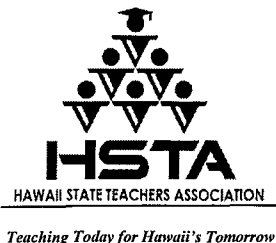
**RE: Relating to Education – HB2377 HD3 SD1**

Chair Kim, Vice Chair Tsutsui and Members of the Committee:

My name is Gary Kai and I am the Executive Director of the Hawaii Business Roundtable. The Hawaii Business Roundtable fully supports HB 2377 HD3 SD1 that proposes amendments to the Hawaii Constitution relating to the Board of Education. We have submitted testimony previously and continue to support the requirement that the Board of Education members to be nominated and, by and with the advice and consent of the Senate, appointed by the Governor from pools of qualified candidates presented to the Governor.

We continue to believe that the current governance structure is ambiguous and has led to conflicted leadership and a lack of accountability. Current events continue to reflect this misalignment of responsibility and authority. A professional Board, appointed by the Governor will help to provide the alignment necessary to provide the strategic leadership necessary for the reforms needed to create that new vision for public education in Hawaii that we all desire. We fully appreciate the difficult and thoughtful deliberation that the members of the legislature have undertaken to create this new vision for public education.

Thank you very much for the opportunity to testify. We look forward to joining your efforts and working with our entire community to take our public education system to the level that will prepare our keiki for the future they desire and deserve.



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**TESTIMONY BEFORE THE SENATE COMMITTEE ON  
WAYS AND MEANS**

**RE: HB 2377, HD3 , SD1- PROPOSING AMENDMENTS TO THE HAWAII  
CONSTITUTION RELATING TO THE BOARD OF EDUCATION.**

Wednesday, March 31, 2010

**WIL OKABE, PRESIDENT  
HAWAII STATE TEACHERS ASSOCIATION**

Chair Kim and Members of the Committee:

The Hawaii State Teachers Association supports an elected Board of Education. We believe in an elected Board of Education because we believe that an elected board is more likely to represent the view of the voters rather than the interest of the governor who appoints them.

However, we offer an amendment to proposed Sec 302A-B.

Proposed Sec 302A-B (f) (5) on page 11 currently reads:

( 5 ) A current or former public school teacher who has been awarded the department of education state teacher of the year award, to be appointed by the exclusive representative for bargaining unit (5) , as defined in section 89-6:

If the committee decides to move this bill, we request that this committee consider an amendment as follows:

(5) A current public school teacher to be appointed by the exclusive representative for bargaining unit (5), as defined in section 89-6.

We seek this change because it is unrealistic to limit the selection to a pool of approximately 25 teachers.

Thank you for the opportunity to testify.