

Date: 03/02/2009

Committee: House Finance

Department: Education

Person Testifying: Patricia Hamamoto, Superintendent of Education

Title of Bill: HB 0541(HSCR125) 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 employees until 6/30/12.

Department's Position: The Department of Education (DOE) strongly supports H.B. 541 (HSCR125). 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.



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

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE
For Hearing on Monday, March 2, 2009
2:30 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 541, Relating to Civil Service Personnel

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

The purpose of HB 541 is to extend the June 30, 2009 repeal date of Act 221, Session Laws of Hawaii (SLH) 2005, for an additional four years to June 30, 2012, to ensure that civil service benefits for Department of Education (DOE) employees are the same as those provided to civil service employees of the executive branch.

Department of Human Resources Development (DHRD) **strongly opposes** the passage of HB 541 as drafted because this measure proposes to unreasonably extend a concept of "dual civil service membership and the attending civil service benefits" between two independent civil service systems.

As the central human resources agency serving 17 departments in the Executive Branch civil service system, DHRD respectfully requests Legislative consideration of the following concerns before extending Act 221, SLH 2005 for another four years:

1. The Omnibus Civil Service Modernization Law, Act 253, SLH 2000 expressly authorized the de-linking, and independent administration and 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.

With the Act 253, SLH 2000 passage, each civil service jurisdiction is

responsible for its independent review and compliance with the changes in civil service laws and public employment 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, applicable collective bargaining provisions, etc.

2. 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.

The civil service systems administered by the DOE and the DHRD are not the same, and they continue to independently evolve in response to the changing needs and missions of the separate workforces.

3. To responsibly administer any civil service system, administrative rules, policies and procedures, and policy guidelines are issued to govern and achieve consistency, fairness and compliance with the numerous Federal and State public employment, employment discrimination and related laws and regulations.

To accept employment in any civil service system, civil service members must first resign and separate from their current employer. All civil service benefits, including return rights to the employee's permanent civil service position and seniority, are forfeited when employment is terminated.

Accordingly, all new initial civil service hires serve initial probation periods and must satisfy the civil service and public service requirements of their new employers to acquire civil service membership.

4. Pursuant to the Act 51 transfer, **94%** of the total 6,452 employees (5,856 civil service members and 181 exempt employees) were already DOE employees. Only **6%** of the non-DOE employees were impacted with the Act 51 transfer. That is, 181 civil service members from Department of Accounting and General Services (DAGS) transferred on July 1, 2005, followed by 234 civil service

members from the Department of Health (DOH) on July 1, 2007 to the DOE.

5. Through an executed one-year Memorandum of Agreement (MOA), the DHRD provided continued competitive civil service recruitment, examination and certification services for DOE classes of work. This included on-site, hands-on training for DOE staff to ensure a successful transition pursuant to Act 51, SLH 2004. Moreover, electronic files of DHRD's administrative rules, policies and procedures and policy guidelines were provided to the DOE for their perusal.

In its implementation of Act 51, SLH 2004 and Act 221, SLH 2005, the DOE determined that their civil service employees of the Hawaii State Public Library Systems (HSPLS) should remain in the civil service system administered by the DHRD. Consequently, DHRD continues to provide ongoing services to the HSPLS civil service employees in all functional areas of staffing, classification and compensation, claims and employee relations.

6. Under the current Act 51 and Act 221 implementation, the **680** civil service members (**12%** of 6452 DOE civil service employees) of the Hawaii State Public Library System (HSPLS) were administratively excluded from the DOE civil service system. As a result, permanent HSPLS civil service members did not continue to enjoy their civil service membership rights and benefits as DOE employees, as set forth in a letter dated July 25, 2003 from the DOE Superintendent to the State Librarian.
 - a. Currently, HSPLS civil service members have no promotional mobility or career opportunities in the Department of Education civil service system as DOE employees. This means that HSPLS civil service members are ineligible in applying for internal promotional recruitments conducted by the DOE proper. Additionally, HSPLS members must apply for DOE's civil service vacancies through inter-departmental competitive promotional recruitments, and compete with the eligible members of the 17 Executive Branch departments who may apply. If no inter-departmental competitive promotional recruitments are conducted by the DOE, then HSPLS members must apply for DOE civil service vacancies on open-competitive recruitments along with the general public.

- b. The effect of DOE's administration of their civil service system in regarding the HSPLS as a separate 'department' in the DHRD-administered civil service system will have serious negative consequences in placement searches conducted for disabled employees and employees affected by Reduction in Force (RIF). That is, all departmental placement searches for HSPLS employees will be limited to their 801 civil service positions, instead of being added to the 5,176 civil service positions in the DOE-administered system.

For placements of the disabled or RIF-affected employees, successful placements are most likely to occur in their own department given that placements are currently permanent appointments without selection interviews and new probation periods, and pay retention is subject to the respective collective bargaining agreements and executive orders.

Because the DOE civil service vacancies are not included in HSPLS members' departmental search, the affected HSPLS employee will need to compete with employees from the other 17 departments which lessen their placement opportunities. If the searches are unsuccessful, then these HSPLS employees will be terminated from service and placed on the appropriate reemployment lists.

7. Pursuant to Act 51, SLH 2004, DHRD gave to the DOE, all electronic records of transferred position and employees, electronic and physical copies official class specifications and related records, existing general registers (eligible lists) and civil service examination materials for DOE-unique classes, etc.
 - a. DHRD no longer has maintenance oversight over DOE's position and employee records. For effective placement searches, employee and position records must be current, accurate and capture the necessary information to minimally conduct jurisdiction-wide placement searches
 - b. The electronic records of both the DOE and DHRD must be able to communicate on a real-time basis for accurate RIF placement searches and consistent placement decisions.

8. The 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.

Because DHRD lacks the resources required to manually perform jurisdiction-wide RIF searches within a 90-day RIF timeline, and must rely on data snapshots, DHRD will not be able to utilize the "paper-bumping" method that minimized the negative emotional impact of RIF to the 1995 RIF-affected employees.

9. With respect to the additional Act 221 workload, DHRD initiated 32 jurisdiction-wide placement searches for 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, however, we have been impacted by one Federal ADA lawsuit filed against the DOE, and our jurisdiction-wide search recently completed was unsuccessful.

With respect to Act 51, SLH 2004 autonomy, the DHRD Director and Deputy Director have been sued by an individual in State civil court because of the continued reference to DHRD's administrative rules, policies and procedures by the DOE. For ongoing voluntary movements of civil service members, DHRD is unable to capture any data, given that we do not have access to DOE's records to generate reports.

DHRD respectfully asks that HB 541 be amended to include provisions that effectively address the following issues and concerns brought to the attention of the Legislature should HB 541 proceed in the legislative process:

1. Mandate a specific deadline for the DOE to promulgate its own set of civil

service administrative rules, policies and procedures, and policy guidelines for its DOE-administered civil service system.

2. Whereas Act 51 impacted only 6% of non-DOE employees, Act 221, SLH 2005 impacts all civil service employees, current and prospective, of both civil service systems.

DHRD recommends that the “dual membership concept” between the civil service systems administered by the DOE and DHRD be limited to the finite number of 415 DAGS and DOH civil service employees who were transferred to the DOE civil service system and the 680 civil service employees of HSPLS separated from the DOE via Act 51, SLH 2004. These are the 1,095 civil service employees who were negatively impacted by Act 51, and they alone should be the focused concern should Act 221, SLH 2005 be extended.

If limited to the small group of Act 51 non-DOE employees transferred to the DOE and HSPLS employees who were initially employed in the DHRD-administered civil service system, DHRD believes that extended civil service benefits may be manageable without additional resources.

3. Further, DHRD seeks legislative clarification on the civil service rights and benefits of the 680 HSPLS civil service employees who statutorily are DOE employees, but are part of the DHRD-administered civil service system. If the Legislature passes HB 541, DHRD asks that the following clarifying provisions for the HSPLS civil service employees be included so that they continue to enjoy the civil service rights and benefits as DOE employees:
 - a. Provide eligibility to HSPLS civil service members to apply and compete for all internal recruitments conducted in the DOE-administered civil service system, along with other qualified DOE civil service members.
 - b. Require that departmental placement searches for disabled HSPLS members include both DOE civil service vacancies and HSPLS civil

service vacancies to maximize placement of HSPLS disabled employees.

- c. Require departmental placement searches for HSPLS members affected by RIF include both DOE civil service positions and HSPLS civil service positions.

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 last-resort Reduction-in-Force be necessary in their own jurisdiction. Without these proposed amendments, HB 541 would continue to place an unfair burden onto 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 four years.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA

Executive Director

Tel: 808.543.0011

Fax: 808.528.0922

NORA A. NOMURA

Deputy Executive Director

Tel: 808.543.0003

Fax: 808.528.0922

DEREK M. MIZUNO

Deputy Executive Director

Tel: 808.543.0055

Fax: 808.523.6879

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

Testimony by
Hawaii Government Employees Association
March 2, 2009

H.B. 541 – RELATING TO
CIVIL SERVICE PERSONNEL

The Hawaii Government Employees Association supports the purpose and intent of H.B. 541 – Relating Civil Service Personnel. 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 appreciate the opportunity to testify in support of H.B. 541.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director