



**EXECUTIVE CHAMBERS**  
HONOLULU

**LINDA LINGLE**  
GOVERNOR

Testimony of  
**Barry Fukunaga**  
Chief of Staff to the Governor

Before the  
**HOUSE COMMITTEE ON FINANCE**  
Wednesday, March 25, 2009, 2:00 p.m.  
Room 308, State Capitol

**SB 387 SD1 RELATING TO THE STATE BUDGET**

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

The Administration strongly opposes SB 387 SD1, which requires the Executive Branch to seek legislative authorization prior to making any appropriation transfers or changes.

In order to ensure the successful and reliable operation of all departments and services, the Executive Branch must be able to budget expenditures appropriately and accordingly. Appropriation transfers are made throughout the fiscal year in accordance with each department's budgeting needs. It is impractical for the Administration to seek legislative approval for appropriation transfers or changes given that the Legislature operates on a part-time basis, whereas the day-to-day operations of the Executive Branch require real-time decisions and budgeting.

Additionally, it would increase the cost of government if the Legislature must be called back into session in order to approve these appropriation transfers. More importantly, if appropriation transfers and changes are not made in a timely matter as a result of this measure, our departments' ability to perform their duties will be greatly hampered.

If a process like the one proposed by this bill is implemented, the Legislature will essentially be making operational decisions for the Executive Branch. As a result, the Administration must oppose SB 387 SD1.

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

March 24, 2009

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE  
For Hearing on Wednesday, March 25, 2009  
2:00 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 387, S.D. 1  
Relating To The State Budget**

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON MARCUS OSHIRO AND MEMBERS OF THE COMMITTEE:

The purpose of S. B. No. 387 S.D. 1 is to reiterate the legislature's intent that appropriation transfers or changes between programs and agencies be made only pursuant to prior legislative authorization.

The Department of Human Resources Development respectfully opposes S. B. 387 S.D. 1. Departments in the Executive Branch need the flexibility to transfer appropriated funds for operating purposes in order to respond to program needs, changing conditions, and unforeseen problems. If the Department's authority to transfer funds between programs is restricted, this will have a negative impact on the Department and all other State departments' ability to meet operational needs and maintain services to the public.

Thank you for the opportunity to provide testimony on this bill.

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 387, S.D. 1

March 25, 2009

RELATING TO THE STATE BUDGET

Senate Bill No. 387, S.D. 1, amends Section 37-74 (d), Hawaii Revised Statutes, to require that no transfers or changes between programs or agencies shall be made without prior legislative authorization. This bill also deletes the requirement that authorized transfers, when made, shall be reported to the Legislature.

We are opposed to this bill because it still requires prior legislative authorization before implementing transfers or changes between programs or agencies. In addition to the concern with the violation of the separation of powers between the Legislative and Executive Branches of government, it may be administratively difficult to implement this bill.

**2<sup>ND</sup> AMENDED****TESTIMONY OF THE STATE ATTORNEY GENERAL  
TWENTY-FIFTH LEGISLATURE, 2009**

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 387, S.D. 1, RELATING TO THE STATE BUDGET.

**BEFORE THE:**

HOUSE COMMITTEE ON FINANCE

**DATE:** Wednesday, March 25, 2009 **TIME:** 2:00 PM**LOCATION:** State Capitol, Room 308**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Randall S. Nishiyama, Deputy Attorney General

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Chair Oshiro and Members of the Committee:

The Department of the Attorney General opposes this bill because it violates the constitutional separation of powers between the Legislative and Executive branches of government.

The purpose of this bill is to require that the Governor seek prior legislative authorization from the Legislature before implementing transfers or changes of appropriated funds between programs or agencies.

The Legislature and the Executive have distinct roles in the budget and appropriation process. Under the Hawaii Constitution, the authority to appropriate moneys for the working of state government rests with the Legislature. Once the appropriations bill has been enacted and the fiscal year begins, the legislative work is completed and it then becomes the responsibility of the Executive branch to implement the budget.

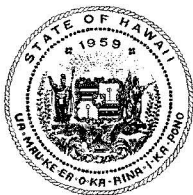
An instructive case on separation of powers is Communications Workers of America, AFL-CIO v. Florio, 617 A.2d 223, 235 (N.J. 1992) ("There is one thing the Legislature cannot do. It cannot exercise the functions of the executive. It cannot administer the money after it has been once appropriated.") (internal quotation marks, brackets, and citation omitted).

**2<sup>ND</sup> AMENDED**

By requiring that the Governor seek prior legislative authorization from the Legislature before implementing transfers or changes of appropriated funds between programs or agencies, the Legislature is attempting to administer the budget after it has been enacted. While the power to appropriate moneys is a legislative function, the power to expend such appropriations is an executive function. The decisions on how to expend appropriations are for the Governor, and not the Legislature, to make.

We believe that this bill is unconstitutional and violates the separation of powers between the Legislative and Executive branches of government, and we ask that this bill be held.

LINDA LINGLE  
GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**

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**JAMES L. PROPOTNICK**  
Deputy Director  
Law Enforcement

No. \_\_\_\_\_

TESTIMONY ON SENATE BILL 387, SD 1  
RELATING TO THE STATE BUDGET

by  
Clayton A. Frank, Director  
Department of Public Safety

House Committee on Finance  
Representative Marcus R. Oshiro, Chair  
Representative Marilyn B. Lee, Vice Chair

WRITTEN TESTIMONY ONLY

Wednesday, March 25, 2009; 2:00 p.m.  
State Capitol, Conference Room 308

Chair Oshiro and Members of the Committee:

The Department of Public Safety strongly opposes Senate Bill 387, SD 1. This bill will restrict the Director of Public Safety from managing the operating funds of the Department, by restricting the immediate movement of funds until approval is obtained from the chairs of both Senate and House money committees of the Legislature. The Director of the Department of Public Safety needs the flexibility to quickly transfer appropriated funds among correctional facilities and the State Law Enforcement Division whenever an unforeseen emergency or event occurs for which the movement of funds is needed immediately. The Senate Bill 387, SD1 will create a delay in the management process.

Management should be held accountable for action that they take, but more importantly they should be given the power and freedom to take action and make the difficult decisions in running the Department. The movement of funds from one program to another in the same department is a decision that should not require the legislators' approval before taking the

Senate Bill 387, SD1  
March 24, 2009  
Page 2

appropriate action. State Departments have exercised this authority, with the approval of the Governor, for years for good reason. It allows the Directors to manage their Department more effectively.

Thank you for the opportunity to testify on this matter of great importance to our department.