



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of Barry Fukunaga
Chief of Staff to the Governor

Before the

Senate Committee on Judiciary and Labor

Thursday, February 7, 2008, 9:00 a.m.
State Capitol, Conference Room 16

SB 2572 Relating to Advice and Consent and
SB 2573 Proposing an Amendment to Article V, Section 6, of the Hawaii
Constitution to Authorize the Senate to Limit its Advice and Consent of the
Nomination of any Executive or Chairperson of a Principal Department to a
Provisional or Temporary Appointment

Chair Taniguchi, Vice Chair Hee, and Committee Members:

The Lingle-Aiona Administration opposes SB 2572 and the companion constitutional amendment measure SB 2573 as we believe both represent bad public policy.

The measures proposed would allow voter consideration to change the state constitution to allow members of the senate, at their discretion to limit their advice and consent on the nomination of principal department heads and board, commission or other body where the nominee is the head of a principal department of the state government to temporary or provisional appointments as opposed to full terms. This change could essentially require department directors to be subject to reappointment each year as opposed to a full term for which the governor was elected.

By such change, uncertainty is introduced into the current nomination and confirmation process that will adversely affect the ability of a governor to attract individuals who would be willing to serve as principal department heads if the period of their tenure was potentially subject to an annual confirmation process that may be subject to unknown requirements or conditions. This situation will reduce interest in public service and result in the loss of extremely qualified and capable individuals who might otherwise be interested in public service. In the

majority of situations, individuals nominated for cabinet positions have forgone other employment for the opportunity to serve. Such interest is in part due to the understanding that a term of service concurrent with the governor would be observed upon confirmation. In the absence of such assurance and faced with the uncertainty of whether they would have to undergo an possible annual reappointment process, these individuals will not apply or be willing to participate.

The measures proposed will not affect our administration but will impact future administrations. We see no positive benefit or purpose for subjecting department heads to an annual confirmation process that will consume time and add little productive or constructive value to the confirmation process. Such measures encroach on the powers of the head of the executive branch of the government elected by the people of the state to provide leadership for the state government. The governor should be able to count on establishing a cabinet that, following the advice and consent of the senate, will be available for the full term of the chief executive's term of office. This model is based on the U.S. Constitution and is also intended to provide a definitive separation of powers between the respective branches of government. The proposed legislation creates a disparate arrangement on such arrangement by potentially weakening the executive branch's ability to count on the consistency of its management team and offers no plausible purpose or benefit.

Since there is no clear definition associated with the terms "provisional" or "temporary" appointment, a question exists as to what such terms mean and how they are determined and applied.

Because of the magnitude of change that would be brought about by the proposed legislation it is preferable to have this issue be subject to consideration, evaluation and debate through a Constitutional Convention.

We respectfully ask that this bill be held in Committee.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2572, RELATING TO ADVICE AND CONSENT.

BEFORE THE:

SENATE COMMITTEE ON JUDICIARY AND LABOR

DATE: Thursday, February 7, 2008 **TIME:** 9:00 AM

LOCATION: State Capitol Room 016
Deliver to: Committee Clerk, Room 219, 1 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or Deputy Attorney General Charleen M. Aina

Chair Taniguchi and Members of the Committee:

The Attorney General opposes the passage of S.B. No. 2573, which proposes amendments to the State Constitution that this measure would then further implement by statute. Thus, the Attorney General similarly opposes the passage of this measure.

LINDA LINGLE
Governor



State of Hawaii
DEPARTMENT OF AGRICULTURE
1428 South King Street
Honolulu, Hawaii 96814-2512

SANDRA LEE KUNIMOTO
Chairperson, Board of Agriculture

DUANE K. OKAMOTO
Deputy to the Chairperson

WRITTEN TESTIMONY OF SANDRA LEE KUNIMOTO
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE SENATE COMMITTEE ON JUDICIARY AND LABOR
February 7, 2008
9:00 A.M.

SENATE BILL NO. 2572
RELATING TO ADVICE AND CONSENT

Chairperson Taniguchi and Members of the Committee:

Thank you for the opportunity to comment on Senate Bill No. 2572. This bill proposes to authorize the Senate, in its discretion, to limit the advice and consent of a nominee to an executive position of any of the principal departments or chairpersons of the board of agriculture, board of land and natural resources, or Hawaiian homes commission to a provisional or temporary appointment. The Hawaii Department of Agriculture (HDOA) strongly opposes this measure.

HDOA believes that the determination of the type of appointment for an executive position is best made by the Governor. We firmly believe that Section 26-31 and Section 26-34 of Hawaii Revised Statutes should remain unchanged.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
SENATE BILL NOS. 2572 AND 2573

February 7, 2008

SENATE BILL NO. 2572: RELATING TO ADVICE AND CONSENT
SENATE BILL NO. 2573: PROPOSING AN AMENDMENT TO ARTICLE V,
SECTION 6, OF THE HAWAII CONSTITUTION TO
AUTHORIZE THE SENATE TO LIMIT ITS ADVICE AND
CONSENT OF THE NOMINATION OF ANY EXECUTIVE
OR CHAIRPERSON OF A PRINCIPAL DEPARTMENT TO A
PROVISIONAL OR TEMPORARY APPOINTMENT

Senate Bill No. 2572 amends chapter 26, HRS, to give the Senate the discretion to limit its advice and consent approval of gubernatorial executive nominations to a provisional or temporary appointment, instead of the full term for which the Governor was elected. Senate Bill No. 2573 proposes a constitutional amendment to authorize the same discretion.

The Department of Budget and Finance opposes this proposed amendment because it will have a negative impact on the operations of Executive Branch departments and agencies.

One of the most critical tasks of the Governor as chief of the Executive Branch is to form a cabinet and appoint members to serve as heads of State departments and agencies. If the appointments are provisional or temporary, there will be a degree of uncertainty and instability in the direction and management of State programs and services. A clear line of authority and responsibility is essential to effective management.

Furthermore, the provisional or temporary status of these highest executive appointments would impair the ability of government to attract and retain candidates with the best qualifications.



STATE OF HAWAII
DEPARTMENT OF TRANSPORTATION
869 PUNCHBOWL STREET
HONOLULU, HAWAII 96813-5097

February 7, 2008

TESTIMONY OF THE DEPARTMENT OF TRANSPORTATION
SENATE BILL NO. 2572, RELATING TO ADVICE AND CONSENT.
COMMITTEE ON JUDICIARY AND LABOR

The Department of Transportation (DOT) strongly opposes this bill.

Article V, Section 1, of the Hawaii State Constitution, provides that the “executive power of the State shall be vested in a governor.” (Emphasis added.) Moreover, Section 6 of that same Article provides that “each principal department shall be under the supervision of the governor.” (Emphasis added.)

We strongly oppose Senate Bill 2572 because it would divest the Governor of her executive powers as well as impermissibly hinder her ability to effectively supervise the executive departments.

Subject to a Constitutional Amendment being approved, Senate Bill 2572 would allow the Senate to limit the Governor’s nomination of any executive or chairperson of a principal department, to a provisional or temporary appointment.

First of all, a “provisional or temporary appointment” is not defined or limited under the proposed language in Senate Bill 2572. Arguably, the Senate could impose conditions or requirements on the nominee, as part of the provisional appointment. These conditions and requirements could be contrary or inconsistent with the Governor’s supervision of the departments. Clearly, the Governor’s ability to supervise the executive departments would be seriously hindered if the department head or chairperson were subject to conditions or requirements imposed by someone other than the Governor.

Furthermore, even if the Senate confirmation was for a temporary appointment, limited only in its duration, with no other conditions; we can think of no “rational basis” for the Senate to approve a nominee for a temporary appointment. Currently, the nominee’s term runs concurrently and is coterminous with the Governor’s term. There is no compelling reason why the department head or chairperson’s term should be limited to anything less than that.

In light of these serious concerns, we feel that Senate Bill 2572 would violate the Constitutional doctrine of “separation of powers” between the Executive and Legislative branches of government. For this reason, we strongly oppose Senate Bill 2572.