



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of Linda Smith
Policy Advisor to the Governor

Before the

House Committee on Finance
Tuesday, April 1, 2008
2:30 PM, Capitol Room 308

SB1311 Proposed HD1

Representative Oshiro and Members of the Committees:

The Office of the Governor strongly opposes SB1311 Proposed HD1, which would withhold salary from state employees for: 1) directing subordinates to not share information with the legislature or; 2) taking personnel action against subordinates who share information with the legislature.

This piece of legislation is fatally flawed and does not account for the many different types of information handled by the Executive branch that are exempted from disclosure due to privacy or confidentiality concerns, such as tax return information, trade secret information, etc. It also does not account for information that is covered under attorney-client privilege or executive privilege.

The enactment of this piece of legislation would establish punitive measures against employees of the State who may be faithfully performing the duties of their positions. As previously testified to by the Department of the Attorney General on HB391, Relating to Legislative Inquiries, which has the same language as this proposed bill: "If the Attorney

General were to instruct a Deputy Attorney General who was representing an employee of the State, not to discuss privileged attorney-client communications with a legislator, the Attorney General would be in violation of this bill.”

Punishing state employees for stopping the release of privileged or confidential information requested by the legislature is both unfair and wrongful when revealing such information would interfere with the proper functioning of the Executive branch agencies. Additionally, we are unsure how collective bargaining agreements or due process could be impacted if salaries are withheld as a result of SB1311 Proposed HD1.

Due to the above mentioned concerns, the Office of the Governor respectfully requests that SB1311 Proposed HD1 be held.

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
CHIEF NEGOTIATOR
HAROLD DeCOSTA
DEPUTY CHIEF NEGOTIATOR

STATE OF HAWAII
OFFICE OF COLLECTIVE BARGAINING
EXECUTIVE OFFICE OF THE GOVERNOR
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April 1, 2008

WRITTEN COMMENTS TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Tuesday, April 1, 2008
2:30 p.m., Conference Room 308

BY

MARIE C. LADERTA, CHIEF NEGOTIATOR
AND DIRECTOR OF HUMAN RESOURCES DEVELOPMENT

**Senate Bill No. 1311, proposed HD1
Relating to Salary Payments**

TO CHAIRPERSON MARCUS R. OSHIRO AND MEMBERS OF THE
COMMITTEE:

The purpose of S.B. No. 1311, proposed HD1 is to amend Chapter 37, Hawaii Revised Statutes, to assist the legislature with fact-finding and promote complete and truthful disclosure by prohibiting the payment of salaries of state employees who coerce, intimidate, or otherwise prevent subordinates from sharing information at legislative hearings or in response to other legislative inquiries.

We **strongly oppose** the proposed HD1 for the following reasons:

1. The bill compromises the State's ability to manage and direct its employees and operations. For example, as the bill is presently constituted, any employee facing the prospect of an investigation for possible disciplinary action would be able to initiate contact with a legislator about his situation. Even if the employer's investigation ultimately justifies disciplinary action, such as a

suspension without pay, the appointing authority who renders the suspension would have his or her salary withheld. As another example, an employee in a health or safety-related position could simply walk off his or her job at anytime to talk with a legislator—even in the middle of a workshift at a hospital or correctional facility, thereby jeopardizing public health and safety—with the knowledge that his supervisor’s pay could be withheld for taking disciplinary action against him. In short, the State’s managers’ and supervisors’ power to exercise their management prerogatives is essentially chilled by this bill because their subordinates can simply pre-empt any undesirable management action by contacting a legislator.

2. Second, this bill is vague in that it lacks necessary procedural details. For example, it does not specify how much of the employee’s salary is to be withheld and the duration. It also does not set forth a procedure for an affected State employee to appeal an action withholding his or her salary, thereby raising issues of due process. Without such a process, this will likely lead to grievances under the State’s respective collective bargaining agreements with the public employee unions or to protracted litigation.

In light of our foregoing concerns, we believe that Chapter 37, HRS, should not be amended as proposed in this bill.

Thank you for the opportunity to submit comments on this matter.

Respectfully submitted,


MARIE C. LADERTA



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

S.B. NO. 1311, PROPOSED H.D. 1, RELATING TO SALARY PAYMENTS.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Tuesday, April 1, 2008 **TIME:** 2:30 PM

LOCATION: State Capitol, Room 308
Deliver to Room 306, 2 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or John P. Dellera, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General opposes this bill.

The bill would prohibit payment of salary to any officer or employee of the State who (1) directs another state employee not to communicate with any member of the legislature about agency business, or (2) discriminates or takes adverse personnel action against an employee because of any communication with a member of the Legislature.

There are several legal objections to this measure.

First, the bill would prevent the Attorney General from taking reasonable steps to preserve the attorney-client privilege and to assure that legal advice to state officials is accurate, consistent, and adheres to lawful policy objectives. For example, if the Attorney General were to instruct a Deputy Attorney General who was representing an employee of the State, not to discuss privileged attorney-client communications with a legislator, the Attorney General would be in violation of this bill. Also it would interfere with the Attorney General's ability to ensure that legal policy advice is the advice of the Attorney General and not a deputy.

Second, the bill may compromise the prosecution or defense of actions by and against the State by prohibiting employees from instructing others not to discuss pending or contemplated litigation;

Third, the bill could result in the violation of privacy rights or in the disclosure of confidential financial or business information by prohibiting employees from instructing others to keep such information confidential. For example, a legislator could ask about a person's tax return information or trade secret information subject to a protective order. Surely the Tax Director should be able to direct an employee to refuse to provide such information and the Attorney General should be able to instruct deputies not to provide such information.

Fourth, the bill could impair investigations and other law enforcement activities and breach confidentiality agreements between state agencies and other units of federal, state, or local government by improperly disclosing information that should not be disclosed. For example, the Attorney General may be obtaining a search warrant for a secret indictment. Surely the Attorney General must be able to forbid his employees from informing legislators.

Fifth, the bill conflicts with section 26-35(1) of the Hawaii Revised Statutes, which provides that the head of departments shall represent administratively attached boards and commissions in communications with the Legislature.

Sixth, contested case hearings or some other statutorily mandated hearing would be required before salaries could be withheld in order to comply with due process requirements;

Seventh, the bill could violate the separation of powers doctrine to the extent it interferes with executive functions that are delegated to the Governor by article V, section 1 of the Hawaii Constitution.

We respectfully request that this measure be held.



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The Twenty-Fourth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

Testimony by
HGEA/AFSCME, Local 152, AFL-CIO
April 1, 2008

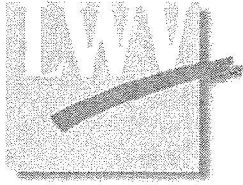
S.B. 1311 (Proposed H.D. 1) –
RELATING TO SALARY
PAYMENTS

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 1311 (Proposed H.D. 1). As drafted, the bill will assist the Legislature in its important fact-finding and oversight responsibilities. The Legislature must obtain complete and accurate information from witnesses who are called to testify before a committee. S.B. 1311 (Proposed H.D. 1) prohibits paying any state employee's salary who coerces, intimidates, or otherwise prevents subordinates from sharing information at legislative hearings or in response to other legislative inquiries.

Thank you for the opportunity to testify in support of this legislation that promotes good government and protects public employees who are willing to testify before the Legislature.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director



THE LEAGUE OF WOMEN VOTERS OF HAWAII

TESTIMONY ON SB 1311 RELATING TO SALARY PAYMENTS – Proposed HD1

Committee on Finance
Rep. Marcus R. Oshiro, Chair
Rep. Marilyn B. Lee, Vice Chair
Tuesday, April 1, 2008 2:30 p.m.
Conference Room 308

Testifying: Jean Aoki, LWV Legislative Committee

Chair Oshiro, Vice Chair Lee, members of the Committee on Finance,

The League of Women Voters is in strong support of the intent of SB 1311.

In this day, nationally and in our states, we hear of corruption and withholding of important information in governments at all levels. It is important that we have laws in place which punish those who would suppress information that could influence the policies pursued or dissuade those who would expose corruption or violations of safety and other laws through intimidation of those working below them or their co-workers.

Yes, we have heard of veiled threats to toe the line with the “or else” withheld, in cases where corruption was not involved but certainly public policies were affected, and in some of these cases, that in itself effectively intimidated the principles into submission until later when the incidents were exposed.

The Legislature is entitled to all the information it needs in order to adopt suitable and effective policies and to enact laws in the interest of the state and its people. The citizens of the state are entitled to such information also so it can hold our elected officials accountable. Those who would enforce silence through intimidation deserve to be punished, and this bill would certainly discourage such behavior.

We trust that the proper safeguards remain to protect the rights of the accused should the accusation itself be a malicious attempt to discredit him or her. Thank you.