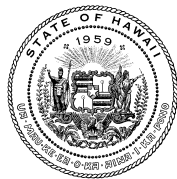


TESTIMONY

SB 1271



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Barry Fukunaga
Chief of Staff to the Governor

Before the
SENATE COMMITTEE ON LABOR
Tuesday, February 17, 2009, 2:45 p.m.
Room 224, State Capitol

S.B. 1271 RELATING TO PUBLIC EMPLOYEES

Chair Takamine, Vice Chair Taniguchi and Members of the Committee:

S.B. 1271 requires employees in the Executive and Legislative Branches who are exempt from civil service to use, donate or forfeit vacation allowance accrued during their employment with the State if they discharge between July 1, 2009 and December 31, 2010. This bill also requires that if an employee is discharged, the employee is not entitled to reemployment by the same department from which they were discharged.

The Administration opposes S.B. 1271 for a number of reasons:

The legislation is inappropriate due to its narrow, selected application to a specific category of employees and adversely impacts a right that is currently accorded to them under Chapter 78, Hawaii Revised Statutes (HRS). The option to accumulate earned leave was expressly offered as an alternative to employees and should not be removed on a retroactive basis.

While we believe it is important to identify various options that can be considered in the State's effort to address our budgetary shortfall, we oppose any measure that is not uniformly and equitably applied toward employees as a whole. As a matter of fairness, we believe any sacrifice made by state employees should apply to all employees, regardless of the branch of government in which they work or their terms of employment.

The specific provisions of S.B. 1271 limit its application only to employees of the Executive Departments and the Legislative Branch who are exempt from Chapter 76, HRS. There is no provision for inclusion of employees of the Judiciary or the majority of the state's employees who do not fall under this category, thereby making its application

selective and disproportionate in nature. Such a limited application may be deemed discriminatory.

We have always advocated the importance of consistency and the necessity for shared sacrifice in dealing with adjustments to the budget and find that the burden on employees brought about by S.B. 1271 fails to meet this standard as it is not shared, is selectively applied and does not have uniform application on all employees.

Currently, the Executive Branch has 25,000 employees who are exempt from Chapter 76, including those in the Department of Education, the University of Hawaii and the Hawaii Health Systems Corporation. The total includes both exempt included employees who have union representation and exempt employees who do not have collective bargaining union representation.

The measure prescribed in this bill will affect a variety of employees of the State such as teachers, professors, attorneys, psychiatrists, physicians, epidemiologists, economists, archaeologists and historic preservation specialists, but no employee within the Judicial Branch of government who is in an exempt category. The bill does not provide a reason or rationale for such exclusion and that amounts to disparate treatment between employees within the same exempt group, the only difference being the branch of government in which they are employed.

The proposed legislation may be in conflict with the rights of the employees affected because it is applied against accumulated leave earned and retained under the current provision of Chapter 78. It essentially removes the right they currently possess that allows them to convert accumulated earned leave to cash compensation after these hours were accumulated with the explicit understanding that employees had the ability to retain and redeem these accumulated hours after they left government service. This change is a retroactive application of restrictions against actions that were taken under the reliance of the current law.

Additionally, the provision that prohibits exempt employees from returning to state employment with the same department is detrimental to government operations. An example is in the Department of Taxation where they will be establishing a Special Enforcement Section to deal with non-compliant cash-based businesses. Given that both specialized skill and experience is needed to fill the exempt positions in this section, former auditors with the Department may be ideal candidates. This measure would prevent such hiring and impact tax collection efforts.

Because S.B. 1271 is aimed to sunset on December 31, 2010, it does not demonstrate a relationship to any budgetary period but rather to a mid-year date, making its application questionable as to its intended audience which is likely to be employees whose employment are likely to end in or about the time the sunset provision applies.

With the large numbers of employees that will be affected, any enactment of S.B. 1217 will result in employees of the affected groups having to expend accumulated leave in addition to annual earned leave or face the loss of the hours in their possession. This situation will compel these employees to use the time, creating an adverse staffing impact on the state government workforce; a situation that will affect services at a time when they are especially needed in a period that the State is also observing hiring restrictions.

Since the largest accumulation of earned and unexpended leave is with employees with higher levels of seniority, it is likely that these are individuals in supervisory positions. Extended absence in addition to creating manning shortages will require in most instances coverage through temporary assignments. Such coverage requires compensation of lower ranked employees that will add costs and take from savings that the bill is attempting to realize.

Since it is difficult to estimate the number of employees who may leave state employment between July 1, 2009 and December 31, 2010; and vacation payouts vary depending on the length of service, it is uncertain what amount of savings will be realized. The Administration is concerned that any employee planning a voluntary discharge may wait until after the sunset date of this measure in order to preserve vacation allowances. If that occurs, the State will only have managed to delay payouts for these employees to the second half of fiscal year 2010-2011. If that should occur the state budget will be negatively impacted.

For these reasons we feel S.B. 1271 is inappropriate and unwarranted and the Administration opposes this measure.



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

February 16, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR
For Hearing on February 17, 2009
2:45 p.m., Conference Room 224
BY
MARIE C. LADERTA, DIRECTOR

Senate Bill 1271
Relating to Public Employees

TO CHAIRPERSON TAKAMINE AND MEMBERS OF THE COMMITTEE:

This bill seeks to amend Chapter 78-23, HRS, to require state executive department and state legislative branch employees, who are exempt from Chapter 76 and voluntarily or involuntarily discharged from state employment, to use, donate, or forfeit any accumulated vacation allowance. It also seeks to prevent exempt employees from being entitled to reemployment by the same department that they were employed in prior to discharge.

The Department of Human Resources Development is strongly opposed to this measure for the following reasons:

1. This proposal is discriminatory in nature because it targets a group of public service employees and applies an inequitable treatment from all other state employees. In addition, this group of exempt employees would be treated unfairly as compared to other exempt employees of the Judiciary and the counties.
2. From a management perspective, this proposal could reduce public services that could have been performed by compelling exempt Executive department employees to take vacation time off from their jobs in lieu of forfeiture. Such exempt employees that will be affected by this measure include positions performing work in criminal justice, mental health, energy, unclaimed property, civil defense, consent decree, social services, corrections, deputy public defenders, and many other non-managerial employees.
3. The measure would also bar exempt employees from reemployment by the same

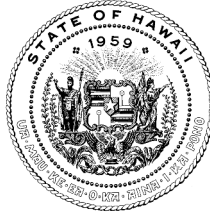
department, which could be detrimental to the State's best interests. For example, if a highly skilled/valued Deputy Attorney General is lured to the private sector and so leaves the Attorney General's Office during the time the Act would be in effect, then shortly thereafter wishes to return, the AG would not be able to reemploy that individual, even if that individual is expert and needed, such as to handle difficult court proceedings which could expose the state to multi-million dollar judgments.

With regard to the provision that would require departments to deposit with the Director of Finance such compensation that would have been paid to the employee upon discharge prior to enactment of that section (see page 5, lines 4 – 10), we are unclear as to its purpose. If this provision is intended to require departments to, in effect, "forfeit" funds equivalent to the exempt employee's forfeited vacation allowance, we question the need to do so when the benefit has been forfeited by the employee.

Because of the above concerns, we recommend that the Committee hold this bill.

Thank you for the opportunity to testify.

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 Senate Committee on
LABOR**

**Tuesday, February 17, 2009
2:45 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 1271
RELATING TO PUBLIC EMPLOYEES**

Senate Bill 1271 proposes to require state executive department and state legislative branch employees who are exempt from Chapter 76, Hawaii Revised Statutes (HRS), to use or donate accumulated and accrued vacation allowance prior to discharge, or to forfeit remaining vacation allowance and any compensation in lieu of retaining vacation allowance upon discharge. **The Department of Land and Natural Resources does not support this measure.**

State executive and legislative branch employees exempt from Chapter 76, HRS, while not falling under the context of civil service employees, are employees, whom, to the best of their abilities, perform a service to the public, not unlike their civil service counterparts. Their dedication to the job is without question. Many of these exempt employees work beyond state office hours, and receive no overtime compensation, unlike their civil service counterparts. To take away one's earned vacation at the end of one's tenure of employment would appear discriminatory and unduly harsh given that civil service employees, as similar public servants, are cashed out for any unused vacation upon termination of employment.

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

RUSSELL Y. TSUIJI
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
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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Labor

Testimony by
Hawaii Government Employees Association
February 17, 2009

S.B. 1271 – RELATING TO PUBLIC
EMPLOYEES

The Hawaii Government Employees Association opposes the purpose and intent of S.B. 1271. This bill would require state executive and legislative branch employees who are exempt from Chapter 76, HRS to use or donate accumulated and accrued vacation leave before being discharged either voluntarily or involuntarily. If the exempt employee was unable to exercise either option, an accumulated amount equivalent to the compensation that would have been paid to the employee for unused vacation leave would be credited to the department that employed them immediately prior to discharge.

The HGEA is aware of the tremendous financial challenges confronting the State of Hawaii and the entire country. However, taking away rightfully earned vacation benefits from exempt employees is unfair. Many of these employees should not be exempt and have been employed longer than many civil service employees. As a result, we have supported legislation requiring many programs to convert exempt employees to civil service. This session there are two bills to achieve that objective (H.B. 1287 and S.B. 1122).

The exemptions to civil service are frequently used by departments because the civil service is too rigid and slow when filling positions. Exempt employment also gives management tremendous leverage over employees because they are not covered under several important articles in our collective bargaining agreements, including discipline, reduction-in-force and overtime.

However, the problems of the state civil service system, the desire of management to hire exempt employees for these reasons and the state's financial problems do not justify the loss of vacation pay as outlined in S.B. 1271. Thank you for the opportunity to testify in opposition to S.B. 1271.

Respectfully submitted,

Nora A. Nomura
Nora A. Nomura
Deputy Executive Director