



GOV. MSG. NO. 479

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

April 14, 2010

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fifth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

I am transmitting herewith HB1868 HD1, without my approval, and with the statement of objections relating to the measure.

HB1868 HD1

A BILL FOR AN ACT
RELATING TO CIVIL SERVICE.

Sincerely,


LINDA LINGLE

EXECUTIVE CHAMBERS

HONOLULU

April 14, 2010

STATEMENT OF OBJECTIONS TO HOUSE BILL NO. 1868

Honorable Members
Twenty-Fifth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, House Bill No. 1868, entitled "A Bill for an Act Relating to Civil Service."

The purpose of this bill is to prohibit all civil service employees not covered by collective bargaining agreements from taking leaves of absence to serve for more than one year in certain appointed positions in the executive and judicial branches. The one-year leave of absence would also apply to civil service employees whose collective bargaining agreements do not provide for the granting of longer leaves for the purpose of serving in appointed positions.

This bill is objectionable for the following reasons. First, this measure provides unfair and disparate treatment between career civil servants depending on whether they are covered by collective bargaining agreements. Because there are a number of collective bargaining agreements covering Hawaii Government Employees Association and United Public Worker employees that provide for four-year leaves of absence to serve in appointed positions, this bill conflicts with section 89C-3, Hawaii Revised Statutes, which requires employers to provide employees not covered by collective bargaining agreements with compensation and benefit packages that are at least equal to compensation and benefit packages provided under collective bargaining agreements for counterparts or subordinates within the

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employer's jurisdiction. Section 89C-3 was recently interpreted by the State Circuit Court to mean that a vacation leave or temporary assignment program offered by a public employer only to civil service employees through a collective bargaining agreement constituted a distinct "benefit" that must be offered equally to all of that employer's civil service employees. As such, we believe, this bill is in conflict with current law. Given that section 89C-6 allows chapter 89C to take precedence over all other statutes, including chapter 76 as amended by this bill, we also note House Bill No. 1868 is for all practical purposes unenforceable.

Second, the net effect of this measure will be to impose severe practical constraints on the ability of various appointing authorities, including the Governor, to fill certain appointed positions such as department directors, deputies, and board and commission members. The number of career civil servants willing to take these types of appointments would be severely reduced without assurances that they will be able to keep their hard earned benefits by returning to their previous positions after the end of an appointment. Although this bill will not affect my administration, it will have a significant impact on the next administration.

Third, this measure needlessly limits valuable opportunities for career civil servants to serve in higher level appointed leadership positions in our government. By specifically targeting civil servants not covered by collective bargaining agreements—who often tend to be managerial and supervisory employees—the State will lose out on the valuable knowledge and expertise that these civil servants will bring to their appointed positions.

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For the foregoing reasons, I am returning House Bill
No. 1868 without my approval.

Respectfully,

A handwritten signature in black ink, appearing to read 'Linda Lingle', written in a cursive style.

LINDA LINGLE
Governor of Hawaii

A BILL FOR AN ACT

RELATING TO CIVIL SERVICE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Chapter 76, Hawaii Revised Statutes, is amended
2 by adding a new section to be appropriately designated and to
3 read as follows:

4 "§76- Leaves of absence to accept appointed positions
5 exempt from the civil service; prohibited. Notwithstanding
6 section 78-23, no leave of absence shall be granted to any
7 employee who leaves a position covered under this chapter for a
8 position that is exempt from this chapter under section 76-
9 16(b)(7), (8), (9), (10), or (16) and whose term of appointment
10 is not less than one year; provided that this section shall not
11 apply to any employee whose collective bargaining agreement
12 provides for the granting of a longer leave of absence."

13 SECTION 2. New statutory material is underscored.

14 SECTION 3. This Act shall take effect upon its approval.

