



EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

Testimony of
Barry Fukunaga
Chief of Staff to the Governor

Before the
HOUSE COMMITTEE ON FINANCE
Monday, March 29, 2010, 7:00 p.m.
Room 308, State Capitol

SB2626 PROPOSED HD1 RELATING TO PUBLIC SERVICE

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

The Office of the Governor **strongly opposes SB2626 Proposed HD1**, which prohibits the filling and acceptance of civil service positions, including the contracting of work traditionally performed by civil service employees, between the enactment of this measure and the third Wednesday in January 2011, when the Legislature reconvenes. This Proposed HD1 also requires all exempt employees to have an initial probation period of not less than twelve months if they are transferred or hired into civil service positions between the enactment of this measure and when the Legislature reconvenes in January. Additionally, this measure requires every state agency to submit to the Legislature quarterly reports regarding all exempt positions.

Specifically, in addition to prohibiting attorneys from being compensated for representing any person accused of appointment prohibited practices, this measure prohibits attorneys general from representing any such person during any stage of the prohibited practices proceeding. This measure also establishes the Hawaii Enforcement Board within the Department of Labor and Industrial Relations to adjudicate allegations of appointment prohibited practices, and imposes a civil penalty not to exceed \$500,000 for appointment prohibited practices. We are strongly opposed

to the proposed draft of this measure because it is irresponsible, convoluted and cannot be implemented in any practical manner.

Section 4, which requires a 12 month probationary period for exempt employees filling civil service position, and section 5, which prohibits the filling of any civil service positions, cannot be implemented together. It does not make sense to require a longer probationary period for exempt employees moving to civil service positions if these employees and the employer will be hit with appointment prohibited practice complaints as required by section 5. Moreover, it is excessive to impose a \$500,000 civil penalty on any employee accepting a civil service position and any employer filling the position, especially since this measure creates personal liability for the penalty in which "all property of that person shall be subject to execution, including by [sic] not limited to any property upon which a limitation on execution of an order or judgment would normally apply."

This penalty is even more unreasonable and draconian when viewed in light of the fact that section 5(f) also prevents any attorney general from representing any person accused of appointment prohibited practices and section 5(a)(3) prevents any other attorney from being compensated for such representation. In essence, this measure allows no legal representation for any person accused of appointment prohibited practices, even on appeal. It is unfair and we question whether any rights of the accused will be violated as a result of these provisions, especially since it is possible for the accused to be bankrupted by the penalty.

Additionally, the creation of the Hawaii Enforcement Board is duplicative and unnecessary at a time when the State is suffering such an unprecedented budget deficit. Currently, the Department of Labor and Industrial Relations' Hawaii Labor Relations Board already hears and adjudicates prohibited practices complaints, and the Department of Human Resources Development's Merit Appeals Board hears and adjudicates any personnel action taken under civil service law. It is a waste of resources and personnel to establish and staff an additional board specifically for appointment prohibited practices as described in section 5 of this measure.

We must note that this measure is badly drafted and filled with inconsistencies. Section 4 of this measure regarding the 12 month probationary period is in effect

between the enactment of this measure and 11:59 a.m. on the third Wednesday in January 2011. Whereas section 5 of this measure regarding the filling of civil service positions is in effect between the enactment of this measure and 10:00 a.m. on the third Wednesday in January 2011. Is the intent of the measure to require the 12 month probationary period to apply to exempt employees for 1 hour and 59 minutes more than the filling of civil service positions, and if so why? Additionally, is it really necessary to state in section 5(b), "This section shall be in full force and effect notwithstanding any contrary provisions in...the Hawaii Administrative Rules, or the provisions, memoranda, documents, or writings of any part of the State, including by [sic] not limited to any conflict of law in any of the foregoing laws, rules, or documents?"

Finally, The Office of the Governor must question the purpose of this measure, which not only creates disparate treatment for exempt employees, but also takes away the right of state employers and employees to be represented by the Department of Attorney General. Additionally, this measure also establishes an unfair and unreasonable process that punishes both employers and employees for the filling of civil service positions. Such actions do not in any way improve our civil service system and is in fact viewed as a means to intimidate state employers and employees. Moreover, the effective period for this measure can only be perceived as a politically motivated attack on this Administration and we must question its appropriateness, especially during these difficult economic times when our focus should be on job creation and economic development. As such, the Administration strongly opposes SB2626 Proposed HD1, and requests that it be held.

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 29, 2010

TESTIMONY TO THE
COMMITTEE ON FINANCE
For Hearing on Monday, March 29, 2010
7:00 p.m., Conference Room 308

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 2626, S.D. 1 Proposed H.D. 1
Relating to Public Service

(WRITTEN TESTIMONY ONLY)

TO CHAIRPERSON MARCUS OSHIRO AND MEMBERS OF THE COMMITTEE:

The purposes of S.B. 2626, S.D. 1, Proposed H.D.1, are to:

1. Create a temporary freeze from the effective date of this Act to 11:59 a.m. on the 3rd Wednesday of January 2011 on hiring individuals who perform work which has traditionally been done by State civil service employees by prohibiting the permanent filling, directly or indirectly, any and all E.M. civil service positions and all positions in the employment system of a non-governmental employer that require the position holder to perform work that has traditionally been done by State civil service employees;
2. Require state agencies to report on a quarterly basis all non-civil service, temporary employees employed;
3. Establish the duration of an initial probation period as not less than six months nor more than one year;
4. Amend Section 76-27, HRS, to impose a one-year initial probation period for

exempt employees transferring to civil service positions between the effective date of the Act until 10:00 a.m. on the 3rd Wednesday of Jan. 2011.

5. Establish the Hawaii Enforcement Board administratively attached to DLIR which adjudicates allegations of persons that commit appointment prohibited practice.

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

1. The bill redefines the term "initial probation" in a manner that eliminates the discretion and flexibility currently available to an employer to extend an employee's initial probation beyond 12 months when there is a legitimate reason to do so. The bill defines "initial probation" as "a period of not less than six months nor more than one year from the beginning of an employee's service in civil service."

Presently, an employer may elect to extend an employee's initial probation beyond a 12-month period in order to allow for a fair and objective assessment of the employee's job performance. There are certain instances when, in fairness to the employee and/or the employer, additional time is needed in order to determine whether the employee can satisfactorily perform the job he/she is charged to do. Examples of legitimate reasons to extend an employee's initial probation period include situations where the employee is absent from work for an extended period due to pregnancy, childbirth or child care, medical disability or injury, elderly care, family medical leave, or other similar reasons.

If the definition of "initial probation" proposed in this bill were to become law, employers could be faced with the dilemma of having to terminate employees who are unable to complete their initial probation because the

employer has no ability to give the employee additional time. Such forced terminations may violate federal discrimination and employment laws (e.g., ADA), and may result in increased grievances and other litigation.

2. The bill unfairly singles out exempt employees and treats them differently by mandating that all exempt employees who are appointed to civil service positions from the effective date of the Act until 10:00 a.m. on the 3rd Wednesday of January 2011 must serve an initial probation of not less than 12 months. In addition, requiring only exempt employees to complete a longer probation period after being selected for a civil service position is contrary to the mandate in Chapter 76 that no person shall be discriminated against in examination or appointment under our civil service system.
3. Unnecessarily establishes a new Hawaii Enforcement Board as an administratively attached agency to the Department of Labor and Industrial Relations (DLIR) to investigate and adjudicate allegations of appointment prohibited practice.

The purpose and function of this new board appears to overlap with the roles and responsibilities of the DLIR's Hawaii Labor Relations Board (HLRB), which currently hears and decides complaints of prohibited practices filed by various parties.

Additionally, there is overlap with the Merit Appeals Board (MAB), which is administratively attached to DHRD. Pursuant to Section 76-4, HRS, MAB is the exclusive authority to hear and decide appeals from any personnel action taken under Chapter 76 (Civil Service Law), HRS, by the Governor, DHRD Director, or department directors or designees on matters set forth in Section 76-14, HRS, concerning the civil service system based on the merit principle.

The DHRD Director is authorized to conduct formal investigations in all

civil service matters pursuant to Section 76-12(4), HRS, and take appropriate actions to correct, remedy or enforce human resources policies, rules and laws in civil service. For these reasons, a new Hawaii Enforcement Board is unnecessary.

4. The measure prevents employees alleged to have committed an appointment prohibited practice from receiving legal representation by the State Department of the Attorney General. Prohibiting the services of the State Department of the Attorney General may be contrary to statutes and collective bargaining agreements.
5. The bill repeals on December 31, 2012 only the section requiring the one-year probation for certain civil service appointments and makes permanent the definition of "initial probation" which requires the 6-month to one-year range.

The purpose of this measure states, "the critical purpose of this Act is to exercise austerity.....by imposing an absolute hiring freeze on permanent civil service position holders for the relatively short duration of nine months or less." However, the measure does not only impose a hiring freeze, but also limits management's rights to operate and administer the workforce by: eliminating the discretion and flexibility to adjust the initial probation period; imposing a different probation period for certain new civil service appointments; creating confusion among roles of existing Boards and positions and conflicts with statutes; and prohibits contractual services that may be needed for public health and safety and other emergencies. With the checks and balances already in place in the civil service recruitment and examination process utilized by DHRD, which ensures compliance with the merit principle in the filling of civil service positions, this bill is unnecessary and therefore, we respectfully and strongly urge the Committee to **not adopt** S.B. 2626, SD1, Proposed HD1. We also defer to the Department of Budget

S.B. No. 2626, S.D. 1 Proposed H.D.1
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and Finance on any fiscal and budgetary implications, and to the Attorney General on all issues and concerns regarding any legal matters raised by this proposed measure.

Thank you for the opportunity to testify in opposition to this measure.



The Judiciary, State of Hawaii

Testimony to the Twenty-Fifth Legislature, Regular Session of 2010

House Committee on Finance
The Honorable Marcus R. Oshiro, Chair
The Honorable Marilyn B. Lee, Vice Chair

Monday, March 29, 2010, 7:00 p.m.
State Capitol, Conference Room 308

By
Sharen M. Tokura
Human Resources Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 2626, S.D. 1, Proposed H.D. 1, Relating to Public Service

Purpose: The inconsistency of the stated purpose and the content of the bill make unclear the purpose. The definition summary states the purpose as temporarily freezing the direct and indirect filling of civil service positions; establishing a lengthy probation period for certain employees; quarterly reporting of temporary employees. Additionally, this bill seeks to establish a board to adjudicate allegations of appointment prohibited practices.

Judiciary's Position:

The Judiciary is strongly opposed to this measure.

If the "critical purpose of this Act is to exercise austerity with respect to all state executive budget expenditures, by imposing an absolute hiring freeze on permanent civil service position holders," then the bill in its current state does not appear to support its intent.

Adequate protections are already in place through statutes, policies, collective bargaining agreements, and case law to provide the protections sought by this measure. For example, the functions of the proposed Hawai'i Enforcement Board overlap those of the Hawai'i Labor



Senate Bill No. 2626, S.D. 1, Proposed H. D. 1, Relating to Public Service
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Relations Board, which adjudicates allegations of prohibited practices such as those described in this bill. The additional staffing and operational expenses of this new board are unjustified and in direct conflict with the "critical purpose of this Act" which is to "exercise austerity with respect to all state executive budget expenditures." It is unclear as to whether a complaint can be filed under multiple procedures; e.g., collective bargaining grievance, HLRB, Hawai'i Enforcement Board. Multiple bites of the apple do not speak well to government efficiency or exercise of fiscal austerity.

The following examples highlight the inconsistent and unnecessary provisions of this bill:

Section 1 states that "the initial probation period for civil service positions needs to be extended." Yet, Section 3, which purports to add a new definition, simply restates the current definition and inserts a maximum of "nor more than one year," which further frustrates government. The current requirement allows for exceptions under valid circumstances; e.g., illness or injury which denies the employee the opportunity to demonstrate satisfactory performance." Section 3 contradicts Section 1 by maintaining the current six-month requirement and not permitting an extension of the initial probation period beyond one year.

Additionally, Section 4 which provides for an extended probation period of not less than twelve months speaks only to a person occupying a position exempt from civil service. This contradicts the intent stated in Section 1.

Further, the extended probation period applies only to an exempt employee who "transfers into a civil service position" or who is hired into a civil service position within ninety days of termination of an exempt appointment. The Judiciary does not "transfer" exempt employees from exempt positions to civil service positions. An exempt employee must apply through an open competitive recruitment and, if selected, starts at the established hiring rate. "Transfer" implies a benefit that is not currently accorded exempt employees. Specifically, there is no protection of salary or compensation adjustment as may be accorded in a "transfer." The language of this bill appears to grant additional benefits to exempt employees.

Section 2 uses the term "contract." The Judiciary does not fill any positions through employment contracts. Thus, the reporting requirement based on "three contract periods in one fiscal year," and "any person employed for a contract period of less than ninety days" is meaningless. The Judiciary may employ an individual for periods of less than ninety days through "appointments," but not through contracts. The use of the term "contract" is not applicable to all jurisdictions.



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Section 5 purports to give civil service status to “any and all positions that perform personal services for the benefit of the State ... are within the employment system of a person or entity that is not a government.” The Judiciary does not maintain a workforce of skilled trades persons as there is no government efficiency in such staffing when the need exists only for occasional emergency repair work. In such instance, there is no civil service employee being displaced and the work is not customarily performed by a civil service position. This bill would prohibit the use of outside resources to perform the needed repair work. Where the work may be traditionally performed by civil service employees in one jurisdiction, such may not be the case in another.

The definition of “positions insulated from partiality” is overly broad and appears to intrude on the authority of the Board of Regents and the Board of Education. Section 5 proposes to treat classroom teachers (“non-classified positions of the department of education”) and the faculty of the University of Hawai‘i system the same as civil service employees.

The establishment of the Hawai‘i enforcement board is unnecessary as the authority of the board duplicates existing systems such as the Hawai‘i Labor Relations Board, Merit Appeals Boards, Civil Rights Commission, collective bargaining provisions, etc., and creates an additional fiscal burden.

In closing, if the intent of this bill is to impose a hiring freeze, the bill should be limited to this intent and clearly speak to the filling of civil service positions for a specified duration. The introduction of extraneous conflicting and redundant concepts deviates from the intended purpose.

The Judiciary believes operational authority should remain with the chief executives of the respective jurisdictions because responsibility without authority creates a lack of accountability. There is a difference between setting policy and controlling purse strings, which is the purview of the legislature, vs the management of operations which falls under the responsibility of the respective chief executives.

Thank you for the opportunity to testify on this measure.

TESTIMONY BY GEORGINA K. KAWAMURA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON FINANCE
ON
SENATE BILL NO. 2626, S.D. 1, PROPOSED H.D. 1

March 29, 2010

RELATING TO PUBLIC SERVICE

Senate Bill No. 2626, S.D. 1, Proposed H.D. 1: 1) creates a temporary freeze from the effective date of this Act to 11:59 a.m. on the 3rd Wednesday of January 2011 on hiring individuals who perform work which has traditionally been done by State civil service employees by prohibiting the permanent filling, directly or indirectly, of any and all E.M. civil service positions and all positions in the employment system of a non-governmental employer that requires the position holder to perform work that has traditionally been done by State civil service employees; 2) requires State agencies to report, on a quarterly basis, all non-civil service, temporary employees employed; 3) establishes the duration of an initial probation period as not less than six months nor more than one year; 4) amends Section 76-27, HRS, to impose a one-year initial probation period for exempt employees transferring to civil service positions between the effective date of the Act until 10:00 a.m. on the 3rd Wednesday of January 2011; and 5) establishes a Hawaii Enforcement Board administratively attached to Department of Labor and Industrial Relations which adjudicates allegations of persons that commit appointment prohibited practice.

We are strongly opposed to this bill. This measure prevents employees alleged to have committed an appointment prohibited practice from receiving legal representation by the State Department of the Attorney General. Prohibiting the services of the State Department of the Attorney General may be contrary to statutes and collective bargaining

agreements and we defer to the Department of the Attorney General for all legal matters proposed in this measure.

While we understand the desire to generate savings from not filling civil service positions, enactment will limit management's ability to manage its workforce. It is important to note that the need to fill vacancies is determined by requirements to provide necessary public services.

In addition, this bill creates yet another board without providing resources to support its activities.



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

ON THE FOLLOWING MEASURE:

S.B. NO. 2626, PROPOSED H.D. 1, RELATING TO PUBLIC SERVICE.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Monday, March 29, 2010 **TIME:** 7:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Mark J. Bennett, Attorney General, or
James E. Halvorson, Deputy Attorney General

Chair Oshiro and Members of the Committee:

The Department of the Attorney General opposes Proposed H.D. 1 and asks that it be held.

Proposed H.D. 1 is essentially the same as the Proposed S.D. 1 that received a public hearing before the Senate Committee on Ways and Means on February 22, 2010. After considering Proposed S.D. 1, the Senate Committee on Ways and Means issued an S.D. 1 that removed some of the objectionable provisions. We respectfully ask that Proposed H.D. 1 be held.

Firstly, as drafted, much of this bill is virtually incomprehensible, but appears to impose a civil service hiring freeze until January 1, 2011. If that is the intent of the bill, the bill should simply say so.

There are also specific concerns with parts of the bill.

Section 2 places a quarterly reporting requirement on all agencies that hire "non-civil service, temporary employees," defined as persons employed for a contract period of less than ninety days. In this time of budget cuts, furloughs, and reduced staffing, this is an onerous and unnecessary burden that will divert limited resources away from essential services provided by these agencies.

Section 5 creates a new concept called "appointment prohibited practice" to fill "positions insulated from partiality." It provides for personal liability up to \$500,000 per event and waives sovereign immunity and all other immunities for everyone, including the Governor. It provides for attorneys fees to be paid to the complainant but not the respondent, and puts all the costs of appeal on the appellant. These provisions needlessly expose individuals who have the responsibility to make hiring decisions in the course of running their various agencies, to liability, including attorneys fees, in their personal capacity.

Section 5 also creates a new "Hawaii enforcement board" consisting of five members, one appointed by the Governor, two by leaders of the Legislature, and two by the unions. This board is unnecessary, and the legislation creates a structure that encourages needless litigation. Moreover, this structure has no logic behind it, and the drafting is odd in many ways (which is likely why it was rejected by the Senate Committee on Ways and Means).

Finally, the bill prohibits the Department from representing any person who is alleged to have committed an appointment prohibited practice. This provision presents a conflict with the Department's duty to represent public officers in the performance of their duties and acting in their official capacity. See sections 28-1 and 28-4, Hawaii Revised Statutes.



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**The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance**

**Testimony by
Hawaii Government Employees Association
March 29, 2010**

**S.B. 2626, S.D. 1 (Proposed H.D. 1) -
RELATING TO PUBLIC SERVICE**

The Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO prefers S.B. 2626, S.D. 1 - Relating to Public Service to the Proposed H.D. 1. S.B. 2626, S.D. 1 requires every state agency to report to the Legislature all non-civil service, temporary employees employed by every agency for each quarter of the fiscal year. The bill also extends the initial probationary period for exempt employees who transfer, or previously transferred, into a civil service position between December 15, 2009 and December 31, 2011.

We support those provisions of S.B. 2626, S.D. 1 (Proposed H.D.1) that are the same as the Senate version of the bill. For example, the reporting requirements imposed on state agencies to report all non-civil service, temporary employees for each quarterly period of the fiscal year is overdue. This information is necessary for the legislature to make informed decisions about the number of non-civil service employees in state government.

The legislature needs to know the extent to which departments are repeatedly extending contract employees (emergency hires) instead of filling the position through civil service. These periodic reports will increase transparency and accountability of state government operations and identify areas where there are problems with the efficient and timely delivery of services. HGEA has consistently advocated that employees should have the opportunity to build a career in government through civil service employment. The use of emergency hires and exempt appointment employees undermines civil service and should be reduced.

We support extending the initial probationary period to not less than twelve (12) months for exempt employees who transfer into a civil service position, or who terminate from an exempt position and are hired into a civil service position within ninety (90) days of that termination during the designated period (effective date of the act through the third Wednesday of January 2011.)

However, if the Legislature decides to implement a hiring freeze on civil service positions from the effective date of the act through the third Wednesday in January 2011, there must be exceptions for frozen positions to be used if there is another reduction-in-force. Without such an exception, more employees will be laid off through the bumping process.

In addition, there are certain critical positions that must be filled because they are vital to the health and safety of the public, or the collection state revenues. It is impractical to ever realize a 100 percent "freeze" in an organization like state government, especially when the demand for services is rising and there are health and public safety requirements that must be met.

The prohibition on issuing requests for proposals or contracts that would allow private sector employees to perform work that is traditionally performed by civil service employees is fully justified and is a positive addition to the proposed legislation. There should also be a prohibition on the use of outside consultants as a means of covering the work typically done by employees whose jobs are unfilled. Much can be accomplished through the hiring freeze, the prohibition of requests for proposals, contracts and consultants during the remainder of the calendar year.

Finally, there should also be a moratorium on converting exempt positions to civil service during this same period. Despite legislation facilitating the conversion from exempt to civil service, only 42 positions (1.6%) were converted between November 1, 2008 and October 31, 2009. This has been a consistent pattern since Act 300, SLH 2006 took effect. It would be unacceptable if the number of conversions suddenly accelerated during the last eight months of the administration.

Thank you for the opportunity to testify on S.B. 2626, S.D. 1 (Proposed H.D. 1) with the suggested amendments.

Respectfully submitted,

Kenn M. Mulleijn

for
Nora A. Nomura
Deputy Executive Director

CHARLES K. Y. KHIM

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March 29, 2010

HOUSE COMMITTEE ON FINANCE

**Testimony in Favor of SB 2626, SD 1, HD 1
(Relating to Public Service)**

To: Chair: Hon. Marcus Oshiro
Vice-Chair: Hon. Marilyn Lee
Members: House Committee on Finance

From: Charles K.Y. Khim, Esq. – Attorney at Law, Legal
Counsel for Many Public and Private Sector Labor
Organizations, Including the UPW



My name is Charles K.Y. Khim, Esq. and I am an attorney who is, and has been licensed to practice law in Hawaii for the last thirty years. I represent many public sector and private sector labor organizations.

Thank you for this opportunity to present testimony in favor of SB 2626, SD 1, Proposed HD 1. In order to address the looming budget deficit by immediately making government work more efficient, this bill provides for:

- (1) temporarily freezing the hiring of highly compensated State employees;

- (2) temporarily freezing the hiring of private sector employees who will be performing work traditionally done by State civil servants; and
- (3) the extension of the probationary period for civil service employees.
- (4) state agencies to provide quarterly reports to the legislature regarding all non-civil service and temporary employees employed by the agencies, so that the legislature can accurately adopt legislation to address government employment.

The attachments to this demonstrate that currently a tremendous amount of State money is being wasted paying private sector employees to perform civil service work. For example, private sector employees are being paid \$200.00 per hour plus \$299.00 per day per diem, to perform work that State civil servants are paid about \$ 45.00 per hour in wages and fringe benefits.

Thus, this well thought out, carefully crafted legislation which addresses a salient problem should be adopted by the Legislature *post haste*.

Thank you for this opportunity to present testimony before this honorable committee. If any committee member has any questions, I will be more than glad to answer them at the appropriate time.

CKYK:rwd



STATE OF HAWAII

SUPPLEMENTAL CONTRACT NO. 3
TO CONTRACT CF-DHS-06-DIR-010-SW

(insert contract number or other identifying information)

This Supplemental Contract No. 3, executed on the respective dates indicated below, is effective as of June 30, 2009, between the DEPARTMENT OF HUMAN SERVICES, State of Hawaii

(insert name of state department, agency, board or commission)

("STATE"), by its DIRECTOR

(insert title of state officer executing contract)

(hereafter also referred to as the HEAD OF THE PURCHASING AGENCY or designee ("HOPA")), whose address is 1390 Miller Street, Honolulu, Hawaii 96813, and BENTON & ASSOCIATES, LTD. ("CONTRACTOR"),

CORPORATION

(insert corporation, partnership, joint venture, sole proprietorship, or other legal form of the CONTRACTOR)

under the laws of the State of Maryland, whose business address and federal and state taxpayer identification numbers are as follows: 4255 Buckskin Lake Drive, Ellicott City, Maryland, 21042, Hawaii address is Executive Centre, 1088 Bishop Street, Suite 1702 Hawaii ID No. W61600691, Federal ID No. 52-1846693

RECITALS

A. WHEREAS, the STATE and the CONTRACTOR entered into Contract CF-DHS-06-DIR-010-SW

(insert contract number or other identifying information)

dated February 1, 2006, which was amended by Supplemental Contract No(s) 1
dated June 28, 2007, which was amended by Supplemental Contract No(s) 2
dated June 30, 2008, which was amended by Supplemental Contract No(s) N/A
dated _____, _____ (hereafter collectively referred to as "Contract") whereby the CONTRACTOR agreed to provide the goods or services, or both, described in the Contract; and

B. WHEREAS, the parties now desire to amend the Contract.

NOW, THEREFORE, the STATE and the CONTRACTOR mutually agree to amend the Contract as follows: (Check Applicable box(es))

- Amend the SCOPE OF SERVICES according to the terms set forth in Attachment-S1, which is made a part of the Contract.
- Amend the COMPENSATION AND PAYMENT SCHEDULE according to the terms set forth in Attachment-S2, which is made a part of the Contract.
- Amend the TIME OF PERFORMANCE according to the terms set forth in Attachment-S3, which is made a part of the Contract.
- Amend the SPECIAL CONDITIONS according to the terms set forth in Attachment-S6 SUPPLEMENTAL SPECIAL CONDITIONS, which is made a part of the Contract.
- Recognize the CONTRACTOR'S change of name.

FROM:

EXHIBIT "A"

TO:

As set forth in the documents attached hereto as Exhibit _____, and incorporated herein.

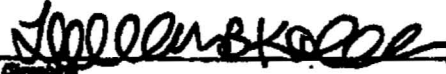
A tax clearance certificate from the State of Hawaii is is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

A tax clearance certificate from the Internal Revenue Service is is not required to be submitted to the STATE prior to commencing any performance under this Supplemental Contract.

The entire Contract, as amended herein, shall remain in full force and effect.

IN VIEW OF THE ABOVE, the parties execute this Contract by their signatures, on the dates below, to be effective as of the date first above written.

STATE: DEPARTMENT OF HUMAN SERVICES




Lillian B. Koller
(Print Name)

Director
(Print Title)

JUN 26 2009
(Date)

CONTRACTOR

BENTON & ASSOCIATES, LTD.
(Name of Contractor)



BILL B. BENTON
(Print Name)

VP
(Print Title)

6/12/09
(Date)

CORPORATE SEAL

(If Applicable)

APPROVED AS TO FORM:



Deputy Attorney General

* Evidence of authority of the CONTRACTOR'S representative to sign this Contract for the CONTRACTOR must be attached.



STATE OF HAWAII

COMPENSATION AND PAYMENT SCHEDULE

The Consultant shall be compensated for goods and/or services performed, including approved costs incurred and taxes. The estimated budget is attached and labeled as Attachment S2CC.

The Consultant shall submit itemized invoices in original and 3 copies to the DHS Contract Administrator.

Benton & Associates, Ltd.
 Supplemental Agreement No. 3
 Contract CF-DHS-06-DIR-010-SW

S2CC

Type A -- Personnel	Hourly Rate	Daily Rate	No. of Days	Total
Bill Benton, DPA	\$200	\$1,500	160	\$256,000
Joseph Borgo, ACSW	\$150	\$1,200	120	\$144,000
James Murphy, CPA	\$125	\$1,000	40	\$40,000
Deborah Chassman	\$175	\$1,400	160	\$224,000
Mack Storms	\$150	\$1,200	160	\$192,000
Jon Hobbs	\$150	\$1,200	160	\$192,000
Jo Anna Barnhart	\$150	\$1,200	70	\$84,000
Ray Goodwin	\$175	\$1,400	120	\$168,000
Robert Montgomery	\$125	\$1,000	120	\$120,000
Niche Consultants	\$125	\$1,000	80	\$80,000
Personnel Subtotal				\$1,500,000
Type B -- Other Operating Cost				
<i>Bill Benton, DPA</i>				
Airfare	\$1,400		12	\$16,800
Lodging*	\$177		120	\$21,240
Meals and Incidentals*	\$112		120	\$13,440
Benton Subtotal				\$51,480
<i>Joseph Borgo, ACSW</i>				
Airfare	\$1,400		12	\$16,800
Lodging*	\$177		120	\$21,240
Meals and Incidentals*	\$112		120	\$13,440
Borgo Subtotal				\$51,480
<i>James Murphy, CPA</i>				
Airfare	\$1,400		2	\$2,800
Lodging*	\$177		40	\$7,080
Meals and Incidentals*	\$112		40	\$4,480
Murphy Subtotal				\$14,360
<i>Deborah Chassman</i>				
Airfare	\$1,400		12	\$16,800
Lodging*	\$177		160	\$28,320
Meals and Incidentals*	\$112		160	\$17,920
Chassman Subtotal				\$63,040

Mack Storrs			
Airfare	\$1,400	12	\$16,800
Lodging*	\$177	160	\$28,320
Meals and Incidentals*	\$112	160	\$17,920
Storrs Subtotal			\$63,040
Jon Hobbs			
Airfare	\$1,400	12	\$16,800
Lodging	\$177	160	\$28,320
Meals and Incidentals	\$112	160	\$17,920
Hobbs Subtotal			\$63,040
Jo Anne Barnhart			
Airfare	\$1,400	12	\$16,800
Lodging	\$177	70	\$12,390
Meals and Incidentals	\$112	70	\$7,840
Barnhart Subtotal			\$37,030
Ray Goodwin			
Airfare	\$1,400	12	\$16,800
Lodging*	\$177	120	\$21,240
Meals and Incidentals*	\$112	120	\$13,440
Goodwin Subtotal			\$51,480
Robert Montgomery			
Airfare	\$250	12	\$10,200
Lodging*	\$177	120	\$21,240
Meals and Incidentals*	\$112	120	\$13,440
Montgomery Subtotal			\$44,880
Niche Consultants**			
Airfare	\$1,400	12	\$16,800
Lodging	\$177	80	\$14,160
Meals and Incidentals	\$112	80	\$8,960
Niche Subtotal			\$39,920
Interisland Travel			
Airfare	\$120	24	\$2,880
Lodging	\$177	48	\$8,496
Meals and Incidentals	\$112	48	\$5,376
Interisland Subtotal			\$16,752
Other Operating Subtotal			\$496,502

Total Direct Costs		\$1,996,502
Indirect Costs	30%	\$598,951
TOTAL		\$2,595,453
General Excise/Use Tax	4.5%	\$116,795
TOTAL PLUS TAX		\$2,712,248
Estimated FFP***	67%	\$1,817,206
Estimated Cost to the State	33%	\$895,042

* Denotes use of Federal travel regulations.

** No staff or consultants will be added to the project without the prior authorization of the DHS Director.

*** Designates estimated rate of Federal Financial Participation (FFP).



STATE OF HAWAII

TIME OF PERFORMANCE

This Contract is extended for an additional 12-month period starting from July 1, 2009 to June 30, 2010. This is extension 3 of the contract.