

PROPOSED

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

S.B. NO. 470
S.D. 1

A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1 SECTION 1. The purpose of this Act is to effectuate the
2 title of this Act.

3 SECTION 2. Chapter 302A, Hawaii Revised Statutes, is
4 amended by adding a new section to be appropriately designated
5 and to read as follows:

6 "§302A- Employees of the department and teacher trainees
7 in any public school; reasonable suspicion testing; employee
8 assistance. (a) The department, including the Hawaii state
9 public library system, shall develop procedures for reasonable
10 suspicion testing to obtain verifiable information regarding use
11 of controlled substances under chapter 329, by persons who are
12 employed in any position, including teacher trainees, that
13 places them in close proximity to children. These procedures
14 shall comply with chapter 329B.

15 Information obtained pursuant to this subsection shall be
16 used exclusively by the employer for the purpose of determining



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1 whether a person is suitable for working in close proximity to
2 children.

3 An employee who refuses to submit to drug testing under
4 this subsection shall be placed on mandatory administrative
5 leave of _____ days.

6 (b) If the test results under subsection (a) are positive,
7 the employer may impose the following sanctions:

8 (1) Refuse to issue a teaching or other educational
9 certificate;

10 (2) Revoke the teaching or other educational certificate;

11 (3) Refuse to allow or continue to allow participation in
12 teacher training;

13 (4) Terminate the employment of any employee or deny
14 employment to an applicant; or

15 (5) Impose other administrative sanctions, including but
16 not limited to, administrative leave,

17 if the employer finds by reason of the nature and circumstances
18 of the use of controlled substances that the person poses a risk
19 to the health, safety, or well-being of children, or otherwise
20 negatively influences children by setting a detrimental example.

21 Sanctions under this subsection may occur only after appropriate
22 investigation and notification to the employee of the results



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1 and planned action, and after the employee is given an
2 opportunity to meet and rebut the finding. Nothing in this
3 subsection shall abrogate any applicable appeal rights under
4 chapter 76 or 89, or administrative rule of the department.

5 (c) In addition to the sanctions under subsection (b), the
6 department, by adoption of rules pursuant to chapter 91, shall
7 provide for substance abuse assessment, treatment, and
8 counseling, and referral to the employee assistance program
9 under subsection (e) if suitable, if the department determines
10 to retain the employee; provided that evidence of clinical
11 discharge from substance abuse treatment or substance abuse
12 counseling shall be a prerequisite to continued employment.

13 (d) Notwithstanding any other law to the contrary, for
14 purposes of this section, the department need not conduct
15 investigations, notifications, or hearings under this section in
16 accordance with chapter 91.

17 (e) This section shall not apply to volunteers or other
18 non-remunerated personnel providing support services at
19 individual schools or any employee subject to a substance abuse
20 testing policy under a valid collective bargaining agreement."



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1 SECTION 3. Chapter 78, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§78- Elected officials; drug testing; disqualification
5 and forfeiture of office. (a) All elected officials shall
6 submit to testing for illegal drugs after certification of their
7 election and prior to taking the oath of office. Thereafter,
8 elected officials shall submit to testing for illegal drugs if
9 there is a reasonable suspicion that the official is using
10 drugs. Testing shall be conducted in compliance with chapter
11 329B. Testing shall be funded from the budget of the branch of
12 government to which the official has been elected. Test results
13 shall be provided to the personnel officer of the branch of
14 government to which the official has been elected or in which
15 the official holds office and the personnel officer shall take
16 action, as appropriate, to effectuate the purposes of this
17 section.

18 (b) Any elected official who tests positive for illegal
19 drugs shall immediately be disqualified from taking office and
20 forfeit any office held.

21 (c) For purposes of this section:



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1 "Elected official" means the governor, lieutenant governor,
 2 members of the senate and the house of representatives, county
 3 mayors, elected county prosecutors, members of the county
 4 councils, members of the board of education and of the board of
 5 trustees of the office of Hawaiian affairs, and any person
 6 certified pursuant to section 11-155 to have won election to one
 7 of these offices but who has not yet taken the oath of office.

8 "Illegal drug" means any controlled substance, as defined
 9 in chapter 329, for which the person does not possess a valid
 10 prescription."

11 SECTION 4. This part does not affect rights and duties that
 12 matured, penalties that were incurred, and proceedings that were
 13 begun, before its effective date.

14 SECTION 5. If any provision of this Act, or the application
 15 thereof to any person or circumstance is held invalid, the
 16 invalidity does not affect other provisions or applications of
 17 the Act, which can be given effect without the invalid provision
 18 or application, and to this end the provisions of this Act are
 19 severable.

20 SECTION 6. New statutory material is underscored.

21 SECTION 7. This Act shall take effect upon its approval;
 22 provided that section 4 shall take effect on July 1, 2007.



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Report Title:

Employment: Drug Testing; DOE Personnel; Public Library
Personnel; Elected Officials

Description:

Requires reasonable suspicion drug testing of public school employees, teachers, and public library employees; requires department of education to adopt rules to determine sanctions for positive drug tests; and establishes employee assistance program. Requires testing for illegal drugs of all elected officials of the State, county, board of education, and office of Hawaiian affairs; disqualifies any person who tests positive for illegal drugs from taking office; and requires forfeiture of office upon testing positive for illegal drugs. (SD1)

