

**HB541**

**Date:** 03/23/2009

**Committee:** Senate Education and Housing  
Senate Labor

**Department:** Education

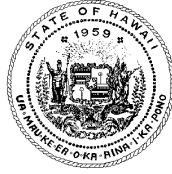
**Person Testifying:** Patricia Hamamoto, Superintendent of Education

**Title of Bill:** HB 0541,HD1(HSCR944) RELATING TO CIVIL SERVICE PERSONNEL.

**Purpose of Bill:** Ensures that civil service benefits for department of education civil service employees are the same as those provided to civil service employees of other executive branch agencies until 6/30/12. (HB541 HD1)

**Department's Position:** The Department of Education (DOE) strongly supports H.B. 0541, HD1 (HSCR944). Currently the Department employs approximately 6,700 civil service employees. This bill provides state executive branch civil service and DOE civil service employees to continue their benefits, rights and privileges relating to transfer, reduction in force, promotion, medical placement, and seniority as if they were within the same jurisdiction. Eligible personnel who wish to transfer will continue to retain their rights and privileges as if they were within the same jurisdiction by applicable inter-department recruitment rules, policies and procedures. This opens up employment opportunities among the executive state branch agencies for all DOE and other civil service employees.

LINDA LINGLE  
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**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
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March 22, 2009

TESTIMONY TO THE  
SENATE COMMITTEE ON EDUCATION AND HOUSING  
SENATE COMMITTEE ON LABOR

For Hearing on Monday, March 23, 2009  
1:30 p.m., Conference Room 225

BY

MARIE C. LADERTA, DIRECTOR

**House Bill No. 541, Relating to Civil Service Personnel**

TO CHAIRPERSONS NORMAN SAKAMOTO, DWIGHT Y. TAKAMINE, AND  
MEMBERS OF THE COMMITTEES:

HB541, HD1 seeks to extend Act 221, Session Laws of Hawaii (SLH) 2005 for another three years to June 30, 2012. Department of Human Resources Development (DHRD) **strongly opposes** HB 541, HD1 for the reasons stated below. If the Legislature extends Act 221, SLH 2005 for another 3 years, DHRD believes it critical to re-examine the necessity of authorizing a separate DOE civil service system under the Board of Education pursuant to the Reinventing Education Act, Act 51.

The Omnibus Civil Service Modernization Law, Act 253, SLH 2000 expressly authorized the de-linking, independent administration, and independent interpretation of the civil service and public employment laws by each separate civil service system among the State Executive Branch, Judiciary Branch, Hawaii

Health Systems Corporation, and county jurisdictions. Consequently, each civil service jurisdiction is responsible for its independent review and compliance with the Act 253 changes in civil service laws and public employment laws, applicable State employment discrimination laws, applicable Federal employment discrimination laws, including the American with Disabilities Amended Act (ADAAA) of 2008, revised Immigration and Reform Control provisions of 2008, worker's compensation and unemployment insurance laws, and applicable collective bargaining provisions, etc. Act 51, SLH 2004 granted the Department of Education (DOE) the full authority and responsibility to establish their own civil service system separate and apart from the civil service system administered by the DHRD, to accomplish the autonomy and flexibility sought by the DOE. The legislative autonomy granted to the DOE, is no different from the full autonomy, responsibility, and accountability of every civil service jurisdiction.

Separate civil service jurisdictions do not allow for the free movements and transfers of civil service employees and their civil service rights (i.e., eligibility for promotional recruitments in a department or between departments, return rights, seniority, placement benefits) from one civil service system to another. However, the Legislature made an exception in 2005 through Act 221 to permit the movements (promotions and transfers) as well as placements between the DOE and DHRD jurisdictions with the crossing of seniority and return rights. At the time, this was deemed necessary in order to allow the DOE to restructure their Office of Human Resources (OHR) from four personnel systems into one unified, integrated system with control over all DOE personnel.<sup>1</sup> The intent of this action was to provide a **temporary** bridge for implementing Act 51, the whole purpose of which is to provide autonomy to the DOE.

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<sup>1</sup> Page 11, Interagency Working Group Transfer of Functions from Various Departments to the Department of Education, A Report to the Legislature in response to Section 42 of Act 51, SLH2004, dated December 2004.

That is, Act 221, SLH 2005 provides members of both DHRD and DOE civil service systems with additional civil service rights and benefits as if they were within the same jurisdiction in the following areas:

- (a) Civil service eligibility for 'promotional' recruitments (if appointed, return rights to permanent jobs);
- (b) Placement searches for disabled civil service employees (if unsuccessful in one civil service jurisdiction then another jurisdiction search must be conducted in the other civil service system);
- (c) Placement searches for RIF-affected civil service employees (if unsuccessful in one civil service jurisdiction then another jurisdiction search is conducted in the other civil service system);  
and
- (d) Pay adjustments and other adjustments necessary to effectuate the movement of personnel between the two jurisdictions, if not otherwise covered through collective bargaining, shall be subject to rules, policies, and procedures established by each respective director.

These additional civil service rights and benefits are not afforded to any other civil service jurisdictions.

### **(1) Solidify DOE's Civil Service System Foundation**

To date, the DOE has yet to promulgate and issue its own set of personnel administrative rules, policies and procedures, policy guidelines and forms to govern their "autonomous" civil services system, as required under Act 51. DHRD has been negatively impacted by DOE's failure to do what all the other civil service systems (HHSC, Judiciary, the counties) have done and continue to do. For instance, DHRD has suffered litigation specifically because of DOE's continued citation and reference to DHRD's administrative rules<sup>2</sup>,

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<sup>2</sup> Memorandum Dated June 30, 2006 from Superintendent to Assistant Superintendent, OHR

policies and procedures for actions they take. DHRD Director and DHRD Deputy Director were personally named as defendants in a Federal lawsuit relating to DOE's citation and reliance on DHRD's administrative rules as well as a circuit court lawsuit by the same individual. Recently, a third Federal lawsuit has been filed under the Americans with Disabilities' Act as Amended (ADAA) for a disabled DOE employee, where again, the DHRD's policies and procedures were unduly referenced and relied upon.

Upon the enactment of Act 262, SLH 1996, Hawaii Health Systems Corporation (HHSC) became independent from the DHRD-administered civil service system on July 1, 1996. Like the DOE, HHSC is part of the Executive Branch, and yet, HHSC promulgated its own set of administrative rules that took effect on July 1, 1996. From July 1, 1996 through present, HHSC has maintained its own separate civil service system that is independent from the DHRD's system. Accordingly, DHRD asks that the same limitation of civil service rights and benefits be applicable with DOE and DHRD members, and to restore compliance with Chapter 76, Hawaii Revised Statutes.

To facilitate the transfer of DHRD's functions to the DOE, DHRD and DOE entered into several Service Level Agreements for the areas of classification and compensation, staffing (recruitment, examination and placement), employee relations (labor relations, personnel transactions, benefits and training), and worker's compensation claims and safety. All electronic and paper copies of DHRD's administrative rules, policies and procedures, policy guidelines and forms were given to the DOE for their perusal. For the staffing Service Level Agreement, Employee Staffing Division provided on-site, hands-on training for DOE staff on DOE's competitive recruitments for one full additional year after the July 1, 2005 autonomy date. Moreover, DHRD provided competitive examination and recruitment documents to DOE for their DOE-unique classes of work.

Therefore, DHRD respectfully asks that a specific timeline and date by which DOE shall promulgate its own set of civil service administrative rules, policies and procedures, policy guidelines and own forms to govern its civil service system be included in HB 541.

## **(2) Legislative Clarification of Civil Service Rights and Benefits to the Civil Service Members of the Hawaii State Public Library System (HSPLS)**

To the best of our knowledge, Hawaii State Public Library System (HSPLS) employees are statutorily DOE/ Board of Education (BOE) employees and we are not aware of any statutory changes caused by Act 51, SLH 2004 or Act 221, SLH 2005. Nevertheless, DOE regards HSPLS to be like one of the 17 other departments in the Executive Branch and not part of the DOE civil service system.<sup>3</sup> Consequently, DOE has deemed HSPLS employees ineligible to apply for DOE internal recruitments conducted for DOE civil service members. At this time, HSPLS employees must apply and compete on DOE's competitive recruitments open to the general public, in order to transfer to DOE schools or administrative offices.

HRD has continued to provide centralized HR services to HSPLS without further statutory amendments, given that they are not serviced by the DOE system. Since Act 221, SLH 2005 provided a four-year window for all members to enjoy civil service rights and benefits prior to the enactment of Act 51, and yet HSPLS members are not treated as part of DOE's system. If the Legislature intended for HSPLS members to be excluded from the DOE's civil service system, DHRD recommends that the appropriate statutory amendments be addressed given that HSPLS remain to be DOE employees under the Board of Education.

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<sup>3</sup> Memo dated July 25, 2005 from Superintendent to State Librarian

We respectfully ask that provisions for the fair and equitable treatment of HSPLS employees, who are statutorily DOE/BOE employees be added to HB 541. This would include: (a) providing HSPLS employees civil service eligibility to apply for DOE internal recruitments; (b) mandating that DOE conduct departmental placement searches for disabled HSPLS employees; and (c) mandating that DOE do departmental placement searches for RIF-affected HSPLS employees. Without further legislative clarification, department placement searches for HSPLS members will continue to be limited to HSPLS positions, and if unsuccessful, then jurisdiction searches for HSPLS employees conducted by DHRD will include the DOE positions along with the 17 other departments. HSPLS members will continue to be ineligible to apply for internal recruitments conducted for members of the DOE civil service system, and instead, must compete for DOE civil service vacancies along with the general public.

**(3) Limit the extension of HB 541 benefits and rights to only those 1095 non-DOE employees and HSPLS employees negatively impacted by Act 51, SLH 2004.**

Since Act 221's passage, key components of Act 51 have been completed. The various DHRD-DOE Service Level Agreements were fulfilled. All DHRD electronic records of transferred positions and employees, electronic and physical copies of official class specifications and related records, etc. were provided to the DOE for their perusal.

DHRD no longer has maintenance oversight over DOE's position and employee records. DHRD no longer has ongoing access to DOE's vital electronic records necessary to effectively facilitate and conduct jurisdiction-wide placement searches for RIF-affected employees. Without full access to electronic records for DOE employees and positions, DHRD must rely on immediate and responsive data snapshots provided by the DOE to conduct any



jurisdiction-wide RIF placement searches. Any extension of RIF placement benefits between jurisdictions will significantly increase the costs of RIFs, as RIF-affected employees must be paid their salaries and fringe benefits until all RIF placement searches are completed.

- a. Currently, all **22, 547** members of both DOE and DHRD systems enjoy the crossing of civil service rights and benefits between both jurisdictions pursuant to Act 221. However, there were only **415** non-DOE employees transferred from Departments of Health (DOH) and Accounting and General Services (DAGS). **680** HSPLS members have also been denied certain rights and benefits as DOE/BOE employees. At this juncture, DHRD believes that any continued rights and benefits afforded by extending Act 221 must be limited to these 1095 members of DAGS, DOH and HSPLS.
- b. If limited to the small group of Act 51 non-DOE employees transferred to the DOE who were initially employed in the DHRD-administered civil service system and HSPLS employees, DHRD believes that extended civil service benefits may be manageable without additional resources.
- c. With respect to the additional Act 221 workload, DHRD had a 42% workload increase or 32 jurisdiction-wide placement searches for Act 221 disabled employees, of which, 27 have been completed and 5 are still in process. Of the 27 completed, two placements were made in the DOE. There have been no placements of DOE employees into DHRD-administered civil service system. Unlike Reduction-in-Force searches, permanent members of civil service are afforded one jurisdiction-wide placement search, and we have been able to manage with data snapshots. Related to litigation, as earlier mentioned, we have been impacted by one Federal ADAA lawsuit

filed against the DOE, and our jurisdiction-wide search for this DOE disabled employee recently completed was unsuccessful.

In spite of the current economic crisis, each Hawaii civil service system continues to be faced with workforce planning and restructuring efforts among their agencies, continued baby boomer retirements, widening skill gaps in applicant pools, and ongoing preparation should a Reduction-in-Force be unavoidable within their own jurisdiction.

Without these proposed amendments, HB 541 would continue to be unduly burdensome for the DHRD-administered civil service system given the lack of current infrastructure and additional resources. For the reasons provided above, we respectfully ask that the Legislature consider and address the multiple issues raised by HB 541 which seeks to extend Act 221, SLH 2005 for an additional three (3) years. If the proposed amendments cannot be incorporated, we then respectfully ask that HB 541, HD1 be held.

Thank you for the opportunity to testify.



**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
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**The Twenty-Fifth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Labor  
Committee on Education and Housing**

**Testimony by  
Hawaii Government Employees Association  
March 23, 2009**

**H.B. 541, H.D. 1 – RELATING TO  
CIVIL SERVICE PERSONNEL**

The Hawaii Government Employees Association supports the purpose and intent of H.B. 541, H.D. 1. Act 51, Session Laws of Hawaii, 2004, called for the transition of certain functions and resources from various state agencies to the Department of Education (DOE). Act 51 also allowed the DOE to establish a separate personnel system that would encompass existing DOE employees, as well as those who transferred in from other state agencies.

It has always been our position that the rights and benefits of employees who become a part of a DOE personnel system as the result of Act 51 should be maintained and not diminished. However, the DOE has not fully developed its own personnel system. This proposed legislation accomplishes that objective for civil service employees. Therefore, it is necessary to extend the sunset until June 30, 2012. We recommend that the effective date of the bill be changed back to upon approval.

We appreciate the opportunity to testify in support of H.B. 541, H.D. 1 with the suggested amendment.

Respectfully submitted,

**Nora A. Nomura**  
Deputy Executive Director