



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Labor and Public Employment

The Honorable Karl Rhoads, Chair

The Honorable Kyle T. Yamashita, Vice Chair

Tuesday, March 17, 2009, 8:30 a.m.
State Capitol, Conference Room 309

by

Thomas R. Keller

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1122, S. D. 2, Relating to Public Employment.

Purpose: Amends various sections of HRS to comply with Act 253, Session Laws of Hawaii 2000, which places restrictions on the creation of civil service exempt positions.

Judiciary's Position:

Senate Bill No. 1122 proposes to amend various sections of the Hawaii Revised Statutes (HRS) to reinforce the intent and implementation of Act 253, SLH 2000 relative to limitations on the establishment of positions exempt from the civil service.

Senate Draft 2 reflects amendments to the original bill relative to Section 76-16(b)(17), which provides some clarification as to the intent of this bill. However, the proposed change to this section continues to be of concern to the Judiciary.

It is difficult to understand that the legislature intends to review the exemption of positions such as judges, justices, administrative director of the courts, and deputy administrative director of the courts. These positions should consistently remain exempt from civil service by the very nature of their work and by provisions of the State Constitution. The automatic repeal of an exemption for judges would throw the justice system into chaos and impact other statutes which provide for the orderly process of selecting judges without regard to the civil service recruitment process, consistent with Article VI-Section 3 of the State Constitution. The positions



Senate Bill No. 1122, S. D. 2, Relating to Public Employment
House Committee on Labor and Public Employment
March 17, 2009
Page 2

of Administrative Director and Deputy Administrative Director of the Courts clearly should be held by at-will employees who serve at the pleasure of the Chief Justice, and therefore, should remain exempt from civil service. This is further emphasized by Article VI-Section 6 of the State Constitution which stipulates that the Chief Justice, with the approval of the Supreme Court, appoints the administrative director "to serve at the chief justice's pleasure."

This bill is characterized as a follow up to Act 253, SLH 2000, which sought to preserve a civil service system based on merit. While the Judiciary supports the merit principle, we submit that the proposed amendment to HRS Section 76-16(b)(17), "Positions specifically exempt from this part by any other law; provided that each position shall be repealed three years after it is established, unless extended by the legislature," is not necessarily constructed to serve as an appropriate vehicle to safeguard against the erosion of the civil service system.

The "repeal" of a position can readily be construed to mean that the position will no longer exist, whether exempt or civil service. This then would mean that the program which is supported by these "repealed" positions will cease to provide legislatively mandated services. If it is intended that the programs will continue, with the exception that the supporting positions will become civil service positions rather than exempt, it is unclear whether the legislative intent is to automatically convert these positions and incumbents to civil service. If so, there needs to be a clear proviso for the conversion of the incumbent. Without such a legislative proviso, the normal civil service process is to establish a civil service position and conduct recruitment, as the circumvention of the civil service recruitment and selection process through the automatic conversion of exempt employees to civil service status is inconsistent with the merit principles of civil service.

The "repeal" three years after establishment of these exempt positions would be disruptive to the programs and diminish the quality of program services. The unstable status of the position would be a significant deterrent to recruitment and retention of the best qualified individuals. Minimally, this section should be further amended to state, "provided that **each such exemption** shall be repealed three years after **position establishment**" if it is legislative intent to permit only three years of exemption for each position specifically statutorily exempted from civil service.

Even with this additional change, there may be a period of transition from exempt status to civil service status, during which the services provided by the program may be reduced or curtailed. Should someone other than the former exempt employee be selected, the new employee will undergo a learning process, which may further affect the program's ability to effectively deliver full services.



Senate Bill No. 1122, S. D. 2, Relating to Public Employment
House Committee on Labor and Public Employment
March 17, 2009
Page 3

Any automatic repeal of exemptions for positions specifically mandated as exempt is not appropriate. If the provision of “unless extended by the legislature” is designed to permit the perpetual extension of certain positions, the public good and government efficiency are ill served by an indiscriminate repeal.

The Judiciary respectfully requests to be allowed the retention of positions exempt from civil service pursuant to Section 76-16(b)(17). The Judiciary has responsibly applied the exemptions afforded by law; exempt positions subject to Section 76-16(b)(17) currently comprise less than 2% of the Judiciary’s total workforce.

When the legislature enacts laws establishing programs and clearly stipulates to the exemption of positions for these programs, it appears inconsistent that the legislature enacts another law which negates that mandate. It would appear more prudent to amend the specific statutes which mandate the exemption rather than institute a statute with blanket repeal provisions applicable to all statutes. Such blanket repeal does not make for an orderly process.

For the foregoing reasons, the Judiciary is unable to support this bill and urges the Committee to not pass Senate Bill No. 1122, S.D. 2.

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
ON
SENATE BILL NO. 1122, SENATE DRAFT 2

March 17, 2009

RELATING TO PUBLIC EMPLOYMENT

We oppose the section of S.B. No. 1122 which proposes to amend H.R.S. §802-12 making mandatory the appointment of public defender employees other than assistant State public defenders in accordance with H.R.S., Chapter 76, the State's civil service law.

The Office of the Public Defender's mission is to provide legal representation to indigent persons charged with criminal offenses. The nature of this mission makes the office somewhat unique in State government. The employees of the office must deal, on a daily basis, with a certain segment of the State's population which many other agencies do not, or choose not, to service. The office's clientele suffer from poverty, societal frustration, mental illnesses and other factors which force the employees of the office approach their jobs with a certain compassion, empathy and commitment. Civil service exempt positions allow the office to employ persons who are uniquely suitable to dealing with the public which the office serves.

Most of the office's non-attorney employees have been with the office for more than five years. Many of them have served the office in excess of ten years and have been retained through at least two different office administrations. There is not a high turnover rate for non-attorney employees.

Finally, Section 6 of the bill seeks to amend H.R.S. §76-16 to repeal civil service exempt positions every three years unless extended by the legislature. As indicated above, these positions are critical to the delivery of criminal legal services to the public. Repeal of the positions every three years would cripple the operation. Phones would go unanswered, appointments for services would be very difficult to schedule, documents would not be filed in court and a variety of other essential office functions would cease to exist. This situation would cause the criminal court system to grind to a virtual halt.

In summary, civil service exempt positions give the Public Defender the required flexibility to efficiently carry out the mission of the office.

Thank you for the opportunity to comment.

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.hawaii.gov/labor
Phone: (808) 586-8842 / Fax: (808) 586-9099
Email: dlir.director@hawaii.gov

March 16, 2009

To: The Honorable Karl Rhoads, Chair
and Members of the House Committee on Labor & Public Employment

Date: Tuesday, March 17, 2009

Time: 8:30 a.m.

Place: Conference Room 309
State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

S.B. 1122 SD2 - Relating to Public Employment

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 1122 SD 2 proposes to place restrictions on the creation of civil service exempt positions and requires an annual review of exempt positions to determine whether they should be converted to civil service positions.

II. CURRENT LAW

Currently the proposed restrictions do not exist.

III. SENATE BILL

The Department opposes this bill for the following reason:

The proposed restrictions on exempt positions will cripple the Department's flexibility in hiring qualified individuals for definite periods of time.



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
335 MERCHANT STREET, ROOM 310
P.O. Box 541
HONOLULU, HAWAII 96809
Phone Number: (808) 586-2850
Fax Number: (808) 586-2856
www.hawaii.gov/dcca

LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON
LABOR AND PUBLIC EMPLOYMENT

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Tuesday, March 17, 2009
8:30 a.m.

**TESTIMONY ON SENATE BILL NO. 1122, S.D. 2
RELATING TO PUBLIC EMPLOYMENT.**

TO THE HONORABLE KARL RHOADS, CHAIR, KYLE T. YAMASHITA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth, Director of Commerce and Consumer Affairs ("Department"). The Department opposes sections 3 and 6 of the bill. Section 3 purports to replace prior authorization to hire outside of chapter 76, Hawaii Revised Statutes ("HRS"), with a requirement to hire in accordance with chapter 76, HRS. The only positions that would be authorized as exempt would be hearings officers and attorneys. Section 6 subjects positions specifically exempted from Part I of Chapter 76, HRS, by any other law, to repeal three years after the positions are established, unless extended by the Legislature.

The Department is concerned over the effects of section 3, to the extent that it removes the Director's authority under section 26-9(o), HRS, to hire engineers, financial

analysts, and other necessary staff without regard to chapter 76, HRS. The only positions explicitly authorized as exempt would be hearings officers and attorneys.

By precluding the Department from hiring outside of chapter 76, HRS, the bill represents a significant departure from the Legislature's previous vision for the Department and its Compliance Resolution Fund over the last ten years. We strongly recommend that you give serious consideration to the effects of undoing a long history of what, we submit, has been a successful model for operating the Department.

On top of the taxes that businesses already pay, they pay fees to support the Department's services, including consumer protection services that arise from the conduct of business, in return for assurances that the Department would be run in a business-like manner.

In order to meet those expectations, the Department needs employees with specialized skills and technical expertise in areas ranging from banking to utilities to insurance. By exempting positions from chapter 76, the Legislature gave the Department a fighting chance at locating, hiring, paying, and retaining people in those jobs.

The flexibility afforded the Department by its ability to exempt positions from chapter 76, HRS, is a central feature in its success. The difficulty that we have in competing for employees with private industry (we recently lost our Captive Insurance Administrator to the private sector), and the difficulty that we have in finding qualified applicants for specialized work, would only be exacerbated if virtually all of our positions were converted to civil service.

With respect to section 6 of the bill, it is unclear what would happen to those employees in positions that are exempt by laws other than chapter 76, HRS. Positions that are created on a going forward basis would be repealed in three years (unless extended by the Legislature or converted to civil service). It may be that exempt positions that were established more than three years ago would be repealed on the effective date of the bill. Under any scenario, section 6 would cause major disruptions to the Department's operations and ability to service the public. It would also create a great deal of havoc in the personal lives of the employees currently in those positions as well as uncertainty in the minds of individuals considering employment with the Department in those positions. In the latter case, the Department would again be disadvantaged at competing with the private sector in attracting qualified persons for highly specialized work.

Section 6 would especially undermine the Department's current efforts to restructure the Division of Consumer Advocacy ("DCA") as called for in Act 183, SLH 2007. The Legislature recognized that regulatory reform is essential to the successful implementation of recent and future energy policy reform and that recent legislation relies heavily on professional staff in DCA to use their skills and experience in various areas relating to public utilities to research, analyze, examine, and process legislative mandates. The Legislature also recognized that:

- (1) Difficulty recruiting and retaining qualified individuals to fill specialized positions that require skills and experience that involve the performance of certain functions; and

- (2) Salaries that are substantially below mainland agency or private sector equivalents, especially considering the demanding and arduous job requirements;

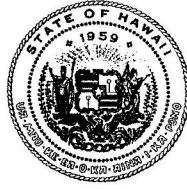
have worked to diminish DCA's ability to perform effectively.

To help address those concerns, the Legislature, by way of Act 183, SLH 2007, increased the number of DCA utility analyst exempt from chapter 76, HRS. However, section 6 would, three years after those positions are established, undo the efforts to improve DCA's effectiveness by repealing those exempt utility analyst positions.

If, in order to prevent the repeal of exempt positions, the Department converts those positions to civil service, we would likely see some of the incumbents choosing to leave their positions unless they are guaranteed no reduction in pay rate. The current Supplemental Agreement between the State and the union regarding the compensation of exempt employees appointed to civil service positions is scheduled to expire at the end of the current fiscal year. The current Supplemental Agreement contains provisions that many consider to be generous to exempt employees. However, there are no guarantees that those generous provisions will exist after June 30, 2009. Exempt employees who are converted after June 30, 2009, would likely experience a reduction in their benefits if provisions comparable to those in the current Supplemental Agreement are not maintained. This would likely cause those employees to seek jobs that offer pay that is comparable to what they are currently making as exempt employees.

The Department understands and appreciates the value of chapter 76, HRS. In fact, the Department has been identifying appropriate exempt positions for conversion to civil service in response to Act 300, Session Laws of Hawaii ("SLH") 2006. Currently, the Department has converted 48 exempt positions to civil service in response to Act 300, SLH 2006. Additional positions are in the process of being converted. Even if this bill does not pass, we will continue to work diligently to identify exempt positions that are appropriate for conversion to civil service.

Thank you for the opportunity to submit testimony.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Committee on Labor & Public Employment

S.B. 1122, SD2 RELATING TO PUBLIC EMPLOYMENT

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

March 17, 2009

1 **Department's Position:** The department respectfully opposes this measure, most significantly during
2 this time of economic uncertainties and evolving departmental priorities.

3 **Fiscal Implications:** This measure will significantly negatively impact immediate and ongoing
4 operations, functions, performance, and personnel within the department.

5 **Purpose and Justification:** Along with all executive departments, the Department of Health (DOH)
6 embraces and respects the foundation of Chapter 76-16(b), Hawaii Revised Statutes, statutorily
7 establishing civil services in state government. Indeed, our hard working and dedicated civil servants
8 are at the core of every functioning department.

9 Unfortunately, as the second largest department in this State, DOH has encountered great
10 challenges in recruiting and retaining the broad variety of qualified individuals that are necessary to fill
11 the ever increasing both educationally and technically demanding field of public health through the civil
12 service process. This is not to condemn the civil service model as it has served and continues to serve
13 our State as best as it can in its current form. It is to very strongly contend that major, significant
14 improvements must in fact be made to the civil service model first, before this Legislature moves to
15 dismantle positions exempt from civil service. We respectfully but strongly suggest that key
16 components to the existing civil service model must be changed, the sooner the better. A serious and

1 result-focused dialogue should be put forward by this Legislature to work collectively to make concrete
2 changes that will assist rather than hinder the executive departments' abilities to perform core functions
3 for the benefit of this State, to greatly improve our options and abilities to compete with comparative
4 employment opportunities, and to bring management and unions to an enhanced understanding of need
5 and response. The Department of Health urgently calls upon each of us, Executive, Legislature,
6 Judiciary, and Unions, to come to the table for this meaningful dialogue so that we, State Government,
7 can progress into this era of change and challenges a manner that honors and fulfills our responsibilities
8 to the entire State of Hawaii.

9 Specific to this measure, DOH suggests the following:

10 1) §348F-5, HRS enables the Disability and Communication Access Board (DCAB) to “hire an
11 executive director, who may hire staff to assist in the performance of the board’s duties. The staff shall
12 be hired without regard to chapter 76; provided that the executive director and staff shall be eligible for
13 participation in state employee benefit plans.” The DCAB is a Governor-appointed Board and it is
14 imperative to have staffs who meet the program and policy directives consistent with the direction of the
15 Board. The exempt status of the positions in the DCAB organization enables the Board to employ
16 individuals with unique skills and abilities, especially as it strives to employ individuals with disabilities.

17 2) §334-4, HRS enables the director to appoint an administrator, associate administrators, a
18 director of psychosocial rehabilitation, a chief of the department of nursing and other highly technical
19 and skilled individuals for the Hawaii State Hospital, which is the sole hospital in Hawaii dedicated to
20 serving adults with serious mental illness. Positions for psychiatrists in our Adult Mental Health
21 Division and Child and Adolescent Mental Health Division are exempted from chapter 76, also under
22 this law. The psychiatrists provide psychiatric treatment and rehabilitation to adults and children
23 suffering from serious mental illness and co-occurring disorders. It is imperative to maintain the
24 psychiatrist as exempt from civil service to appropriately compensate them for the services provided and

1 numerous medical practices requirements. Therefore, we strongly recommend the deletion of Page 13,
2 Section 6 (b)(17), line 10 that will repeal a statutorily created exempt position three years after it is
3 established, unless extended by the legislature. The extent of damage this singular line can do to the
4 mental health system is simply untenable.

5 3) Other positions exempted by specific laws include the Toxicologist, Ecological Risk Assessor,
6 and Environmental Ombudsman, in our Environmental Health Administration. These positions also
7 require the knowledge and skills of these environmental technical experts.

8 Finally, in the absence of the greater dialogue on civil service reforms, the Department of Health
9 assures the Legislature that it is continuously evaluating our operations, services, resources, and staffing
10 for the department to operate at a higher level of efficiency. It is through this process that the
11 department will determine which exempt positions will be transitioned to civil service.

12 For these reasons, we respectfully strongly oppose this specific measure, but enthusiastically
13 welcome further serious dialogue on this matter.

14 Thank you for the opportunity to testify.
15
16

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 16, 2009

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on March 17, 2009
8:30 A.M., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

**Senate Bill No. 1122, SD2
Relating to Public Employment**

TO CHAIRPERSON RHOADS AND MEMBERS OF THE COMMITTEE:

We strongly oppose this measure.

Senate Bill No. 1122, SD2 amends various sections of the Hawaii Revised Statutes (HRS) to effect the mandatory conversion of positions that are exempt from civil service. It also imposes a three-year limitation on the exemption of positions from civil service under 76-16(b)(17), HRS.

The intent of the proposed amendment to Section 76-16(b)(17), HRS, is unclear. The paragraph indicates that each position shall be repealed three years after it is established, unless extended by the legislature, but does not indicate when the three years would begin to run. In any case, the automatic repeal of exempt positions, enabling law, or exemption provisions every three years is an unnecessary and disruptive process as temporary exemptions from civil service are reviewed annually for continued need and funding availability.

While Senate Bill No. 1122, SD2 seeks to reduce the number of exempt positions as prescribed by Act 253, Session Laws of Hawaii 2000 and Act 300, Session

Laws of Hawaii 2006, it eliminates the flexibility of the State to determine how best to fill positions and maintain services for the public. It also eliminates the latitude to establish and utilize exempt positions to conduct the affairs of departments, which is absolutely necessary if we are to be successful in achieving our respective responsibilities and service to the public. This is an essential management tool.

The exempt system offers flexibility in job classification, pay, and recruitment that are necessary for the State to develop or implement projects or programs or to perform work outside of traditional work conventions.

With the emergence of new "green collar" jobs for energy and sustainability initiatives, the Legislature must equip the State with the ability to quickly reach out for those vital federal economic recovery dollars that could be infused into our economy, and the best way to do so is to have the exempt employment system available for quick response.

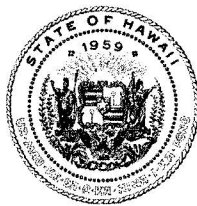
The proposed elimination of the exempt employment system will hinder agencies' ability to implement new programs and accomplish goals when flexibility and expediency may be imperative to quickly support government initiatives.

Although we understand the intent of Act 253 and Act 300, we are unable to support Senate Bill No. 1122, SD2 because the State needs the flexibility that exempt positions provide to deliver public services, especially to meet the demands of the downturn in our economy.

The Department of Human Resources Development and the Hawaii Government Employees Association (HGEA) have been working collaboratively to establish a logical, workable, and fair process to convert exempt positions to civil service positions in various departments when possible. We would like to continue working collaboratively with the HGEA and executive branch departments to meet the requirements of Act 253 and Act 300.

Thank you for the opportunity to testify on this important measure.

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H, THIELEN
Chairperson**

**Before the House Committee on
LABOR & PUBLIC EMPLOYMENT**

Tuesday, March 17, 2009

8:30 AM

State Capitol, Conference Room 309

**In consideration of
SENATE BILL 1122, SENATE DRAFT 2
RELATING TO PUBLIC EMPLOYMENT**

Senate Bill 1122, Senate Draft 2 proposes to amend sections of the Hawaii Revised Statutes (HRS) to conform with Act 253, Session Laws of Hawaii (SLH) 2000, which placed restrictions on the creation of civil service exempt positions and required the annual review of exempt positions to determine whether exempt positions should remain exempt or be converted to civil service positions. The Department of Land and Natural Resources (Department) opposes this measure. And given the current fiscal difficulties, it would not be prudent to pursue enactment at this time.

The Department understands the intent of Act 253, SLH 2000, which was to increase the number of positions included in the civil service system, where appointments and promotions were made under a system of merit determined by competitive examination, and to decrease the use of exempt appointments, which are positions outside the civil service. At this particular time, however, when the future stability of Hawaii's economy is uncertain, the Department is perplexed by this bill. This Department has acted in accordance with previous legislation and has converted a number of its exempt positions to civil service. The Legislature has also previously recognized the need for temporary positions and had awarded a number of such exempt positions to various state departments. Continued support of this bill by the Legislature will force departments to choose to add tenured positions to the current state work force or convert exempt positions to tenured civil service positions. This increases the cost of supporting state government and places potential long-term burden on state taxpayers. It also fails to consider the employee in the exempt position, who chose employment in such a position and who may suffer monetary setback as oftentimes the exempt temporary nature of the position, is offset by higher salaries.

The majority of employees in the exempt positions are selected and employed because they have unique and specialized qualifications; i.e., the Department's Commission on Water Resources

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

Management (Commission). The Commission had been granted statutory authority to appoint employees without regard to Chapter 76, HRS. The Commission believes that this authority was originally granted in recognition of the unique and specialized qualifications that are needed to carry out the mandates of the State Water Code (Chapter 174C, HRS). There is no comparable agency in the State tasked with the protection, planning and regulation of water resources. The Commission requires geological, hydrological, engineering, legal and regulatory knowledge as it relates to water resources and must offer salaries commensurate with such education and experience and comparable to current employment market conditions. To fill such difficult to recruit positions, flexibility is needed to attract and retain such employees. The use of such positions oftentimes is a win-win situation for employee and employer.

Additionally, this bill seeks to amend various sections of the HRS to effectuate the mandatory conversion of positions that are exempt from civil service. It also imposes a three year limitation on the exemption of positions from civil service under Section 76-16(b)(17), HRS. The repeal of exempt positions three years after they are established, unless extended by the Legislature, is an unnecessary, cumbersome, and disruptive process as temporary exemptions from civil service are presently reviewed annually for continued need and funding availability. As these positions are so specialized and difficult to recruit, the pool of applicants with such unique qualifications and experience is extremely limited. This would cause an agency to lose a trained employee and cause disruption of projects or services. To fill such difficult to recruit positions, flexibility is needed to attract and retain such employees.

For the above compelling reasons, the Department asks that this Committee recognize this legislation does not serve the best interests of the State and its citizens and should be held without further action.

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 1122, SD 2
RELATING TO PUBLIC EMPLOYMENT

by
Clayton A. Frank, Director
Department of Public Safety

House Committee on Labor and Public Employment
Representative Karl Rhoads, Chair
Representative Kyle Yamashita, Vice Chair

Tuesday, March 17, 2009, 8:30AM
State Capitol, Conference Room 309

Chair Rhodes and Members of the Committee:

The Department of Public Safety opposes Senate Bill 1122, SD 2, which places restrictions on the creation of civil service exempt positions and requires an annual review of exempt positions to determine whether they should be converted to civil service positions. This measure will impose undue restrictions and hamper the Department's ability to operate efficiently and effectively.

Establishing positions exempt from civil service allows the Department to create positions to fulfill the program or funding requirements, including the specialized knowledge, skills and abilities and any required licensures or certifications.

The exempt positions provide the Department with flexibility in establishing position description and level of compensation to attract highly qualified individuals or meet the funding requirement of the program, as well as flexibility to recruit and fill such exempt positions on a timely basis. This includes exempt positions established to fill highly specialized, technical and/or professional work, or to fulfill requirements of court ordered actions and/or settlement agreements.

The exempt positions also allow the Department to establish positions based on the funding source and meeting program requirements, such as a program operating like a self-sustaining private business whereby revenue generated funds such exempt positions. The funding sources may include special funds and/or revolving funds.

The Department must be able to have the latitude to establish and utilize exempt positions to conduct its affairs and to successfully accomplish its mission and meet the service needs of those we serve.

Thank you for the opportunity to testify on this matter.

TESTIMONY BY JIM WILLIAMS
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST
FUND, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT
ON
SENATE BILL 1122 SD2

8:30 A.M., March 17, 2009

RELATING TO PUBLIC EMPLOYMENT

Chairperson Rhoads and Members of the Committee:

My name is Jim Williams, and I am Administrator of the Hawaii Employer-Union Health Benefits Trust Fund (also known as the EUTF). Thank you for this opportunity to present this testimony requesting one amendment to Senate Bill 1122 SD2.

The EUTF provides health and life insurance benefits to approximately 92,000 public employees and retirees (55,000 actives and 37,000 retirees). EUTF is governed by a ten-member Board of Trustees.

This bill provides for amendments to various sections of HRS to comply with previous measures adopted by this Legislature. The EUTF Board of Trustees, at its meeting of February 10, 2009, voted to request one amendment to this bill. The Board reaffirmed its position in relation to Senate Draft 2 of this bill at its meeting on February 25, 2009. The Board took no position on the overall merits of this bill. The EUTF request's that the provision requiring EUTF exempt positions to be repealed after three (3) years unless the Legislature continues them (see paragraph 17 below) be deleted. As a matter of policy, the Legislature, in Act 88 SLH 2001, determined to give the EUTF maximum authority and flexibility to provide for the administration of the

EUTF by exempting new positions (those not carried over from the predecessor Public Employees Health Fund) from civil service. The Legislature understood that the Board might even decide to hire a third party administrator (TPA) to handle EUTF operations. Unlike various individual positions that were exempted due to specific or unusual circumstances that might vary over time, this policy decision of the Legislature was built on a long-term view of the EUTF. It would be contrary to that long-term view to repeal these positions as provided in this bill.

HB1287

SECTION 6. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:


(1) – (16) [No objection.]

EUTF requests to delete the following:

[(17) Positions specifically exempted from this part by any other law; provided that each position shall be repealed three years after it is established, unless extended by the legislature; provided further that all of the positions defined by paragraph (9) shall be included in the position classification plan;]

Thank you for this opportunity to present this testimony requesting an amendment to SB 1122. I will be pleased to answer any questions from members of the Committee.

To: Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

From: Alan Carpenter 
MaryAnne Maigret *MM for MM*
Holly McEldowney *Holly McEldowney*
Civil Service Exempt Employees (Archaeologist II-III)
Division of State Parks, Department of Land and Natural Resources

Hearing: Tuesday, March 17, 2009, 8:30 A.M.
Conference Room 309

Subject: Testimony in Support of Senate Bill 1122 SD2 – Relating to Public Employees

We are submitting joint testimony in **strong support** of Senate Bill 1122 Senate Draft 2 which would remove the authority specific programs have in statute to hire civil service exempt staff. The intent of this measure is to prompt compliance with Act 253, Session Laws of Hawaii 2000, which aimed to reduce the inappropriately high number of civil service exempt employees in state and county agencies and required an annual review of exempt positions to determine which should be converted to civil service. We are all civil service exempt employees working for the Division of State Parks, Department of Land and Natural Resources (DLNR), and have worked for DLNR in exempt positions for 17, 6, and 19 years respectively.

We submit testimony with considerable frustration. Under established criteria, our positions should have been converted to civil service several years ago and the statutory exception used to justify keeping our positions exempt, §6E-3(14), clearly does not apply to State Parks. It applies to the State Historic Preservation Division. There is no statutory authority particular to State Parks that permits the hiring of civil service exempt employees. The mandated annual review of exempt employees continues to perpetuate this error despite our efforts to bring this mistake to the attention of those conducting the review. This error is a relict of the pre-1990 period when the historic preservation and state parks programs were part of the same division. The two programs split in 1990. We support Senate Bill 1122 SD2 because it would, by amending §6E-3(14), HRS, remove the misapplied justification DLNR has used to keep our positions exempt.

Two of us have been submitting testimony to the Hawaii State Legislature on the civil service exempt problem regularly since 2003. We were encouraged by progress that was being made through legislation and resolutions. HGEA and the employer have reached what we believe is a fair and equitable agreement on how to convert employees from exempt to civil service positions. In our cases, we were all hired at entry level on the pay scale. This conversion process would recognize our years of service and we would be compensated at a salary step that is comparable to our civil service counterparts with equivalent service. Currently there is no civil service classification for "archaeologist," but we understand that a temporary class can be created until the lengthy classification process is complete. The apparent resistance to pursuing our conversions is difficult to understand when so many of the obstacles and uncertainties we faced in 2003 have been overcome and it is so clearly inequitable to have a handful of employees in a workplace that do not enjoy the full civil service protections and benefits of everyone else in that workplace.

Thank you for the opportunity to testify on Senate Bill 1122 SD2. If you have any questions about our particular situations as civil service exempt employees or the disparities we face, you can contact us by cell phone: Alan Carpenter (391-5793); Holly McEldowney (222-2190); and MaryAnne Maigret (938-0116).