

Honolulu, Hawaii

FEB 20 2009

RE: S.B. No. 667  
S.D. 1

Honorable Colleen Hanabusa  
President of the Senate  
Twenty-Fifth State Legislature  
Regular Session of 2009  
State of Hawaii

Madam:

Your Committee on Labor, to which was referred S.B. No. 667  
entitled:

"A BILL FOR AN ACT RELATING TO WHISTLEBLOWERS' PROTECTION,"

begs leave to report as follows:

The purpose of this measure is to provide additional protection to public employees who report violations of the law and other improper activities such as waste, gross misconduct, incompetence, or inefficiency; and to expand the State Ombudsman's responsibilities regarding whistleblowers.

Testimony in support of this measure was submitted by one organization. Testimony in opposition to this measure was submitted by one state agency. One state agency and one county agency supported the intent of the measure. The Office of the Ombudsman submitted comments on the measure. Written testimony presented to the Committee may be reviewed on the Legislature's website.

Your Committee finds that public employees should feel protected from employers' retaliation if they report government waste, gross misconduct, incompetence, or inefficiency. Your Committee notes the Hawaii Government Employees Association's testimony that federal and other state legislation provide protections to public and private employees who report actions that are illegal or threaten public health and safety, and that Hawaii's legislation should provide similarly strong protections.



Your Committee notes the State Ombudsman's recommendation that prescribing the posting of notices, referenced in sections 3 and 4 of the measure, is a responsibility more appropriate for the Department of Labor and Industrial Relations.

Your Committee also notes the State Ombudsman's concern that section 4 of the measure, which requires the Ombudsman to inform a complainant of the complainant's rights under the law, is inconsistent with the Ombudsman's role as an impartial third party that should neither side with the complainant or any governmental agency in an investigation nor provide legal advice.

Your Committee shares the concern expressed by the City and County of Honolulu's Department of Human Resources regarding the broad and vague categories of complaints for which public employees would be protected for reporting violations. These categories include "economically wasteful", "gross misconduct", "incompetence", and "inefficiency". Your Committee believes that these terms should be better defined as the Legislature further debates this matter.

Your Committee agrees with the State Ombudsman's recommendation to remove paragraph 7 in section 5 of the measure, as paragraph 1 already lists administrative acts that are contrary to law as an appropriate subject for investigation.

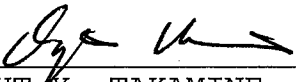
Your Committee has accordingly amended this measure as follows:

- (1) By replacing the references to the State Ombudsman with the Department of Labor and Industrial Relations in sections 3 and 4 of the measure, which relate to the posting of notices and informing the complainant of the complainant's rights under the law;
- (2) By deleting paragraph 7 in section 5 of the measure, which would have added a violation of the proposed new section as an appropriate subject for investigation by the Ombudsman;
- (3) By amending the effective date to July 1, 2050, for the purpose of encouraging further discussion; and
- (4) By amending this measure to correctly reflect the language in the Hawaii Revised Statutes.



As affirmed by the record of votes of the members of your Committee on Labor that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 667, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 667, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on  
behalf of the members of the  
Committee on Labor,

  
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DWIGHT Y. TAKAMINE, Chair



The Senate  
Twenty-Fifth Legislature  
State of Hawaii

**Record of Votes**  
**Committee on Labor**  
**LBR**

Bill / Resolution No.:* <i>SB 607</i>	Committee Referral: <i>LBR, JCO</i>	Date: <i>2-17-09</i>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
TAKAMINE, Dwight Y. (C)	✓			
TANIGUCHI, Brian T. (VC)	✓			
BUNDA, Robert				✓
HEE, Clayton	✓			
SLOM, Sam				✓
<b>TOTAL</b>	<i>3</i>	<i>0</i>	<i>0</i>	<i>2</i>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: <i>[Signature]</i>				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes