

STAND. COM. REP. NO. 1876

Honolulu, Hawaii

A-05, 2007

RE: S.B. No. 96  
S.D. 3  
H.D. 2

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

Sir:

Your Committee on Finance, to which was referred S.B. No. 96, S.D. 3, H.D. 1, 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) Establishing a program for controlled substance testing based on individualized suspicion of Department of Education (DOE) employees including teacher trainees and employees of the Hawaii State Public Library System who work in close proximity to children, who are not otherwise subject to a drug testing policy under a valid collective bargaining agreement, 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, pose a risk to or negatively influence children;

- (D) Requiring DOE to provide for substance abuse assessment, treatment, and counseling, if DOE retains an employee whose test results are positive; and
  - (E) Requiring that evidence of clinical discharge from substance abuse treatment or counseling is required for continued employment of 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 to include providers, subcontractors, or trainees from an institution of higher education providing or seeking 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 trainees, but not to employees, subject to the checks; and
  - (4) Appropriating funds to DOE for the costs of conducting criminal history record checks.

DOE and the Hawaii Government Employees Association, HGEA/AFSCME, Local 152, AFL-CIO supported the intent of this bill. The Hawaii State Teachers Association, Drug Policy Action Group, American Civil Liberties Union of Hawaii, Drug Policy Forum of Hawaii, and a concerned individual opposed this measure.

Your Committee has amended this bill by:

- (1) Reverting to testing based on reasonable suspicion, and also requiring testing on a random basis;
- (2) Requiring the employer to discharge the employee for refusal to test, rather than placing the employee on administrative leave for 30 days;

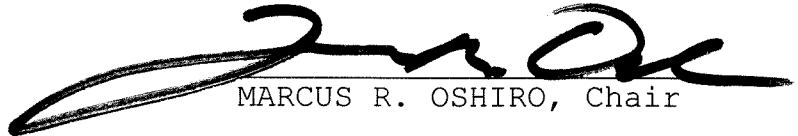


- (3) Replacing administrative leave as an administrative sanction that the employer may impose for positive test results, with the sanction of suspension without pay;
- (4) Removing language requiring that sanctions for positive test results may only occur after appropriate investigation and notification to the employee of the results and planned action, and the employee is given an opportunity to meet and rebut the finding;
- (5) Deleting the provision that the sanctions provided for positive test results shall not abrogate the applicable appeal rights under Chapter 76 or 89, Hawaii Revised Statutes, or DOE administrative rules;
- (6) Specifying that the substance abuse assessment required for continued employment must be provided by a substance abuse professional (SAP), and that the employee is responsible for the cost of any rehabilitation program, treatment, and counseling required by the SAP;
- (7) Deleting the requirement that if DOE retains an employee whose test results are positive, DOE must provide for substance abuse treatment, counseling, and referral to the employee assistance program; and
- (8) Allowing the appropriation to include expenditures for reasonable suspicion and random drug testing of DOE employees;
- (9) Changing the effective date to July 1, 2020, to encourage further discussion; and
- (10) Making technical, nonsubstantive amendments for style, clarity, and consistency.

As affirmed by the record of votes of the members of your Committee on Finance that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 96, S.D. 3, H.D. 1, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 96, S.D. 3, H.D. 2.



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



MARCUS R. OSHIRO, Chair



