

STAND. COM. REP. NO. 1499

Honolulu, Hawaii

March 23, 2007

RE: S.B. No. 96
S.D. 3
H.D. 1

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2007
State of Hawaii

Sir:

Your Committee on Judiciary, to which was referred S.B. No. 96, S.D. 3, entitled:

"A BILL FOR AN ACT RELATING TO THE DEPARTMENT OF EDUCATION,"

begs leave to report as follows:

The purpose of this bill is to ensure the safety and welfare of children enrolled in the public school system and users of the public library system by:

- (1) Providing for a program of controlled substance testing based on reasonable suspicion of Department of Education (DOE) employees, including teacher trainees and Hawaii State Public Library System employees, who work in close proximity to children, as follows:
 - (A) Requiring DOE to develop procedures for controlled substance testing;
 - (B) Requiring the employer to place employees who refuse the test on administrative leave for 30 days;



- (C) Authorizing the employer to impose certain sanctions on employees whose test results are positive and who, as a result of their use of controlled substances, negatively influence children; and
 - (D) Requiring DOE to provide for substance abuse assessment, treatment, and counseling, and referral to the employee assistance program, if DOE retains an employee whose test results are positive;
- (2) Expanding the category of individuals subject to criminal history record checks as a condition of DOE employment by authorizing DOE to conduct criminal history record checks on any employee, provider, subcontractor, or trainee from an institution of higher education who enters or intends to enter into a contract with or is currently contracted by DOE to provide services in close proximity to children;
 - (3) Authorizing DOE to pass on the cost of a criminal history record check to the applicants, providers, subcontractors, and trainers (not employees) subject to the checks; and
 - (4) Appropriating funds to DOE for the costs of conducting criminal history record checks.

DOE, the University of Hawaii and Hawaii Government Employees Association testified in support of the intent of this bill. The American Civil Liberties Union of Hawaii, Drug Policy Action Group, and Drug Policy Forum of Hawaii testified in opposition to this measure. The Department of the Attorney General submitted comments.

Your Committee has amended this bill by:

- (1) Clarifying that DOE shall develop procedures for individualized, rather than reasonable, suspicion to avoid the initiation of drug testing on an unsubstantiated basis;



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- (2) Eliminating the refusal of the issuance of a teaching or other educational certificate and revocation of a teaching or other educational certificate as sanctions an employer may impose on employees whose test results are positive; and
- (3) Removing language allowing DOE to conduct investigations, notifications, or hearings without regard to the rulemaking process of Chapter 91, Hawaii Revised Statutes.

Technical, nonsubstantive amendments were made for clarity, consistency, and style.

As affirmed by the record of votes of the members of your Committee on Judiciary that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 96, S.D. 3, as amended herein, and recommends that it be referred to the Committee on Finance in the form attached hereto as S.B. No. 96, S.D. 3, H.D. 1.

Respectfully submitted on
behalf of the members of the
Committee on Judiciary,



TOMMY WATERS, Chair



State of Hawaii
House of Representatives
The Twenty-fourth Legislature

HSCR 1499

Record of Votes of the Committee on Judiciary

Bill/Resolution No.: SB 96, SD3 (HSCR 1273)		Date: 3/20/07		
Committee Referral: EDN/LAB, JUD, FIN		<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.		
The recommendation is to: <input type="checkbox"/> Pass, unamended <input checked="" type="checkbox"/> Pass, with amendments <input type="checkbox"/> Hold <input type="checkbox"/> Pass, with amendments, for recommitment for further consideration				
JUD Members	Ayes	Ayes (WR)	Nays	Excused
1. WATERS, Tommy (C)	✓			
2. OSHIRO, Blake K. (VC)	✓			
3. CALDWELL, Kirk	✓			
4. EVANS, Cindy	✓			
5. GREEN, Josh, M.D.	✓			
6. ITO, Ken	✓			
7. LUKE, Sylvia	✓			
8. McKELVEY, Angus L.K.				✓
9. MORITA, Hermina M.				✓
10. SONSON, Alex M.				✓
11. SOUKI, Joseph M.				✓
12. TSUJI, Clift	✓			
13. YAMANE, Ryan I.	✓			
14. YAMASHITA, Kyle T.	✓			
15. MARUMOTO, Barbara C.	✓			
16. PINE, Kymberly Marcos				✓
17. THIELEN, Cynthia				✓
TOTAL	11			6
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
If joint referral, _____ did not support recommendation. committee acronym(s)				
Vice Chair's or designee's signature: 				
Distribution: Original (White) – Committee Duplicate (Yellow) – HMSO Duplicate (Pink) – Clerk's Office				