



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. 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.

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 testifies in strong opposition to this bill.

Currently, the Constitution makes cabinet members' terms coextensive with those of the Governor. This constitutional amendment, if adopted, would allow the Senate to confirm department heads and chairs of boards that head departments, to terms as short as the Senate chooses. There is no reason to allow the Senate to break up a cabinet member's term into as many shorter terms as the Senate wishes. The power to advise and consent, as at the federal level, is one that should be exercised once per appointment. This amendment would simply greatly increase the power of the Senate for no discernible reason.

Moreover, the amendment, if adopted, would allow undefined "provisional appointments." Presumably, the Senate has in mind appointments that continue only if the cabinet member meets conditions set by the Senate. This would improperly allow the Senate to take on the role of the executive. This bill does not say what types of provisional appointments the amendment would allow, and so presumably the types of "provisions" would be unlimited.

In addition, this proposal will clearly discourage many otherwise qualified and capable individuals from allowing a governor to nominate them to serve. People willing to quit their jobs mid-career and commit themselves to sharing their knowledge and experience to serve the public for four years, should not have to make that commitment and subject themselves to the Senate's scrutiny only to be given an indefinite or shorter term. Who would be willing or could afford to stand for nomination under such uncertain circumstances?

If the Senate believes a nominee lacks the appropriate ability to serve, when it is asked to advise and consent to a gubernatorial nomination, the Senate should reject the nomination outright. That should be the limit of the Senate's "advise and consent" power.

We ask that this bill be held.

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

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. 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.

Chairperson Taniguchi and Members of the Committee:

Thank you for the opportunity to comment on Senate Bill No. 2573. This bill proposes an amendment to Article V, Section 6, of the Hawaii State 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. The Department of Agriculture strongly opposes this measure.

HDOA believes that the determination of the type of appointment for an executive or chairperson position is best made by the Governor. We firmly believe that this decision should remain the prerogative of the Governor and see no compelling reason for a change to the Hawaii constitution.

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 DEFENSE

TESTIMONY ON SENATE BILL 2573
A BILL FOR AN ACT RELATING PROPOSING AN ADMENDMENT 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 OF
CHAIRPERSON OF A PRIINCIPAL DEPARTMENT TO A PROVISIONAL OF
TEMPORARY POSITION

PRESENTATION TO THE
COMMITTEE ON JUDICIARY AND LABOR

BY

MAJOR GENERAL ROBERT G. F. LEE
ADJUTANT GENERAL
February 7, 2008

Chair Taniguchi, Vice Chair Hee and Members of the Committee:

I am Major General Bob Lee, Adjutant General. I am testifying on Senate Bill 2573. We strongly oppose the intent and purpose of Senate Bill 2573. Amending 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 position undermines the principle of finding the best qualified individual with military experience and potential to command the Hawaii National Guard.

The position of Adjutant General not only commands the National Guard, but is also responsible for State Civil Defense and Homeland Security in the State of Hawaii. The individual nominated for this position, not only must have the consent of our State Senate, but must also be confirmed and awarded federal recognition in military grade and rank by the United States Senate. Confirmation process by the United States Senate is lengthy and may take up to a year to complete. Based on this lengthy process, the National Guard Bureau would more than likely not submit an individual appointed to a provisional or temporary adjutant general's position for U. S. Senate confirmation.

More importantly, an individual appointed to a provisional or temporary position, without federal recognition to lead the State Department of Defense, undermines the Office of the Adjutant General at a critical time when soldiers and airmen of the Hawaii National Guard are being deployed and redeployed to Iraq and Afghanistan supporting our nation's global war on terrorism. It would place Hawaii at a severe disadvantage compared to other States.

For the reasons stated above, we strongly oppose Senate Bill 2573. Thank you for the opportunity to provide testimony. Are there any questions?

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
HONOLULU, HAWAII 96813-2437

February 6, 2008

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For hearing on Thursday, February 7, 2008
9:00 a.m., Conference Room 016

BY

MARIE C. LADERTA, DIRECTOR

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

TO CHAIRPERSON TANIGUCHI AND MEMBERS OF THE COMMITTEE:

The purpose of this bill is to authorize the Senate to limit its advice and consent of Executive Branch Department head to a "provisional or temporary appointment."

The Department of Human Resources Development **strongly opposes** this bill for the following reasons:

- This bill is abrasive to the fundamental principle of the separation of powers among the branches of government that is the hallmark of our State Constitution.
- This bill would unnecessarily impinge upon the Governor's prerogatives in selecting and retaining those best suited for the positions of department heads.
- This bill would substantially interfere with the efficient functioning of the Executive Branch departments and lengthen the time required for recruiting each department's senior leaders.

Under our system of government, the Governor is vested with the authority and responsibility to supervise the administration of the Executive Branch departments.

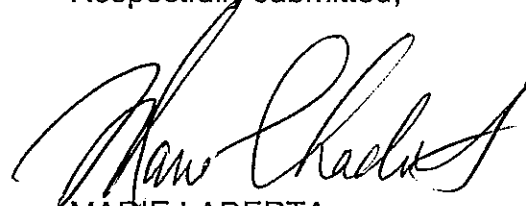
Hawaii Const. Art. V, § 1. The Governor accomplishes this supervision, in large part, by the selection of highly qualified Executive Branch department heads who, once approved by a majority of the Senate, serve at the direction of the Governor and for a term of up to the end of the Governor's term of office.

This bill does not define "provisional or temporary appointment." The Department is concerned that the Senate would seek to impose conditions on a nominee as part of a provisional appointment. As such, enactment of this amendment would fundamentally alter the separation of powers among the Executive Branch and Legislative Branch. There appears to be no compelling reason to alter the basic structure of our system of governance.

Moreover, enactment of this amendment would adversely affect the Governor's ability to select and retain highly qualified department heads if the Senate were empowered to impose additional qualifications upon their appointments. It is essential that each department's director be vested with the broad authority to administer his or her department, subject to the supervision of the Governor.

Accordingly, we respectfully oppose this bill because it would unduly interfere with the efficient and effective operation of the departments within the Executive Branch.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Marie Laderta", written in a cursive style.

MARIE LADERTA

DIRECTOR

LINDA LINGLE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON SENATE BILL NO. 2573

RELATING TO 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

Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Judiciary and Labor
Senator Brian T. Taniguchi, Chair
Senator Clayton Hee, Vice Chair

February 7, 2008, Thursday, 9:00 a.m.
State Capitol, Conference Room 016

Senator Taniguchi, Senator Hee and Members of the Committee:

The Department of Public Safety (PSD) strongly opposes Senate Bill 2573,
because it would divest the Governor of her executive powers as well as impermissibly
hinder her ability to effectively supervise the executive departments.

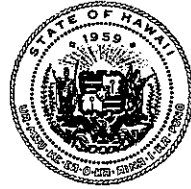
Article V, Section 1, of the Hawaii State Constitution, provides that the
“executive power of the State shall be vested in a governor”, and Section 6 of that same
Article provides that “each principal department shall be under the supervision of the
governor.”

Senate Bill 2573 would amend the State Constitution to allow the Senate to limit the Governor's nomination of any executive or chairperson of a principal department, to a provisional or temporary appointment.

PSD feels that this measure would violate the Constitutional doctrine of "separation of powers" between the Executive and Legislative branches of government. A "provisional or temporary appointment" is not defined or limited under the proposed language. This bill would allow the Senate to impose conditions or requirements on the nominee, as part of the provisional appointment, that could be contrary or inconsistent with the Governor's supervision of the departments. As a result, the Governor's ability to supervise the executive departments would be seriously hindered should the department head or chairperson be subject to conditions or requirements imposed by someone other than the Governor.

For this reason, the Department of Public Safety strongly opposes Senate Bill 2573.

Thank you for this opportunity to submit this written testimony.



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. 2573

(PROPOSING AN AMENDMENT TO ARTICLE V, SECTION 6, OF THE HAWAII STATE 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)

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 2573 because it would divest the Governor of her executive powers as well as impermissibly hinder her ability to effectively supervise the executive departments.

Senate Bill 2573 would amend the State Constitution to 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 2573. 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 2573 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 2573.