



GOV. MSG. NO. 910

EXECUTIVE CHAMBERS

HONOLULU

July 9, 2008

LINDA LINGLE
GOVERNOR

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 2449 SD2 HD2 CD1

On July 8, 2008, Senate Bill No. 2449, entitled "A Bill for an Act Relating to Education" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to repeal the two-consecutive-year probationary period for first time Department of Education teachers, vice-principals, and principals.

The current contract between the Hawaii State Teachers Association and the State of Hawaii stipulates that newly employed teachers are subject to one year of probationary status. This provision conflicts with current law, which requires first time teachers, vice-principals, and principals to complete a two-year probationary period.

This conflict is problematic because the Hawaii Supreme Court has ruled that "Compliance with statutes is non-negotiable and collective bargaining agreements that prevent the government agency from complying with its statutory duties are unenforceable as against public policy." In other words, the current one-year probationary period in the collective bargaining agreement is arguably unenforceable because it is not consistent with the law.

Repealing the two-year statutory probationary period will resolve this conflict. My Administration has held the position that the length of a probationary period is a matter to be determined by management and should not be subject to negotiation. However, we recognize that the Department of Education negotiated the one year probationary period with the teachers union.

For the foregoing reasons, I allowed Senate Bill No. 2449 to become law as Act 222, effective July 8, 2008, without my signature.

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1 SECTION 1. The legislature finds that, during the past
2 round of negotiations for the 2007-2009 bargaining unit (5)
3 collective bargaining agreement, the department of education and
4 the Hawaii state teachers association bargained and reached an
5 agreement in good faith on a provision to reduce the
6 probationary period for non-tenured teachers from two
7 consecutive years (four semesters) to one year (two semesters).
8 Upon reaching a voluntary settlement on the unit (5) contract,
9 the parties discovered that the negotiated provision was in
10 direct conflict with section 302A-607, Hawaii Revised Statutes,
11 which states in relevant part, that "[a]ll teachers, principals,
12 and vice-principals entering the service of the department for
13 the first time shall serve as probationary employees of the
14 department for a minimum period of two consecutive years."

15 The purpose of this Act is to repeal the statutorily
16 established probationary provision of employment as these
17 probationary periods are currently being, or have already been,



1 negotiated between the department of education and the Hawaii
2 State Teachers Association that represents bargaining unit (5)
3 and the Hawaii Government Employees Association that represents
4 bargaining unit (6). The department of education and the Hawaii
5 State Teachers Association that represents bargaining unit (5)
6 have recently clarified and simplified the process by which the
7 probation period may be extended.

8 SECTION 2. Section 302A-607, Hawaii Revised Statutes, is
9 repealed.

10 ~~["§302A-607] Probationary period of employment. (a) All~~
11 ~~teachers, principals, and vice principals entering the service~~
12 ~~of the department for the first time shall serve as probationary~~
13 ~~employees of the department for a minimum period of two~~
~~consecutive years, provided that:~~

15 ~~(1) The consecutive employment may be interrupted by~~
16 ~~maternity leave, sick leave, or any other leave~~
17 ~~approved by the department not exceeding a period of~~
18 ~~three years; by military leave not exceeding a period~~
19 ~~of five years; or by termination or nonrenewal of the~~
20 ~~probationary employment contract because of decrease~~
21 ~~in the number of pupils or for causes over which the~~
22 ~~department has no control, the period between~~



1 ~~employment not to exceed five years, without loss of~~
2 ~~credit for the period of probationary employment; and~~
3 ~~(2) At or prior to the end of two years of probation, the~~
4 ~~department may extend the probationary period of a~~
5 ~~teacher, principal, or vice principal for additional~~
6 ~~periods not to exceed a total of five years.~~

7 ~~(b) Any full time intern teaching period served in the~~
8 ~~State shall be credited toward fulfillment of the probationary~~
9 ~~period. Any annual contract with any teacher, principal, or~~
10 ~~vice principal during this probationary period of employment may~~
11 ~~or may not be renewed as the department shall determine. The~~
12 ~~department, during the probationary period, may discharge or~~
13 ~~demote a teacher, principal, or vice principal."]~~

14 SECTION 3. Statutory material to be repealed is bracketed
15 and stricken.

16 SECTION 4. This Act shall take effect upon its approval.

APPROVED this day of , 2008

GOVERNOR OF THE STATE OF HAWAII



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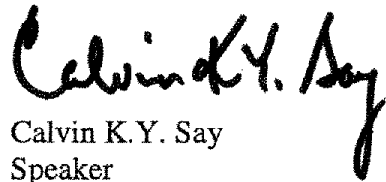


SB No. 2449, SD 2, HD 2, CD 1

THE HOUSE OF REPRESENTATIVES OF THE STATE OF HAWAII

Date: April 29, 2008
Honolulu, Hawaii

We hereby certify that the foregoing Bill on this day passed Final Reading in the House of Representatives of the Twenty-Fourth Legislature of the State of Hawaii, Regular Session of 2008.



Calvin K.Y. Say
Speaker
House of Representatives

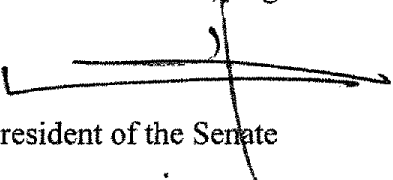


Patricia Mau-Shimizu
Chief Clerk
House of Representatives

THE SENATE OF THE STATE OF HAWAII

Date: April 29, 2008
Honolulu, Hawaii 96813

We hereby certify that the foregoing Bill this day passed Final Reading in the Senate of the Twenty-fourth Legislature of the State of Hawaii, Regular Session of 2008.



President of the Senate



Clerk of the Senate