

1 The legislature finds that drug screening of department of
2 education employees, including public library employees, when
3 hired and random drug testing thereafter is appropriate.

4 Teachers teach our children, who are innocent. The legislature
5 believes that establishing a random drug screening program for
6 department of education employees is in the public interest,
7 promotes the safety of students, and would set an example by
8 adults who influence the children most outside of the family.

9 The purpose of this part is to establish a random drug
10 screening program for all department of education and public
11 library employees.

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

15 "§302A- Employees of the department and teacher trainees
16 in any public school; random substance abuse testing; employee
17 assistance. (a) The department, including the Hawaii state
18 public library system, shall develop procedures for random
19 substance abuse testing to obtain verifiable information
20 regarding use of controlled substances under chapter 329, by
21 persons who are employed or seeking employment in any position,



1 including teacher trainees, that places them in close proximity
2 to children. These procedures shall comply with chapter 329B.

3 Information obtained pursuant to this subsection shall be
4 used exclusively by the employer or prospective employer for the
5 purpose of determining whether a person is suitable for working
6 in close proximity to children.

7 An employee who refuses to submit to drug testing under
8 this subsection shall be placed on mandatory administrative
9 leave of _____ days.

10 (b) If the test results under subsection (a) are positive,
11 the employer or prospective employer may refuse to employ, or
12 may impose the following sanctions:

- 13 (1) Refuse to issue a teaching or other educational
14 certificate;
15 (2) Revoke the teaching or other educational certificate;
16 (3) Refuse to allow or continue to allow participation in
17 teacher training;
18 (4) Terminate the employment of any employee or deny
19 employment to an applicant; or
20 (5) Impose other administrative sanctions, including but
21 not limited to, administrative leave,



1 if the employer or prospective employer finds by reason of the
2 nature and circumstances of the use of controlled substances
3 that the person poses a risk to the health, safety, or
4 well-being of children, or otherwise negatively influences
5 children by setting a detrimental example. Refusal to employ
6 and sanctions under this subsection may occur only after
7 appropriate investigation and notification to the employee or
8 applicant for employment of the results and planned action, and
9 after the employee or applicant for employment is given an
10 opportunity to meet and rebut the finding. Nothing in this
11 subsection shall abrogate any applicable appeal rights under
12 chapter 76 or 89, or administrative rule of the department.

13 (c) In addition to the sanctions under subsection (b), the
14 department, by adoption of rules pursuant to chapter 91, shall
15 provide for substance abuse assessment, treatment, and
16 counseling, and referral to the employee assistance program
17 under subsection (e) if suitable, if the department determines
18 to retain the employee; provided that evidence of clinical
19 discharge from substance abuse treatment or substance abuse
20 counseling shall be a prerequisite to continued employment.

21 (d) Notwithstanding any other law to the contrary, for
22 purposes of this section, the department need not conduct



1 investigations, notifications, or hearings under this section in
2 accordance with chapter 91.

3 (e) The department shall establish an employee assistance
4 program to provide help to employees of the department,
5 including the Hawaii state public library system, who may have
6 substance abuse problems that interfere with daily living and
7 functioning in the work place. The employee assistance program
8 shall be open to referrals made under subsection (c) and to
9 other employees who voluntarily request to be in the program.
10 The department may contract with a private provider of service
11 for purposes of this subsection, or may utilize substance abuse
12 services provided by the department of health.

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

17 SECTION 3. The department of education shall report to the
18 legislature no later than twenty days prior to the convening of
19 the regular sessions of 2008 and 2009 on the implementation of
20 this Act, including but not limited to, costs of the testing,
21 impediments to implementation, and recommendations for any
22 statutory amendments.



1 SECTION 4. There is appropriated out of the general
2 revenues of the State of Hawaii the sum of \$, or so
3 much thereof as may be necessary for fiscal year 2007-2008, and
4 the same sum, or so much thereof as may be necessary for fiscal
5 year 2008-2009, to implement random substance abuse testing
6 pursuant to this part.

7 The sums appropriated shall be expended by the department
8 of education.

9 PART II

10 SECTION 5. The legislature finds that Hawaii currently
11 faces a drug crisis, with drug use reaching epidemic
12 proportions. During the 1990s, an elected official was found to
13 be using drugs at or near the time of the expiration of his
14 elected service. In addition, because of the high rate of drug
15 usage in the State, it is possible that at least some current
16 elected officials are using illegal drugs during their terms of
17 office. Hawaii's immediate drug crisis knows no economic or
18 social boundaries—the most powerful and wealthy are affected
19 just as are the lame and the poor. This part is necessary
20 because of the past history of drug use by elected officials and
21 the rising numbers of drug users in the general population who
22 may be elected to public office.



1 The legislature further finds that because of Hawaii's
2 current "ice" epidemic, as well as the increased rate of other
3 drug use, it is critical to ensure that no one elected to
4 represent the people of Hawaii uses illegal drugs. Drug use by
5 elected officials makes Hawaii a more dangerous place to live
6 and visit and undermines the foundation of government. Though
7 elected officials are not the leaders of the Hawaii drug crisis,
8 any involvement in drugs by an appointee of the public who is
9 charged with creating antidrug enforcement policies, or even the
10 appearance of impropriety thereof, is wholly unacceptable.
11 Hawaii's unique need to deal with this past issue of drugs and
12 elected officials, and the unique need Hawaii will continue to
13 face with the rise of drug use by those who may become elected
14 officials, requires that drug testing be implemented.

15 Beyond need, the legislature declares that a zero tolerance
16 policy on drug use by elected officials serves the public
17 because the officials are accountable to the public and use of
18 illegal drugs draws into question an elected official's judgment
19 and integrity; jeopardizes the discharge of public functions,
20 including antidrug law enforcement efforts; and undermines
21 public confidence and trust in elected officials.



1 Because elected officials have power over the community
2 through the introduction and enactment of legislation, including
3 the ability to subject citizens to mandatory drug testing, this
4 part is necessary to ensure that elected officials are held to
5 at least the same, if not a higher, standard as other citizens.

6 SECTION 6. Chapter 78, Hawaii Revised Statutes, is amended
7 by adding a new section to be appropriately designated and to
8 read as follows:

9 "§78- Elected officials; drug testing; disqualification
10 and forfeiture of office. (a) All elected officials shall
11 submit to testing for illegal drugs after certification of their
12 election and prior to taking the oath of office. Thereafter,
13 elected officials elected to a term of office of two years shall
14 submit to testing for illegal drugs every six months. Elected
15 officials elected to a term of office of four years shall submit
16 to testing for illegal drugs every twelve months. Testing shall
17 be conducted in compliance with chapter 329B. Testing shall be
18 funded from the budget of the branch of government to which the
19 official has been elected. Test results shall be provided to
20 the personnel officer of the branch of government to which the
21 official has been elected or in which the official holds office



1 and the personnel officer shall take action, as appropriate, to
2 effectuate the purposes of this section.

3 (b) Any elected official who tests positive for illegal
4 drugs shall immediately be disqualified from taking office or
5 forfeit any office held.

6 (c) For purposes of this section:

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

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

17 SECTION 7. This part does not affect rights and duties
18 that matured, penalties that were incurred, and proceedings that
19 were begun, before its effective date.

20 PART III

21 SECTION 8. New statutory material is underscored.



1 SECTION 9. This Act shall take effect upon its approval;
2 provided that section 4 shall take effect on July 1, 2007.



Report Title:

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

Description:

Requires random 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)

