

EXECUTIVE CHAMBERS

HONOLULU

JUNE 20, 2002

COPY

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1969

Honorable Members
Twenty-First Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith without my approval, House Bill No. 1969, entitled "A Bill for an Act Relating to the Board of Education."

The purpose of this bill is to allow the Board of Education to appoint or retain by contract attorneys independent of the Attorney General. It further allows the Board of Education to be the primary hiring authority; sets forth the legal services to be provided; allows the Board to set compensation; and specifies that the Board is not precluded from requesting and securing legal services from the attorney general.

House Bill No. 1969, however, has the potential to create more legal problems and divisiveness between the Board of Education and the rest of the Department of Education and between the Board of Education and the Governor. As the attorney for the Board, the rest of the Department, including the Hawaii State Public Library System, and the Governor, it is the responsibility of the Attorney General to advise these clients, while being cognizant of the statewide implications and concerns. It is the responsibility of the Attorney General to assist in resolving disputes within the Executive Branch and certainly to assist in resolving legal disputes between the Board and the rest of the Department of Education. The Board of Education is not autonomous from the Executive Branch. As such, its interests may diverge from that of the rest of the Executive Branch, but cannot be in conflict with that of the Executive Branch.

The Attorney General previously allowed the Board of Education to retain three attorneys on its staff to write opinions and advise the Board on certain matters, with oversight

having been provided by the Department of the Attorney General. On several occasions, advice given by the Board's staff attorneys has had to be changed by the Department of the Attorney General office. Because the staff attorneys are under the supervision of the Board, their advice was often an effort to provide the Board with the answer that it wished and not a correct interpretation of the law. The Board has recently requested that the Memorandum of Agreement that allowed this arrangement be revoked.

Additionally, developing a legal section would cost money and could never duplicate the resources or expertise of the Department of the Attorney General. Unless and until the Board is conferred autonomy from the Executive Branch, it is critical that the legal advice given to the Board is consistent with the legal advice given to other agencies of the Executive Branch. Otherwise, much time and effort will be spent resolving differences in positions and actions between the Board and the Governor. Moreover, oftentimes the disputes are not only between the Board and the rest of the Executive Branch, but also between the Board and the rest of the Department of Education itself.

The issues that continue to arise regarding the divergence of the Board's interests from that of the Executive Branch relate to funding. It is the Governor's and the Department of Budget and Finance's responsibility to ensure that the State's fisc is prudently managed. The bill will not resolve that problem. As was made clear in Board of Education v. Waihee, 70 Haw. 253, 768 P.2d 1279 (1989) (a lawsuit by certain members of the Board, not by the Board itself), the Governor and the Director of Finance have the authority to oversee the Executive Branch's budget, including that of the Board of Education.

In 1994, Article X of the State Constitution was amended to clarify the roles and responsibilities of the Board and the Superintendent of Education. The 1994 amendment to Section 3 of Article X limited the powers of the Board to formulating statewide educational policy, as provided by law, and appointing the Superintendent. The day-to-day management and

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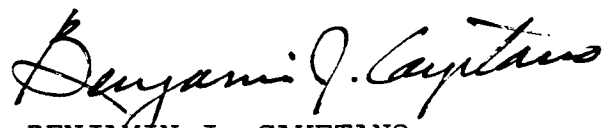
operation of the schools was left to the Superintendent. Because it is sometimes difficult to determine what is policy and what is internal organization, operation, and management, and because of the Board's prior authority, before the 1994 amendment, to make decisions with respect to internal organization and management issues, several disagreements between the Board and the Superintendent have had to be addressed by the Department of the Attorney General.

The bill could potentially cause more conflict between the Board and the rest of the Department of Education and the Board and the Governor. If the Board has the authority to hire its own attorneys, it could lead to a circumvention of the constitutional amendment or litigation between the Board and the rest of the Department to determine whether particular actions or issues concern statewide educational policymaking or day-to-day operations. The bill could also potentially lead to legal challenges and litigation between the Board and the Governor. Such potential litigation could cost the State a lot of money with little to no ultimate benefit to the entities involved and certainly with no benefit to the State.

Because judgments against the Department of Education would continue to be funded by the Legislature, oversight of litigation must continue to be the responsibility of the Attorney General. The Board needs to be given accurate and sound legal advice. If the attorneys are employees of the Board, accurate and objective legal advice would be difficult to give to the Board.

For the foregoing reasons, I am returning House Bill No. 1969 without my approval.

Respectfully,



BENJAMIN J. CAYETANO
Governor of Hawaii

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P R O C L A M A T I O N


WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of the Governor's plan to return with the Governor's objections any bill presented to the Governor less than ten days before adjournment sine die or presented to the Governor after adjournment sine die of the Legislature; and

WHEREAS, House Bill No. 1969, entitled "A Bill for an Act Relating to the Board of Education," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, House Bill No. 1969 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return House Bill No. 1969 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 20
day of June, 2002.



BENJAMIN J. CAYETANO
Governor of Hawaii