

---

---

# A BILL FOR AN ACT

RELATING TO EMPLOYMENT.

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

1           SECTION 1. Chapter 302A, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4           "§302A- Employees of the department and teacher trainees  
5 in any public school; reasonable suspicion testing; employee  
6 assistance. (a) The department, including the Hawaii state  
7 public library system, shall develop procedures for reasonable  
8 suspicion testing to obtain verifiable information regarding use  
9 of controlled substances under chapter 329, by persons who are  
10 employed in any position, including teacher trainees, that  
11 places them in close proximity to children. These procedures  
12 shall comply with chapter 329B.

13           Information obtained pursuant to this subsection shall be  
14 used exclusively by the employer for the purpose of determining  
15 whether a person is suitable for working in close proximity to  
16 children.



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

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

6        (1) Refuse to issue a teaching or other educational  
7 certificate;

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

9        (3) Refuse to allow or continue to allow participation in  
10 teacher training;

11       (4) Terminate the employment of any employee or deny  
12 employment to an applicant; or

13       (5) Impose other administrative sanctions, including but  
14 not limited to, administrative leave,

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

19 Sanctions under this subsection may occur only after appropriate  
20 investigation and notification to the employee of the results  
21 and planned action, and after the employee is given an  
22 opportunity to meet and rebut the finding. Nothing in this



1 subsection shall abrogate any applicable appeal rights under  
2 chapter 76 or 89, or administrative rule of the department.

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

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

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

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



1        "§78- Elected officials; drug testing; disqualification  
2 and forfeiture of office. (a) All elected officials shall  
3 submit to testing for illegal drugs after certification of their  
4 election and prior to taking the oath of office. Thereafter,  
5 elected officials shall submit to testing for illegal drugs if  
6 there is a reasonable suspicion that the official is using  
7 drugs. Testing shall be conducted in compliance with chapter  
8 329B. Testing shall be funded from the budget of the branch of  
9 government to which the official has been elected. Test results  
10 shall be provided to the personnel officer of the branch of  
11 government to which the official has been elected or in which  
12 the official holds office and the personnel officer shall take  
13 action, as appropriate, to effectuate the purposes of this  
14 section.

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

18        (c) For purposes of this section:

19        "Elected official" means the governor, lieutenant governor,  
20 members of the senate and the house of representatives, county  
21 mayors, elected county prosecutors, members of the county  
22 councils, members of the board of education and of the board of



1 trustees of the office of Hawaiian affairs, and any person  
2 certified pursuant to section 11-155 to have won election to one  
3 of these offices but who has not yet taken the oath of office.

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

7 SECTION 3. This part does not affect rights and duties that  
8 matured, penalties that were incurred, and proceedings that were  
9 begun, before its effective date.

10 SECTION 4. If any provision of this Act, or the application  
11 thereof to any person or circumstance is held invalid, the  
12 invalidity does not affect other provisions or applications of  
13 the Act, which can be given effect without the invalid provision  
14 or application, and to this end the provisions of this Act are  
15 severable.

16 SECTION 5. This Act will take effect if the Hawaii State  
17 Teachers Association and the State of Hawaii do not reach an  
18 agreement on drug testing in their contract negotiations.

19 SECTION 6. New statutory material is underscored.

20 SECTION 7. This Act shall take effect upon its approval;  
21 provided that section 3 shall take effect on July 1, 2059.



**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. (SD2)

