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# A BILL FOR AN ACT

RELATING TO EDUCATION.

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

1           SECTION 1. Chapter 89, Hawaii Revised Statutes, is amended  
2 by adding a new section to be appropriately designated and to  
3 read as follows:

4           "§89-       Employment; teachers; educational officers. (a)  
5 Beginning with contracts negotiated for the contract period  
6 beginning July 1, 2013, any collective bargaining contract made  
7 between the exclusive representative of bargaining units (5) and  
8 (6) and a public employer shall not result in the vesting of  
9 tenure or continued expectations of employment in an employment  
10 relationship.

11           (b) Any member of bargaining units (5) or (6) with tenured  
12 status shall lose such status as of the expiration of the  
13 collective bargaining contract covering the 2011-2012 contract  
14 period."

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



1           "§302A- Civil service application. (a) Members of  
2 bargaining units (5) and (6) shall be board of education  
3 appointees exempt from chapter 76, but the application of  
4 section 89-6 with respect to collective bargaining coverage and  
5 the employer for purposes of collective bargaining shall not be  
6 affected. Except for tenure and rights and benefits  
7 specifically conditioned upon membership in the civil service,  
8 the wages, hours, benefits, and other terms and conditions of  
9 employment for these employees in existence on July 1, 2013,  
10 shall remain in effect, but may be changed as provided in  
11 chapter 89 or 89C, as applicable."

12           SECTION 3. Section 76-16, Hawaii Revised Statutes, is  
13 amended by amending subsection (b) to read as follows:

14           "(b) The civil service to which this chapter applies shall  
15 comprise all positions in the State now existing or hereafter  
16 established and embrace all personal services performed for the  
17 State, except the following:

18           (1) Commissioned and enlisted personnel of the Hawaii  
19 national guard as such, and positions in the Hawaii  
20 national guard that are required by state or federal  
21 laws or regulations or orders of the national guard to



- 1           be filled from those commissioned or enlisted  
2           personnel;
- 3           (2) Positions filled by persons employed by contract where  
4           the director of human resources development has  
5           certified that the service is special or unique or is  
6           essential to the public interest and that, because of  
7           circumstances surrounding its fulfillment, personnel  
8           to perform the service cannot be obtained through  
9           normal civil service recruitment procedures. Any such  
10          contract may be for any period not exceeding one year;
- 11          (3) Positions that must be filled without delay to comply  
12          with a court order or decree if the director  
13          determines that recruitment through normal recruitment  
14          civil service procedures would result in delay or  
15          noncompliance, such as the Felix-Cayetano consent  
16          decree;
- 17          (4) Positions filled by the legislature or by either house  
18          or any committee thereof;
- 19          (5) Employees in the office of the governor and office of  
20          the lieutenant governor, and household employees at  
21          Washington Place;
- 22          (6) Positions filled by popular vote;



- 1 (7) Department heads, officers, and members of any board,  
2 commission, or other state agency whose appointments  
3 are made by the governor or are required by law to be  
4 confirmed by the senate;
- 5 (8) Judges, referees, receivers, masters, jurors, notaries  
6 public, land court examiners, court commissioners, and  
7 attorneys appointed by a state court for a special  
8 temporary service;
- 9 (9) One bailiff for the chief justice of the supreme court  
10 who shall have the powers and duties of a court  
11 officer and bailiff under section 606-14; one  
12 secretary or clerk for each justice of the supreme  
13 court, each judge of the intermediate appellate court,  
14 and each judge of the circuit court; one secretary for  
15 the judicial council; one deputy administrative  
16 director of the courts; three law clerks for the chief  
17 justice of the supreme court, two law clerks for each  
18 associate justice of the supreme court and each judge  
19 of the intermediate appellate court, one law clerk for  
20 each judge of the circuit court, two additional law  
21 clerks for the civil administrative judge of the  
22 circuit court of the first circuit, two additional law



1 clerks for the criminal administrative judge of the  
2 circuit court of the first circuit, one additional law  
3 clerk for the senior judge of the family court of the  
4 first circuit, two additional law clerks for the civil  
5 motions judge of the circuit court of the first  
6 circuit, two additional law clerks for the criminal  
7 motions judge of the circuit court of the first  
8 circuit, and two law clerks for the administrative  
9 judge of the district court of the first circuit; and  
10 one private secretary for the administrative director  
11 of the courts, the deputy administrative director of  
12 the courts, each department head, each deputy or first  
13 assistant, and each additional deputy, or assistant  
14 deputy, or assistant defined in paragraph (16);  
15 (10) First deputy and deputy attorneys general, the  
16 administrative services manager of the department of  
17 the attorney general, one secretary for the  
18 administrative services manager, an administrator and  
19 any support staff for the criminal and juvenile  
20 justice resources coordination functions, and law  
21 clerks;



- 1           (11) (A) Teachers, principals, vice-principals, complex  
2           area superintendents, deputy and assistant  
3           superintendents, other certificated personnel,  
4           not more than twenty noncertificated  
5           administrative, professional, and technical  
6           personnel [~~not engaged in instructional work~~];
- 7           (B) Effective July 1, 2003, teaching assistants,  
8           educational assistants, bilingual/bicultural  
9           school-home assistants, school psychologists,  
10          psychological examiners, speech pathologists,  
11          athletic health care trainers, alternative school  
12          work study assistants, alternative school  
13          educational/supportive services specialists,  
14          alternative school project coordinators, and  
15          communications aides in the department of  
16          education;
- 17          (C) The special assistant to the state librarian and  
18          one secretary for the special assistant to the  
19          state librarian; and
- 20          (D) Members of the faculty of the University of  
21          Hawaii, including research workers, extension  
22          agents, personnel engaged in instructional work,



- 1                   and administrative, professional, and technical  
2                   personnel of the university;
- 3       (12) Employees engaged in special, research, or  
4           demonstration projects approved by the governor;
- 5       (13) Positions filled by inmates, kokuas, patients of state  
6           institutions, persons with severe physical or mental  
7           handicaps participating in the work experience  
8           training programs, and students and positions filled  
9           through federally funded programs that provide  
10          temporary public service employment such as the  
11          federal Comprehensive Employment and Training Act of  
12          1973;
- 13       (14) A custodian or guide at Iolani Palace, the Royal  
14          Mausoleum, and Hulihee Palace;
- 15       (15) Positions filled by persons employed on a fee,  
16          contract, or piecework basis, who may lawfully perform  
17          their duties concurrently with their private business  
18          or profession or other private employment and whose  
19          duties require only a portion of their time, if it is  
20          impracticable to ascertain or anticipate the portion  
21          of time to be devoted to the service of the State;



- 1           (16) Positions of first deputies or first assistants of  
2           each department head appointed under or in the manner  
3           provided in section 6, article V, of the Hawaii state  
4           constitution; three additional deputies or assistants  
5           either in charge of the highways, harbors, and  
6           airports divisions or other functions within the  
7           department of transportation as may be assigned by the  
8           director of transportation, with the approval of the  
9           governor; four additional deputies in the department  
10          of health, each in charge of one of the following:  
11          behavioral health, environmental health, hospitals,  
12          and health resources administration, including other  
13          functions within the department as may be assigned by  
14          the director of health, with the approval of the  
15          governor; an administrative assistant to the state  
16          librarian; and an administrative assistant to the  
17          superintendent of education;
- 18          (17) Positions specifically exempted from this part by any  
19          other law; provided that all of the positions defined  
20          by paragraph (9) shall be included in the position  
21          classification plan;





- 1       (18) Positions in the state foster grandparent program and  
2               positions for temporary employment of senior citizens  
3               in occupations in which there is a severe personnel  
4               shortage or in special projects;
- 5       (19) Household employees at the official residence of the  
6               president of the University of Hawaii;
- 7       (20) Employees in the department of education engaged in  
8               the supervision of students during meal periods in the  
9               distribution, collection, and counting of meal  
10              tickets, and in the cleaning of classrooms after  
11              school hours on a less than half-time basis;
- 12      (21) Employees hired under the tenant hire program of the  
13              Hawaii public housing authority; provided that not  
14              more than twenty-six per cent of the authority's work  
15              force in any housing project maintained or operated by  
16              the authority shall be hired under the tenant hire  
17              program;
- 18      (22) Positions of the federally funded expanded food and  
19              nutrition program of the University of Hawaii that  
20              require the hiring of nutrition program assistants who  
21              live in the areas they serve;



1 (23) Positions filled by severely handicapped persons who  
2 are certified by the state vocational rehabilitation  
3 office that they are able to perform safely the duties  
4 of the positions;

5 (24) The sheriff;

6 (25) A gender and other fairness coordinator hired by the  
7 judiciary; and

8 (26) Positions in the Hawaii national guard youth and adult  
9 education programs.

10 The director shall determine the applicability of this  
11 section to specific positions.

12 Nothing in this section shall be deemed to affect the civil  
13 service status of any incumbent as it existed on July 1, 1955."

14 SECTION 4. Section 302A-610, Hawaii Revised Statutes, is  
15 amended to read as follows:

16 "**§302A-610 Job-sharing.** (a) A job-sharing program is  
17 established in the department subject to the requirements in  
18 this section.

19 (b) The superintendent shall announce the job-sharing  
20 program to all full-time, [~~tenured,~~] certificated personnel of  
21 the department, excluding educational officers, and shall



1 solicit the voluntary requests of personnel interested in  
2 participating in the program.

3       The superintendent, in consultation with the recognized  
4 employee bargaining units, shall formulate and adopt guidelines  
5 for the implementation of this section. Employees who respond  
6 to the announcement and other persons who request information  
7 shall receive a full written description of the terms of the  
8 program when the guidelines are finalized, and those persons  
9 desiring to participate may apply to participate in the program.  
10 The employees who apply for participation shall obtain the  
11 concurrence of their immediate supervisor, other appropriate  
12 personnel officers, and the superintendent. Those persons who  
13 qualify then shall be interviewed by a personnel officer of the  
14 department.

15       Upon the selection of a permanent, full-time employee for  
16 job-sharing, the superintendent shall convert the position of  
17 the employee into two job-sharing positions, one of which shall  
18 be filled by the employee, and the other by the hiring of a new  
19 hire or by another [~~tenured,~~] certificated employee of the  
20 department, excluding any educational officer.

21       A person hired to fill a job-sharing position shall be  
22 recruited through this section and shall possess the minimum



1 requirements of the full-time position that was converted into a  
2 job-sharing position under this section.

3 (c) Benefits that can be divided in half, such as the  
4 number of days of sick leave, and are considered to be an  
5 equitable share when divided, shall be computed on that basis.  
6 Benefits that cannot be divided, such as eligibility for  
7 membership in the public employees' health plan, shall be given  
8 to the job-sharers without the foregoing division,  
9 notwithstanding any provision of chapter 87 or 88 to the  
10 contrary. The newly hired job-sharer shall be excluded from  
11 collective bargaining under chapter 89.

12 The full-time permanent employee shall not lose membership  
13 in an employee bargaining unit because of participation in this  
14 program, any other law to the contrary notwithstanding. Union  
15 membership or service fees paid by the job-sharer under this  
16 section shall be at a level consistent with normal union  
17 membership dues or service fees. The State's contribution to  
18 the job-sharers' prepaid health, prepaid dental, and group life  
19 insurance plans shall be the same as for full-time employees,  
20 any other law to the contrary notwithstanding. Job-sharers  
21 shall be covered under chapter 386 and the applicable provisions  
22 of chapter 383. [~~Service credit for the tenured teacher~~



1 ~~participating in the program under this section shall be given~~  
2 ~~on the same basis as that for full-time employees.]~~ Nothing in  
3 this section shall be construed, however, to vest any person  
4 with any rights to permanent employment status, whether under  
5 civil service or otherwise, which did not exist prior to the  
6 participation of the person in the job-sharing program. [~~The~~  
7 ~~granting of tenure shall be under applicable statutes.]~~ No  
8 full-time position shall be abolished or reduced to a half-time  
9 position except for the purpose of job-sharing. [~~In a~~  
10 ~~reduction in force procedure, consideration of a job sharer's~~  
11 ~~tenure rights shall be on the same basis as that of a full-time~~  
12 ~~employee.]~~ Nothing in this section shall impair the employment  
13 or employment rights or benefits of any employee.

14 [~~(d) Tenured employees sharing full-time positions with~~  
15 ~~other tenured employees shall not be required to relinquish~~  
16 ~~their duty-free period. The job sharing team shall submit to~~  
17 ~~its principal a job sharing proposal that preserves its duty-~~  
18 ~~free period and meets the educational needs of its students.~~  
19 ~~Where the job sharing team cannot reach a reasonable scheduling~~  
20 ~~agreement, the team may agree to waive its contractual rights by~~  
21 ~~executing a contract waiver.~~



1       ~~(e)~~ (d) Participation in the program shall require the  
2 commitment on the part of all parties to a contractual agreement  
3 for one year; provided that the employee shall be given the  
4 option to renew the contract for another year, subject to  
5 approval by the immediate supervisor and personnel officer of  
6 the department.

7       ~~(f)~~ (e) No job-sharing position committed to a specified  
8 period of time under the terms of the contractual agreement  
9 shall be converted to full-time status before the termination of  
10 the contractual agreement. A job-sharing vacancy created by the  
11 resignation, retirement, or other permanent or temporary  
12 severance of employment with the department on the part of any  
13 person may be filled by the department either through  
14 recruitment of another person pursuant to this section, or by  
15 increasing the remaining half-time job-sharing person to full-  
16 time employment by mutual agreement.

17       ~~(g)~~ (f) Upon the termination of contractual agreements,  
18 all job-sharing positions shall be renegotiated or reconverted  
19 to full-time positions, and the employees who held the full-time  
20 positions prior to their participation in the job-sharing  
21 program under this section shall be entitled to resume their



1 positions without loss of [~~previous tenure or other~~] employee  
2 rights.

3       [~~h~~] (g) Beginning with the 2002-2003 school year, this  
4 section shall be interpreted as though the term "certificated"  
5 read "licensed" as the latter term is used in subpart D, and as  
6 circumstances require."

7       SECTION 5. Section 302A-633.5, Hawaii Revised Statutes, is  
8 amended to read as follows:

9       " **[+]§302A-633.5[+]** School personnel engaged in

10 **instructional work, other than teachers and educational**

11 **officers.** (a) The board of education shall appoint teaching  
12 assistants, educational assistants, bilingual/bicultural school-  
13 home assistants, school psychologists, psychological examiners,  
14 speech pathologists, athletic health care trainers, alternative  
15 school work/study assistants, alternative school  
16 educational/supportive services specialists, and alternative  
17 school project coordinators as may be required to carry out the  
18 purposes of this chapter. The board, in consultation with the  
19 department of human resources development, shall prescribe the  
20 duties and qualifications for positions, adopt classification  
21 systems, classify and fix the compensation of positions  
22 accordingly, and provide a classification appeals procedure[-



1 ~~and establish probationary and other requirements for tenure~~  
2 ~~that protects employees from being disciplined without proper~~  
3 ~~cause].~~

4 (b) Employees in positions under subsection (a) shall be  
5 board of education appointees exempt from chapter 76, but the  
6 application of section 89-6 with respect to collective  
7 bargaining coverage and the employer for purposes of collective  
8 bargaining shall not be affected. Except for rights or benefits  
9 specifically conditioned upon membership in the civil service,  
10 the wages, hours, benefits, and other terms and conditions of  
11 employment for these employees in existence on July 1, 2002,  
12 shall remain in effect, but may be changed as provided in  
13 chapter 89 or 89C, as applicable. ~~[Any employee who is a member~~  
14 ~~of the civil service on July 1, 2002 shall be granted tenure by~~  
15 ~~the board of education without the necessity of meeting any~~  
16 ~~probationary or other requirements for tenure that the board of~~  
17 ~~education establishes.] "~~

18 SECTION 6. Section 302B-10, Hawaii Revised Statutes, is  
19 amended by amending subsection (d) to read as follows:

20 "(d) The department, in conjunction with the office, shall  
21 facilitate and encourage the movement of instructional personnel  
22 between the department and charter schools; provided that[+]





1       ~~(1) Comparable]~~ comparable and verifiable professional  
2       development and employee evaluation standards and  
3       practices, as determined and certified by the office,  
4       are in place in charter schools for instructional  
5       staff [~~;~~

6       ~~(2) Licensed charter school teachers, as determined by the~~  
7       Hawaii teacher standards board, who are not yet  
8       tenured in the department and are entering or  
9       returning to the department after full time employment  
10      ~~of no less than one full school year at a charter~~  
11      ~~school, shall be subject to no more than one year of~~  
12      ~~probationary status; and~~

13      ~~(3) Tenured department licensed teachers, as determined by~~  
14      ~~the department, who transfer to charter schools shall~~  
15      ~~not be required to serve a probationary period]."~~

16           SECTION 7. Section 302A-608, Hawaii Revised Statutes, is  
17      repealed.

18           ~~["§302A-608] Reemployed teachers; rights. After the~~  
19      ~~completion of the probationary period without discharge, such~~  
20      ~~teachers as are thereupon reemployed shall continue in service~~  
21      ~~in the public schools during good behavior and competent service~~  
22      ~~and prior to the age at which the teachers are eligible for~~



1 ~~retirement, pursuant to section 88-73 or 88-281, and shall not~~  
2 ~~be discharged or demoted except for one or more of the causes~~  
3 ~~specified in section 302A-609." ]~~

4 SECTION 8. Section 302A-609 , Hawaii Revised Statutes, is  
5 repealed.

6 [ "~~§302A-609~~ ~~Causes for discharge or demotion; preferred~~  
7 ~~eligibility list.~~ Causes for the discharge or demotion of a  
8 teacher shall be inefficiency or immorality; wilful violations  
9 of policies and rules of the department; or for other good and  
10 just cause. The department, without a hearing, may terminate  
11 the tenure rights of a teacher who fails to return to service,  
12 except when caused by illness, following the expiration of an  
13 approved leave of absence. Teachers may also be dismissed  
14 because of a decrease in the number of pupils or for other  
15 causes over which the department has no control. Dismissals due  
16 to a decrease in the number of pupils or for causes over which  
17 the department has no control shall begin with those teachers  
18 with the least number of years of service. The teachers so  
19 dismissed shall be placed on a preferred eligibility list and  
20 shall have the right to be restored to duty in the order of  
21 length of service whenever vacancies occur in which the teacher  
22 is qualified." ]



1 SECTION 9. Section 302A-611, Hawaii Revised Statutes, is  
2 repealed.

3 [~~["§302A-611] Authorized leaves of absence; tenure status~~  
4 ~~unaffected.~~ The granting of authorized leaves of absence by the  
5 department to regularly employed teachers shall not affect any  
6 of the tenure rights that the teacher may have acquired prior  
7 thereto under section 302A-608."]

8 SECTION 10. Statutory material to be repealed is bracketed  
9 and stricken. New statutory material is underscored.

10 SECTION 11. This Act shall take effect on July 1, 2013;  
11 provided that it shall apply to contracts negotiated after the  
12 expiration of the 2011-2012 contract period.

13

INTRODUCED BY:

T. Steinhilber

Allen A. Belotti

JAN 11 2012



**Report Title:**

Department of Education; Tenure

**Description:**

Eliminates the vesting of tenure for certain employees of the Department of Education.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

