

ACT 5

S.B. NO. 8

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 the constitutional amendments to article X, section 2, of the Hawaii State Constitution that were adopted by the legislature and ratified by the electorate in the 2010 general election, by statutorily requiring the members of the board of education to be nominated and, with the advice and consent of the senate, appointed by the governor.

PART II

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

**“§302A-A Board of education; members; student and military representative.** (a) The board shall consist of nine members as follows:

- (1) One member from the county of Hawaii;
- (2) One member from the county of Maui;
- (3) One member from the county of Kauai;
- (4) Three members from the city and county of Honolulu; and
- (5) Three at-large members; provided that the governor shall select an at-large member as the chairperson.

The members shall be appointed by the governor, with the advice and consent of the senate. The governor may remove or suspend for cause any member of the board.

(b) Pursuant to article XVIII, section 12, of the Hawaii State Constitution, the period of transition from the elected to the appointed board shall be as determined in section 21 of Act , Session Laws of Hawaii 2011.

(c) The members of the board shall serve without pay but shall be entitled to reimbursement for necessary expenses, including travel and board and lodging expenses, while attending meetings of the board or when actually engaged in business relating to the work of the board.

(d) Pursuant to section 302A-447, the state student council shall select a nonvoting public high school student representative to the board.

(e) Pursuant to section 302A-1101(c), the board shall invite the senior military commander in Hawaii to appoint a nonvoting military representative to the board.

**§302A-B Board of education; eligibility.** Except as otherwise provided by law, state officers shall be eligible for appointment and membership to the board. No person shall be eligible for appointment to the board:

- (1) Under section 302A-A(a)(1) through (4) unless the person is a resident of the county from which the person is to be appointed; or
- (2) Under section 302A-A(a)(5) unless the person is a resident of the State.

**§302A-C Board of education; terms.** (a) The governor shall set the terms of the members initially appointed to the board under section 21 of Act , Session Laws of Hawaii 2011, 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, shall serve three-year terms.

(b) The term of each member shall be three years, except as provided for in the initial appointment in subsection (a). Members shall serve no more than three consecutive three-year terms; provided that the members who are initially appointed to terms of two years or less pursuant to subsection (a) may be reappointed to three ensuing consecutive three-year terms. If a member is nominated to a second or subsequent consecutive term, 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 immediately preceding term; provided that if the senate has not taken final action to reconfirm the member by the one hundred twenty-day deadline, the member shall continue to serve until the senate takes final action on the reconfirmation.

(c) The term of the student representative shall be one year. The student representative may be selected for one additional consecutive term; provided that the student representative shall be a student at the time of selection and shall be a student for the majority of that term.

(d) 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 sections 302A-A, 302A-F, and 302A-G.

**§302A-D Board of education; organization; quorum; meetings.** (a) The governor shall select a chairperson of the board; provided that the chairperson shall be selected from among the at-large members. The board shall select a vice chairperson from among its members, and the vice chairperson shall serve as interim chairperson in the event the chairperson's seat becomes vacant.

(b) 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 five voting members, three voting members of the board shall constitute a quorum to conduct business and the concurrence of at least three voting members shall be necessary to make any action of the board valid.

(c) 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.

**§302A-E Board of education; vacancies.** (a) The governor shall notify the senate 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;

provided that any vacancy shall be filled by appointment by the governor, with the advice and consent of the senate, in accordance with sections 302A-A , 302A-B, 302A-C, 302A-F, and 302A-G.

(b) Where the chairperson position becomes vacant, the governor may nominate a sitting member of the board to the chairperson position in accordance with subsection (a) and shall fill any resulting vacancy in accordance with subsection (a).

**§302A-F Board of education; qualifications; administration priorities.** (a) Upon the nomination of any board member, the governor shall provide written documentation articulating the administration's goals and priorities with respect to the formation of a highly-functioning, well-balanced board, and describing the nominee's qualifications.

(b) Each nominee shall meet the following minimum qualifications:

- (1) Record of integrity, civic virtue, and high ethical standards. Each nominee shall demonstrate integrity, civic virtue, and high ethical standards and be willing to hold fellow board members to the same;
- (2) Availability for constructive engagement. Each nominee shall commit to being a conscientious and attentive board member;
- (3) Knowledge of best practices. Each nominee shall have an understanding of best practices in educational governance or shall be willing to be trained in such; and
- (4) Commitment to educational leadership. Each nominee shall have a clear understanding of the board's role in developing and protecting a clear, long-term strategic vision for Hawaii's public schools, and shall understand the need to hold the superintendent of education accountable for making consistent progress toward that vision.

(c) Each nominee shall ideally meet the following recommended qualifications:

- (1) Understanding of collective bargaining. Each nominee should demonstrate an understanding of the collective bargaining process and an ability to participate in that process on behalf of the board free from any conflict of interest;
- (2) Experience governing complex organizations. Each nominee should possess experience with complex organizations and a proven ability to function productively within them;
- (3) Collaborative leadership ability. Each nominee should have substantial leadership experience that ideally illustrates the nominee's ability to function among diverse colleagues as an effective team member, with the ability to articulate, understand, and help shape consensus surrounding board policies; and
- (4) Commitment to education. Each nominee's record should demonstrate a deep and abiding interest in education and a dedication to the social, academic, and character development of young people.

**§302A-G Board of education; senate advice and consent.** In determining whether to confirm the governor's nominees to the board, the senate shall consider the combination of abilities, breadth of experiences, and characteristics

of the board, as a whole, that will best serve the diverse interests and needs of the students and their families, the education system in Hawaii from early childhood through higher education, and the public libraries. Such considerations shall include but not be limited to reflecting the diversity of the student population, geographical representation, and a broad representation of education-related stakeholders.”

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[-];
- (2) In the case of an election involving a federal office or an elective office where the voters in the entire 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 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,]~~ 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 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 11-331, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

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

- (1) The candidate or candidate 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) A noncandidate committee required to be registered with the commission pursuant to section 11-323."

## ACT 5

SECTION 5. Section 11-423, Hawaii Revised Statutes, is amended by amending subsection (d) to read as follows:

“(d) From January 1 of the year of any primary, special, or general election, the aggregate expenditures for each election by a candidate who voluntarily agrees to limit campaign expenditures, inclusive of all expenditures made or authorized by the candidate alone, all treasurers, the candidate committee, and noncandidate committees on 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 board of education and]~~ all other offices — 20 cents.”

SECTION 6. Section 11-425, 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 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

- (1) Commissioned and enlisted personnel of the Hawaii national guard as such, and positions in the Hawaii national guard that are required

- by state or federal laws or regulations or orders of the national guard to be filled from those commissioned or enlisted personnel;
- (2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;
  - (3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;
  - (4) Positions filled by the legislature or by either house or any committee thereof;
  - (5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;
  - (6) Positions filled by popular vote;
  - (7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;
  - (8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;
  - (9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);
  - (10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;
  - (11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administra-

- tive, professional, and technical personnel not engaged in instructional work;
  - (B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;
  - (C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and
  - (D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;
- (12) Employees engaged in special, research, or demonstration projects approved by the governor;
  - (13) Positions filled by inmates, kokuas, patients of state institutions, persons with severe physical or mental handicaps participating in the work experience training programs, and students and positions filled through federally funded programs that provide temporary public service employment such as the federal Comprehensive Employment and Training Act of 1973;
  - (14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;
  - (15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;
  - (16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, Article V, of the Hawaii State Constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;
  - (17) Positions specifically exempted from this part by any other law; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;
  - (18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;
  - (19) Household employees at the official residence of the president of the University of Hawaii;
  - (20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection,



and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;

- (21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's work force in any housing project maintained or operated by the authority shall be hired under the tenant hire program;
- (22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;
- (23) Positions filled by severely handicapped persons who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;
- ~~[(24) One public high school student to be selected by the Hawaii state student council as a nonvoting member on the board of education as authorized by the State Constitution;]~~<sup>1</sup>
- ~~(25)]~~ (24) Sheriff, first deputy sheriff, and second deputy sheriff;
- ~~[(26)]~~ (25) A gender and other fairness coordinator hired by the judiciary; and
- ~~[(27)]~~ (26) Positions in the Hawaii national guard youth and adult education programs.

The director shall determine the applicability of this section to specific positions.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955."

SECTION 10. 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 11. Section 84-41, Hawaii Revised Statutes, is amended to read as follows:

**“[H§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 12. 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 or counties under chapter 11; provided that the person receives compensation, pay, or salary for such office.”

SECTION 13. Section 302A-447, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) The council shall determine whether it shall directly select the student ~~[member of]~~ representative to the board or whether it shall run an election to select that individual.”

SECTION 14. 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 15. Section 302A-1106.5, Hawaii Revised Statutes, is amended to read as follows:

**“[H§302A-1106.5] Board of education; community meetings.** The board shall hold not less than ~~[two]~~ one community ~~[meetings]~~ meeting annually in each ~~[departmental school district]~~ county 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 16. Section 302A-1110, Hawaii Revised Statutes, is amended to read as follows:

**“[H§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 17. Section 17-6, Hawaii Revised Statutes, is repealed.

SECTION 18. Section 302A-1105, Hawaii Revised Statutes, is repealed.

SECTION 19. Section 302A-1106, Hawaii Revised Statutes, is repealed.

SECTION 20. Chapter 13, Hawaii Revised Statutes, is repealed.

#### PART IV

SECTION 21. 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 no fewer than five members of the board of education pursuant to this Act, at which time all elected members shall be discharged from office and the appointed board members shall begin their service; provided that any vacancy in an elected member's seat occurring between the effective date of this Act and the discharge from office of all the elected members of the board of education shall remain vacant until filled by appointment by the governor, with the advice and consent of the senate, pursuant to this Act; provided further that the governor shall nominate all members of the board of education no later than June 30, 2011.

#### PART V

SECTION 22. The revisor of statutes shall insert 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.<sup>2</sup>

SECTION 25. This Act shall take effect upon its approval; 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 21 of this Act.

(Approved March 14, 2011.)

#### Notes

1. Semicolon should be struck through.
2. Edited pursuant to HRS §23G-16.5.