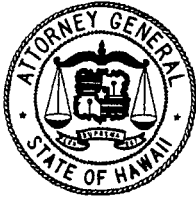


SB 387



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2009

ON THE FOLLOWING MEASURE:

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

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Thursday, February 5, 2009 **TIME:** 9:30 AM

LOCATION: State Capitol, Room 211

TESTIFIER(S): Mark J. Bennett, Attorney General
or Randall S. Nishiyama, Deputy Attorney General

Chair Kim 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 chairs of the money committees of both houses of 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).

By requiring that the Governor seek prior legislative authorization from the chairs of the money committees of both houses of 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.

WRITTEN ONLY

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON WAYS AND MEANS
ON
SENATE BILL NO. 387

February 5, 2009

RELATING TO THE STATE BUDGET

Senate Bill No. 387 amends Section 37-74 (d), Hawaii Revised Statutes, to require that transfers or changes between programs or agencies shall not be put into effect until approved by the chairs of the money committees of both houses of the Legislature.

We are opposed to this bill. The chairs of the money committees do not speak for the Legislature as a whole. As such, their approval does not constitute approval by the Legislature as a whole. In addition, it may be administratively difficult to implement such procedures, notwithstanding the concern with infringement on the powers of the Executive Branch of government.



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Barry Fukunaga
Chief of Staff to the Governor

Before the
SENATE COMMITTEE ON WAYS AND MEANS
Thursday, February 5, 2009, 9:30 a.m.
Room 211, State Capitol

S.B. 387 RELATING TO THE STATE BUDGET

Chair Mercado Kim, Vice Chair Tsutsui, and members of the Committee, thank you for the opportunity to provide testimony on S.B. 387. The Office of the Governor **opposes** S.B. 387, which requires all appropriation transfers made by the Executive Branch to be proposed to and approved by the Chairs of the money committees.

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. It is impractical for the Administration to seek legislative re-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.

More importantly, this bill allows the Chairs of the House Finance Committee and the Senate Ways and Means Committee to approve appropriation transfers and changes. Providing such authority to two members of the Legislature is objectionable because appropriations are not made solely by these two members, and they do not represent the Legislative body as a whole.

If a process like the one proposed by this bill is implemented, the Chairs of the money committees will not only make the final determinations for the Legislative Branch, but will make those determinations for the Executive Branch as well. As a result, the Office of the Governor must oppose S.B. 387.

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 4, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON WAYS AND MEANS
For Hearing on Thursday, February 5, 2009
9:30 a.m., Conference Room 211

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 387
Relating To The State Budget

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON DONNA MERCADO KIM AND MEMBERS OF THE COMMITTEE:

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

The Department of Human Resources Development respectfully opposes S. B. 387. 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.

Respectfully submitted,

A handwritten signature in black ink that reads "Marie C. Laderta".
MARIE C. 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 387
RELATING TO THE STATE BUDGET
Clayton A. Frank, Director
Department of Public Safety

Senate Committee on Ways and Means
Senator Donna Mercado Kim, Chair
Senator Shan S. Tsutsui, Vice Chair

Thursday, February 5, 2009, 9:30 AM
State Capitol, Conference Room 211

Senator Donna Mercado Kim and Members of the Committee:

The Department of Public Safety strongly opposes Senate Bill 387. 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 the money committees of both houses 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 will create 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 action. Departments have exercised this authority, with the approval of the Governor, for years for good reason. It allows the Directors to manage their departments more effectively.

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