

HOUSE OF REPRESENTATIVES

H.B. NO.

2377

TWENTY-FIFTH LEGISLATURE, 2010

H.D. 3

STATE OF HAWAII

S.D. 2

C.D. 1

A BILL FOR AN ACT

RELATING TO EDUCATION.

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

PART I

SECTION 1. The purpose of this Act is to implement, upon its ratification, the constitutional amendments to Article X, Section 2 of the Hawaii Constitution, by requiring the members of the board of education to be nominated and, with the advice and consent of the senate, appointed by the governor from lists of qualified candidates presented to the governor by the board of education selection advisory council.

PART II

SECTION 2. Chapter 302A, Hawaii Revised Statutes, is amended by adding two new sections to be appropriately designated and to read as follows:

"§302A-A Board of education members; appointment; terms; quorum and meetings;

compensation. (a) The board shall consist of ten members as follows:

(1) Nine voting members who shall represent and reside in the specified geographic areas as follows:

- (A) One member from the county of Hawaii;
 - (B) One member from the county of Maui;
 - (C) One member from the county of Kauai; and
 - (D) Six members from the city and county of Honolulu;
- and

(2) One nonvoting member who shall be a public school student at the time of the initial appointment.

The members shall be appointed by the governor, with the advice and consent of the senate, and may be removed by the governor.

Except as otherwise provided by law, state officers shall be eligible for appointment and membership.

(b) Except for the student member, the governor shall set the terms of those initially appointed under this section to each seat on the board as follows:

- (1) Three members shall serve one-year terms;
 - (2) Three members shall serve two-year terms; and
 - (3) Three members, including the chairperson of the board, shall serve three-year terms.
- (c) Except for the student member:

(1) The term of each member shall be three years, except as provided for the initial appointment in subsection (b); and

(2) Members shall serve no more than two consecutive three-year terms; provided that the members who are initially appointed to terms of two years or less pursuant to subsection (b) may be reappointed to two ensuing, consecutive three-year terms. If a member is to be appointed to a second consecutive term of three years, the senate shall consider the question of whether to reconfirm the member at least one hundred twenty days prior to the expiration of a member's first three-year term; provided that if the senate is not in session after the member's reappointment and prior to the one-hundred-twenty-day deadline by which the senate shall have considered the question of reconfirmation, the member shall continue to serve until the senate takes final action on the reconfirmation when it convenes for the next regular session or the next special session during which the senate is authorized to consider the question of reconfirmation.

(d) The term of the student member shall be two years. The student member may be reappointed for one additional consecutive term even though the member is no longer a student at the time of

reappointment; provided that the senate shall consider the question of whether to reconfirm the member at least one hundred twenty days prior to the expiration of the member's first term; provided further that if the senate is not in session after the member's reappointment and prior to the one-hundred-twenty-day deadline by which the senate shall have considered the question of reconfirmation, the member shall continue to serve until the senate takes final action on the reconfirmation when it convenes for the next regular session or the next special session during which the senate is authorized to consider the question of reconfirmation.

(e) Every member may serve beyond the expiration date of the member's term of appointment until the member's successor has been appointed by the governor and confirmed by the senate in accordance with Article X, Section 2, of the Hawaii Constitution.

(f) The board shall select a chairperson from among its voting members.

The board shall select a vice chairperson from among its voting members, who shall serve as interim chairperson in the event the chairperson's seat becomes vacant.

(g) A majority of all the voting members to which the board is entitled shall constitute a quorum to conduct business. At any time the board has fewer than six voting members, three voting members of the board shall constitute a quorum to conduct business and the concurrence of three voting members shall be necessary to make any action of the board valid.

Notwithstanding chapter 92, from the convening of the legislature in regular session to adjournment sine die of each regular session, and during each special session of the legislature, the board may file any notice that specifies only legislation or legislation-related agenda items, no fewer than two calendar days before the meeting.

(h) The governor shall notify the board of education selection advisory council in writing within ten days of:

(1) Removing a member of the board; or

(2) Receiving notification that a member of the board is resigning or has died.

(i) The members of the board shall serve without pay but shall be entitled to their travel expenses within the state when attending meetings of the board or when actually engaged in business relating to the work of the board.

§302A-B Board of education selection advisory council. (a) There is established the board of education selection advisory council to present to the governor lists of qualified candidates from which the members of the board shall be nominated and, with the advice and consent of the senate, appointed by the governor. The council shall be attached to the department for administrative purposes.

(b) The council shall present a list of qualified candidates to the governor for each vacant seat on the board as provided by law, with no fewer than two and no more than four qualified candidates for each seat on the board:

(1) Within thirty days of convening its first meeting; and

(2) For all subsequent presentations to the governor:

(A) Within sixty days of a vacancy that arises by resignation, death, or removal by the governor;
or

(B) Within one hundred fifty days prior to the expiration of a board member's term.

The council shall be deemed to have fulfilled its obligation under this section upon presentation of the names of the minimum number of candidates required to be presented for each seat on the board.

(c) In selecting the candidates to be presented to the governor, the council shall:

(1) Establish the criteria for qualifying, screening, and presenting to the governor candidates for membership on the board;

(2) Develop a statement that includes the selection criteria to be applied and a description of the responsibilities and duties of a member of the board and distribute this statement to potential candidates;

(3) Screen and qualify candidates for membership on the board based on their background, experience, and potential for discharging the responsibilities of a member of the board;

(4) Publicly advertise pending vacancies and actively solicit and accept applications from potential candidates;

(5) Develop and implement a fair, independent, and nonpartisan procedure for selecting candidates to serve on the board; and

(6) Require each candidate to disclose any existing or anticipated contracts with the department or any existing or anticipated financial transactions with the department.

No council member shall qualify to be a candidate.

Upon submission of the names of candidates to the governor, the council shall make available the names of candidates to the public through the department.

Notwithstanding any provision in this subsection, each member of the board serving on the day of the effective date of this Act, if the member accepts, shall be included in the list of candidates to be presented to the governor for the initial appointment of the members of the board, in addition to those candidates selected pursuant to this section; provided that:

(1) A member of the board serving on the day of the effective date of this Act shall only be a candidate for the seat in the geographic area in which the member resides, as provided in 302A-A(a), except in the case of the student member of the board serving on the day of the effective date of this Act; and

(2) The student member serving on the day of the effective date of this Act shall only be a candidate for the student member seat established in section 302A-A(a).

(d) For each board seat to be filled, the governor shall select one appointee from among the candidates submitted by the council; provided that no board member shall be appointed until December 6, 2010.

The appointee selected by the governor shall serve as an interim board member until the appointee has been confirmed by the senate; provided that the members initially appointed to the board shall not serve until five voting members are appointed and the elected members of the board are discharged from office pursuant to section 19 of this Act , Session Laws of Hawaii 2010.

(e) The council shall consist of seven members to be appointed without regard to section 26-34 as follows:

(1) One member of the community appointed by the governor; provided that this member shall not be appointed until December 6, 2010;

(2) One member of the community appointed by the president of the senate;

(3) One member of the community appointed by the speaker of the house of representatives; and

(4) Four members appointed by the Hawaii P-20 Council, of which:

(A) Two members shall be parents, one of whom shall be a currently-serving school community council parent representative;

(B) One member shall be from the business or nonprofit community; and

(C) One member shall be an educator.

Individuals who are or have served as members of the Hawaii P-20 Council within the last two years immediately preceding the establishment of or a vacancy on the board of education selection advisory council shall not be eligible to serve as members of the board of education selection advisory council.

The board of education selection advisory council shall be selected in a nonpartisan manner.

Appointees to the council shall have a general understanding of the purposes of public education, the mission of the department, and the responsibilities of the board. Appointees shall be individuals who are widely viewed as having placed the broad public interest ahead of special interests, having achieved a high level of prominence in their respective professions, and being respected members of the community.

If any member has not been appointed within one hundred eighty days of a vacancy on the council, the other members on the council shall make an interim appointment to fill the vacant seat. The interim appointee shall satisfy the requirements for appointment provided in this subsection and shall serve until the time when the appropriate appointing authority makes an appointment for the vacant seat as provided in this subsection.

(f) Members of the council shall serve four-year terms; provided that the three members initially appointed by the governor, president of the senate, and speaker of the house of representatives shall each serve for an initial term of two years; provided further that members shall serve no more than two consecutive four-year terms; and provided further that terms for members initially appointed to the council shall be deemed to begin on the day of the effective date of this Act, regardless of the actual

date of appointment.

(g) If a vacancy occurs on the council, a successor shall be appointed in the same manner and subject to the same qualifications as the person's predecessor. The person appointed to fill a vacancy shall serve for the remainder of the term of the person's predecessor.

(h) The council shall operate in a nonpartisan manner. No individual, while a member of the council, shall run for or hold any elected office under the United States or the State or any of its political subdivisions.

(i) The council shall convene its first meeting when a majority of its members have been appointed and as early as practicable. The members of the council shall select a chairperson from among themselves. A majority of all the members to which the council is entitled shall constitute a quorum to conduct business. The concurrence of a majority of all the members to which the council is entitled shall be necessary to make any action of the council valid. The council shall meet annually and at other times as necessary. The council shall be exempt from part I of chapter 92.

(j) Members of the council shall serve without compensation but shall be entitled to reimbursement for expenses, including travel, necessary for the performance of their duties.

(k) Notwithstanding chapter 92F or any other law to the contrary, all information required by the council shall be confidential, including all council information obtained, reviewed, or considered before and after a council decision making meeting. Confidential council information shall include documents, data, or other information that is not of public record, including:

(1) Personal financial information;

(2) The names of candidates;

(3) Applications and the personal, financial, and other information contained therein submitted by the candidates to the council;

(4) Interviews;

(5) Schedules;

- (6) Reports;
- (7) Studies;
- (8) Background checks;
- (9) Credit reports;
- (10) Surveys and reports prepared for or on the council's behalf;
- (11) The results of any evaluations or assessments conducted by the council;
- (12) The substance and details of any discussions with council members; and
- (13) The substance and details of discussions and deliberations of the council and any of its committees during meetings."

PART III

SECTION 3. Section 11-157, Hawaii Revised Statutes, is amended to read as follows:

"§11-157 In case of tie. In case of the failure of an election by reason of the equality of vote between two or more candidates, the tie shall be decided by the chief election officer or county clerk in the case of county elections in accordance with the following procedure:

(1) In the case of an election involving a seat for the senate, house of representatives, [~~board of education,~~] or county council where only voters within a specified district are allowed to cast a vote, the winner shall be declared as follows:

(A) For each precinct in the affected district, an election rate point shall be calculated by dividing the total voter turnout in that precinct by the total voter turnout in the district. For the purpose of this subparagraph, the absentee votes cast for the affected district shall be treated as a precinct. The election rate point shall be calculated by dividing the total absentee votes cast for the affected district by the total voter turnout in that district. All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth[-];

(B) The candidate with the highest number of votes in a precinct shall be allocated the election rate point calculated under subparagraph (A) for that precinct. In the event that two or more persons are tied in receiving the highest number of votes for that precinct, the election rate point shall be equally apportioned among those candidates involved in that precinct tie[-];

(C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as provided under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the highest election rate point total shall be declared the winner[-]; and

(D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the precinct with the largest voter turnout shall be declared the winner[-];

and

(2) In the case of an election involving a federal office or an elective office where the voters in the entire [~~State~~] state or in an entire county are allowed to cast a vote, the winner shall be declared as follows:

(A) For each representative district in the [~~State~~] state or county, as the case may be, an election rate point shall be calculated by dividing the total voter turnout in that representative district by the total voter turnout in the state, county, or federal office district, as the case may be; provided that for

purposes of this subparagraph:

(i) The absentee votes cast for a statewide, countywide, or federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total absentee votes cast for the statewide, countywide, or federal office by the total voter turnout in the state, county, or federal office district, as the case may be~~[-]; and~~

(ii) The overseas votes cast for any election in the ~~[State]~~ state for a federal office shall be treated as a separate representative district and the election rate point shall be calculated by dividing the total number of overseas votes cast for the affected federal office by the total voter turnout in the affected federal office district. The term "overseas votes" means those votes cast by absentee ballots for a presidential election as provided in section 15-3.

All election rate points shall be expressed as decimal fractions rounded to the nearest hundred thousandth~~[-];~~

(B) The candidate with the highest number of votes in a representative district shall be allocated the election rate point calculated under subparagraph (A) for that district. In the event that two or more persons are tied in receiving the highest number of votes for that district, the election rate point shall be equally apportioned among those candidates involved in that district tie~~[-];~~

(C) After the election rate points calculated under subparagraph (A) for all the precincts have been allocated as prescribed under subparagraph (B), the election rate points allocated to each candidate shall be tallied and the candidate with the election rate point total shall be declared the winner~~[-]; and~~

(D) If there is a tie between two or more candidates in the election rate point total, the candidate who is allocated the highest election rate points from the representative district with the largest voter turnout shall be declared the winner."

SECTION 4. Section 11-195, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) For purposes of this subpart, whenever a report is required to be filed with the commission, "filed" means electronically filed on the commission's electronic filing system by the date and time specified for the filing of the report by the:

(1) Candidate or the committee of a candidate who is seeking election to the:

- (A) Office of governor;
- (B) Office of lieutenant governor;
- (C) Office of mayor;
- (D) Office of prosecuting attorney;
- (E) County council;
- (F) Senate;
- (G) House of representatives; or
- (H) Office of Hawaiian affairs; ~~[or~~
- ~~(I) Board of education;]~~

or

(2) Noncandidate committee required to be registered with the commission pursuant to section 11-194."

SECTION 5. Section 11-209, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) From January 1 of the year of any primary, special, or general election, the total expenditures for each election for candidates who voluntarily agree to limit their campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone and all campaign treasurers and committees in the candidate's behalf, shall not exceed the following amounts expressed respectively multiplied by the number of voters in the last preceding general election registered to vote in each respective voting district:

- (1) For the office of governor--\$2.50;
- (2) For the office of lieutenant governor--\$1.40;
- (3) For the office of mayor--\$2.00;
- (4) For the offices of state senator, state representative, and county council member--\$1.40; and
- (5) For ~~[the offices of the board of education and]~~ all other offices--20 cents."

SECTION 6. Section 11-218, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) For ~~[the board of education and]~~ all other offices, the maximum amount of public funds available to a candidate shall not exceed \$100 in any election year."

SECTION 7. Section 12-5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Nomination papers for candidates for members of Congress, governor, and lieutenant governor~~[-and the board of education]~~ shall be signed by not less than twenty-five registered voters of the State or of the Congressional district ~~[or school board district]~~ from which the candidates are running in the case of candidates for the United States House of Representatives ~~[or for the board of education]~~."

SECTION 8. Section 26-35.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) For purposes of this section, "member" means any person who is appointed, in accordance with the law, to serve on a temporary or permanent state board, including members of the board of education, the local school board of any charter school established under chapter 302B, council, authority, committee, or commission, established by law or elected to ~~[the board of education, or]~~ the board of trustees of the employees' retirement system under section 88-24, or the corporation board of the Hawaii health systems corporation under section 323F-3 and its regional system boards under section 323F-3.5; provided that "member" shall not include any person elected to serve on a board or

commission in accordance with chapter 11 [~~other than a person elected to serve on the board of education~~]."

SECTION 9. Section 84-17, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

"(d) The financial disclosure statements of the following persons shall be public records and available for inspection and duplication:

(1) The governor, the lieutenant governor, the members of the legislature, candidates for and delegates to the constitutional convention, [~~the members of the board of education,~~] the trustees of the office of Hawaiian affairs, and candidates for state elective offices;

(2) The directors of the state departments and their deputies, regardless of the titles by which the foregoing persons are designated; provided that with respect to the department of the attorney general, the foregoing shall apply only to the attorney general and the first deputy attorney general;

(3) The administrative director of the State;

(4) The president, the vice presidents, the assistant vice presidents, the chancellors, and the provosts of the University of Hawaii;

(5) The members of the board of education, and the superintendent, the deputy superintendent, the state librarian, and the deputy state librarian of the department of education;

(6) The administrative director and the deputy director of the courts; and

(7) The administrator and the assistant administrator of the office of Hawaiian affairs."

SECTION 10. Section 84-41, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~84-41] **Applicability of part.** This part applies to legislators, [~~elected~~] members of the board of education, trustees of the office of Hawaiian affairs, the governor, the lieutenant governor, and executive department heads and deputies. This part does not apply to any other officer or employee of the State."

SECTION 11. Section 88-21, Hawaii Revised Statutes, is amended by amending the definition of "elective officer" or "elective official" to read as follows:

""Elective officer" or "elective official": any person elected to a public office or appointed to fill a vacancy of an elective office, except as a delegate to a constitutional convention [~~or member of the board of education~~], in accordance with an election duly held in the [~~State~~] state or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office."

SECTION 12. Section 302A-1101, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) There shall be a principal executive department to be known as the department of education, which shall be headed by [~~an elected~~] a policy-making board to be known as the board of education. The board shall have power in accordance with law to formulate statewide educational policy, adopt student performance standards and assessment models, monitor school success, and [~~to~~] appoint the superintendent of education as the chief executive officer of the public school system."

SECTION 13. Section 302A-1110, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~302A-1110] **Educational districts not applicable.** The educational districts established by

section 4-1 shall not be applicable to, nor alter, ~~[the school board or departmental school districts, established by section 13-1, or]~~ the school districts established for administrative purposes by the department."

SECTION 14. Section 17-6, Hawaii Revised Statutes, is repealed.

~~["§17-6 Board of education members. (a) The governor shall make an appointment to fill any vacancy in the membership of the board of education for the unexpired term of that vacancy whenever a vacancy occurs and the term of that vacancy ends at the time of the next succeeding general election:~~

~~(b) In the case of a vacancy, the term of which does not end at the next succeeding general election:~~

~~(1) If it occurs not later than on the sixtieth day prior to the next succeeding general election, the vacancy shall be filled for the unexpired term at the next succeeding general election. The chief election officer shall issue a proclamation designating the election for filling the vacancy. All candidates for the unexpired term shall file nomination papers not later than 4:30 p.m. on the fiftieth day prior to the general election (but if such day is a Saturday, Sunday, or holiday then not later than 4:30 p.m. on the first working day immediately preceding) and shall be elected in accordance with this title. Pending the election the governor shall make a temporary appointment to fill the vacancy and the person so appointed shall serve until the election of the person duly elected to fill such vacancy.~~

~~(2) If it occurs after the sixtieth day prior to the next succeeding general election, the governor shall make an appointment to fill the vacancy for the unexpired term:~~

~~(c) All appointments made by the governor under this section shall be made without consideration of the appointee's party affiliation or preference or nonpartisanship, however the persons so appointed shall meet the residency requirement specified in section 13-1."]~~

SECTION 15. Section 302A-1105, Hawaii Revised Statutes, is repealed.

~~["§302A-1105 Compensation; expenses. Board of education members shall be allowed:~~

~~(1) Compensation at the rate of \$100 per day for each day's actual attendance at meetings;~~

~~(2) Transportation fares between islands and abroad; and~~

~~(3) Personal expenses at the rates specified by the board while attending board meetings or while on official business as authorized by the chairperson, when the board meetings or official business require a board member to leave the island upon which the board member resides."]~~

SECTION 16. Section 302A-1106, Hawaii Revised Statutes, is repealed.

~~["§302A-1106 Organization; quorum; meetings. (a) The board shall elect from its own membership a chairperson and a vice-chairperson. A majority of all members to which the board is entitled shall constitute a quorum to do business and the concurrence of a majority of all members to which the board is entitled shall be necessary to make any action of the board valid; provided that due notice shall have been given to all members of the board or a bona fide attempt shall have been made to give due notice to all members of the board to whom it was reasonably practicable to give due notice. Meetings shall be called and held, at the call of the chairperson or by a quorum, as often as may be necessary for the transaction of the department's business.~~

~~(b) Chapter 92 notwithstanding, from the convening of the legislature in regular session to adjournment sine die of each regular session, and during each special session of the legislature, the board may file any notice that specifies only legislation or legislation-related agenda items, no fewer~~

than two calendar days before the meeting."]

SECTION 17. Section 302A-1106.5, Hawaii Revised Statutes, is repealed.

~~["§302A-1106.5] Board of education; community meetings. The board shall hold not less than two community meetings annually in each departmental school district in addition to their regular meetings to discuss and receive input from the community on public education and public library issues. The board chairperson shall designate board members to attend the community meetings. These community meetings shall not be held for the purpose of formulating educational policy. The community meetings shall be exempt from sections 92-2.5, 92-7, 92-9, and 92-41, provided that the board shall give written public notice of each community meeting. The meeting notice shall indicate the date, time, and place of the meeting, and shall be filed in the office of the lieutenant governor and in the board's office for public inspection six calendar days before the meeting. The notice shall also be posted at the site of the meeting."]~~

SECTION 18. Chapter 13, Hawaii Revised Statutes, is repealed.

PART IV

SECTION 19. Notwithstanding any law to the contrary, the elected members of the board of education serving on the day of the effective date of this Act shall continue to serve until the appointment of five voting interim members of the board of education, at which time the elected members are discharged from office; provided that any vacancy occurring between the effective date of this Act and the discharge from office of all the elected members of the board of education, shall not be filled.

SECTION 20. Except as provided in section 21 of this Act, all employees, including secretarial staff and analysts, serving the board of education on the day of the effective date of this Act, shall continue to be exempt employees of the department of education.

SECTION 21. On the day of the effective date of this Act, the executive director of the board of education shall no longer be an employee of the department of education and shall serve at the pleasure of the board of education.

PART V

SECTION 22. The revisor of statutes shall insert the effective date of this Act and the number of

this Act in the appropriate places in section 2 of this Act.

SECTION 23. In codifying the new sections added by section 2 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 24. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 25. This Act shall take effect upon ratification of the constitutional amendments requiring the members of the board of education to be appointed; provided that Part III of this Act shall take effect when the elected members of the board of education are discharged from office pursuant to section 19 of this Act.

Report Title:

Board of Education; Appointment; Selection Advisory Council

Description:

Requires the members of the Board of Education to be nominated and, with the advice and consent of the Senate, appointed by the Governor from lists of qualified candidates presented to the Governor by the Board of Education Selection Advisory Council. (HB2377 CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.