

SB2395

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEES ON JUDICIARY AND GOVERNMENT OPERATIONS
AND WAYS AND MEANS
ON
SENATE BILL NO. 2395

February 17, 2010

RELATING TO THE BUDGET

Senate Bill No. 2395 amends Chapter 37, HRS, by adding a new section that provides that if there is a conflict with general law relating to: (1) budget allocations, transfers, or restrictions; or (2) establishment, transfer or abolition of positions, powers or duties related thereto, the provisions or directives contained in the Executive budget act for the fiscal year shall prevail. The bill further requires that the Governor shall execute budget provisos and the accompanying final budget worksheets, and report actions taken to the Legislature within 30 days of enactment of the budget.

We strongly oppose this bill. The proposed amendments could seriously undermine and impair the ability of the Governor and the Executive Branch to manage State programs and resources for efficiency, productivity, and economy. During periods of fiscal uncertainty, it is critical that the Governor and Executive Branch have the authority and flexibility to control spending, reduce expenses, and economize available resources.

When revenues are deemed insufficient or uncertain, fiscal prudence must be exercised to avoid deficits in the budget and planning period. Where program requirements need further examination and justification, management review is the prerequisite for expending public funds. Actions to control expenditures are exercised as needed throughout the year by the Executive Branch in its capacity as administrator of State programs and finances.

Additionally, potentially limiting the authority of the Governor and the Executive Branch to control expenditures could have an adverse impact on the State's bond rating. The rating agencies have specifically noted the Governor's authority to reduce expenditures as one of the State's credit strengths and a determining factor in maintaining the State's bond rating. For example, Moody's Investors Service's February 4, 2010 credit report for Hawaii G.O. Bonds states,

“Unlike many states, Hawaii's governor has strong executive powers to cut spending and balance the budget and recent actions to reduce expenses underscore ongoing willingness to take those steps.”

Further, we believe that the proposed amendments could encroach upon the principle of separation of powers between the Legislative and Executive Branches of government. As explained more fully in the Attorney General's testimony, the Legislature and the Executive Branch have distinct roles in the budget process. The Legislature has the power to appropriate funds for the working of State government. The Executive Branch has the responsibility to implement the budget.

Finally, we point out that, unlike the process of enacting general law, the process for determining what provisos get included in the Executive budget and supplemental budget acts and what is compiled in the accompanying final budget worksheets is ad hoc and informal, and not transparent to the public. At least, the conference committee process for determining specific budget adjustments is conducted in an open, public decision-making session. Provisos are rarely even discussed in the public budget decision-making session and only become public upon release of the conference draft. Final budget worksheets are prepared after session ends by staff and are only generally reviewed by the respective money committee chairs.

On a technical matter, we have questions regarding what the Governor is supposed to report to the Legislature within 30 days of enactment of the budget. What are the specifics of actions taken?

We strongly recommend that this bill be held.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2010**

ON THE FOLLOWING MEASURE:

S.B. NO. 2395, RELATING TO THE BUDGET.

BEFORE THE:

SENATE COMMITTEES ON WAYS AND MEANS AND ON
JUDICIARY AND GOVERNMENT OPERATIONS

DATE: Wednesday, February 17, 2010 **TIME:** 10:00 a.m.

LOCATION: State Capitol, Room 211

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

Chairs Kim and Taniguchi and Members of the Committees:

The Department of the Attorney General opposes this bill.

This bill provides that, notwithstanding any law to the contrary, if any statutory provision is in conflict with or contradicts state budget allocations, transfers, or restrictions, or the establishment, transfer, or abolishment of positions, then the budget passed by the Legislature shall prevail. In addition, this bill provides that the Governor shall execute the provisions of the budget and the accompanying final budget worksheets.

This bill violates the constitutional separation of powers between the Legislature and the Executive Branch. The Legislature and the Executive branch have distinct roles in the budget and appropriation process. Under the Hawaii State 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 becomes the responsibility of the Executive Branch to implement the budget.

This bill, among other things, would prohibit the Governor from imposing restrictions on appropriated moneys and reducing

allotments, and makes the Legislature the sole authority in establishing funding levels for programs. We believe that this bill would impair the Governor's ability to manage state programs.

The separation of powers doctrine is meant to preclude a commingling of essentially different powers of government in the same hands, and thereby prevent a situation where one branch of government would be controlled by, or subjected, directly or indirectly, to the coercive influence of either of the other branches of government. State v. Augafa, 92 Haw. 454, 470 (Haw. App. 1999) (citations omitted).

The Executive Branch's responsibility in expending public funds is expressed, in part, by section 5, article VII of the Hawaii State Constitution, "general fund expenditures for any fiscal year shall not exceed the State's current general fund revenues and unencumbered cash balances"

Under section 37-31, Hawaii Revised Statutes (HRS), relating to the allotment system, "it is declared to be the policy and intent of the legislature that the total appropriations made by it . . . shall be deemed to be the maximum amount authorized to meet the requirements of the department or establishment for the period of the appropriation, . . . and that the governor and the director of finance should be given the powers . . . in order that savings may be effected by careful supervision throughout each appropriation period with due regard to changing conditions; and by promoting more economic and efficient management of state departments and establishments."

The Governor's authority to restrict appropriated funds as authorized by article VII, section 5 of the Hawaii State Constitution, which requires that "[p]rovision for the control

of the rate of expenditures of appropriated state moneys, and for the reduction of such expenditures under prescribed conditions, shall be made by law," is implemented through the allotment system that is set forth in sections 37-31 to 37-43, HRS. The allotment system requires departments to request the release of appropriated moneys from the Director of Finance or the Governor before the expenditure of such moneys can occur. While article VII, section 5 of the Hawaii State Constitution, provides that the Governor's allotment powers "shall be made by law," the provisions of this bill eliminate the Governor's allotment powers.

Rather than having spending decisions being made by the Governor concurrently with the knowledge of current economic conditions and needs within the amounts appropriated by the Legislature, this bill makes such spending decisions without the consideration of the information that is essential to prudent fiscal management.

While the separation between the three branches of government is not "watertight," this bill appears to constitute too much legislative interference with the functions of the Executive Branch. Compare Akahane v. Fasi, 58 Haw. 74 (1977) (holding that the executive branch is vested with primary responsibility for municipal planning and should initially conduct studies related to city planning rather than the City Council). Its subjects the Executive Branch to the control of the Legislature with respect to the administration of the allotment system.

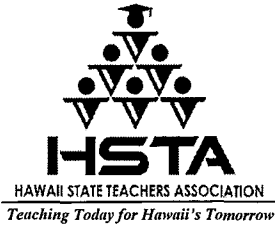
Further, under this bill, a budget proviso or a budget worksheet in the legislatively enacted budget would prevail over a statute regarding the establishment, transfer, or abolishment of positions. However, a budget proviso cannot create or amend

general law. See Attorney General Opinion No. 86-08.

Similarly, a budget worksheet cannot create or amend general law. Section 14 of article III of the Hawaii State Constitution provides, in part: "[e]ach law shall embrace but one subject, which shall be expressed in its title." The title of S.B. No. 2395 is "A Bill for an Act Relating to the Budget." An attempt to delete statutorily established positions through a budget proviso or a budget worksheet would violate article III, section 14 of the Hawaii State Constitution, because eliminating statutorily established positions would go beyond the subject of the title of the bill. A fair reading of the title of S.B. No. 2395 would not apprise interested persons that it might contain a provision such as the deletion of the statutorily created positions.

We believe that this bill is unconstitutional and violates the separation of powers between the Legislative and Executive branches of government. We also believe that this bill authorizes a budget proviso or a budget worksheet to amend or create general law contrary to the Hawaii State Constitution's requirements that a bill's subject be included in its title.

We respectfully ask that this bill be held.



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**TESTIMONY BEFORE THE SENATE COMMITTEES ON
JUDICIARY & GOVERNMENT OPERATIONS AND WAYS & MEANS**

RE: SB 2395 – RELATING TO THE BUDGET.

February 17, 2010

**WIL OKABE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION**

Chair Taniguchi, Chair Kim and Members of the Committees:

The Hawaii State Teachers Association supports Senate Bill 2395. The state budget is a plan for intended expenditures based on the projected cost of providing needed governmental services. The state budget goes through many steps of review and numerous adjustments.

The department of education's budget, which is developed by the superintendent's office, is scrutinized and revised by the board of education. The approved board budget is sent to the governor who further scrutinizes the request. The governor then sends the budget for the state to the legislature, where multiple committees in both houses analyze and amend it, as they consider requests from other departments and the courts. When the final budget is approved by the legislature, it is sent to the governor to approve or veto. The governor can also line-item veto the budget before final signature.

After it has gone through multiple iterations and several rounds of scrutiny and amendments before receiving the approval of the legislature and the governor, the allocated amounts should be released, not be withheld by the governor. The governor should honor the work and thought that went into the creation of the budget and execute the intent of the plan that he or she had previously approved.

Thank you for the opportunity to testify.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association
February 17, 2010

S.B. 2395 – RELATING TO
THE BUDGET

The Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of S.B. 2395, which establishes that if any statutory provision conflicts or contradicts state budget allocations, transfers, position changes or other powers, the budget will prevail. It also requires the Governor to execute the budget and its final budget worksheets and to report the actions taken to the Legislature within 30 days of the budget's enactment.

S.B. 2395 will help to ensure that the budget as approved by the Legislature is implemented by the Governor. We appreciate the opportunity to testify in support of this important legislative initiative.

Respectfully submitted,

Nora A. Nomura
Deputy Executive Director

