



The Judiciary, State of Hawaii

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

House Committee on Labor & Public Employment

The Honorable Karl Rhoads, Chair

The Honorable Kyle T. Yamashita, Vice Chair

Friday, March 12, 2010, 10:00 a.m.
State Capitol, Conference Room 309

by

Sharen M. Tokura

Human Resources Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: SB2626, S. D.1, Relating to Public Service

Purpose: Temporarily lengthen the initial probationary period from six months to twelve months for persons entering a civil service position from a position exempt from civil service; requires state agencies to provide quarterly reports to the legislature of all non-civil service and temporary employees employed by the agency.

Judiciary's Position:

The Judiciary is opposed to this measure.

It has been an established and longstanding policy of state agencies to require a six-month initial probationary period of newly hired employees who do not have civil service status. The six-month initial probationary period can be extended up to an additional six months for a total of twelve months should the new employee require additional time to adjust to employment requirements. Furthermore, the initial probationary period can be extended even further beyond



one year should the employee be unavailable for legitimate reasons and the supervisor was not afforded a full six months to evaluate performance.

The targeting of a select group of new employees to serve a longer initial probationary period than others who were selected through the same competitive recruitment process is discriminatory. Exempt employees of the Judiciary do not transfer to civil service positions and can only be appointed to civil service positions after having undergone the normal civil service recruitment process. The appointment to the civil service position is considered a new appointment and pay is at the entry level. As they received the same treatment throughout the recruitment process, formerly exempt employees should also be provided the same initial probationary period as any other applicant selected for the position. Discriminating against a former exempt employee as proposed is unwarranted and indefensible.

If the intent of this bill is to safeguard the merit principles and prevent the appointment of an exempt employee to a civil service position without the attendant recruitment and examination process, a better approach is to address the process leading to the appointment rather than to penalize the individual after appointment. If the intent is to discourage or hamper the hire of exempt appointees in civil service positions, this will undermine the merit principle of hiring the best qualified for the job. All applicants compete against established standards, and the best qualified applicant is expected to rise to the top for consideration. There may be instances wherein the best qualified is an exempt appointee. It is in the best interests of government service to hire the individual with the requisite knowledge, skills, and abilities, be he/she an exempt hire, civil service employee, or otherwise.

As mentioned, mechanisms to permit a longer probationary period are already in place and utilized as appropriate to each individual situation, rather than to a class of employees based on prior employment (i.e., exempt appointees).

Thank you for the opportunity to testify on this measure.

WRITTEN ONLY

Date: 03/12/2010

Committee: House Labor & Public
Employment

Department: Education

Person Testifying: Kathryn Matayoshi, Interim Superintendent of Education

Title of Bill: SB 2626, SD1 (SSCR2616) RELATING TO PUBLIC SERVICE.

Purpose of Bill: Requires every state agency to report to the legislature all non-civil service, temporary employees employed by the agency for each quarterly period of the fiscal year. Establishes a definition for initial probation period; amends section 27(a)(1), HRS, to provide that the initial probation period for a person transferring between a position exempt under section 76-16, HRS, to a civil service position between 12/15/2009 and 12/31/2011 shall be 12 months. (SD1)

Department's Position: The Department of Education does not support this bill. Current law and administrative rules already allow for the extension of initial probation to a maximum of one year if the hiring authority deems it necessary.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
March 12, 2010

S.B. 2626, S.D. 1 - RELATING TO PUBLIC SERVICE

The Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of S.B. 2626, S.D. 1 - Relating to Public Service, which 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.

The data requested by S.B. 2626, S.D. 1 is needed 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.

We have 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. According to the most recent report to the Legislature, as required by Act 300, SLH 2006, there were 2,565 exempt positions in state government. Exempt employees comprise approximately 9% of all state employees. Combining the number of emergency hires with exempt employees would likely exceed 10% of the state's workforce. That figure should be reduced to no more than 2-3%. There are too many exemptions from civil service under Section 76-16, HRS.

We also 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

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terminate from an exempt position and are hired into a civil service position within ninety (90) days of that termination during the designated period (December 15, 2009 - December 31, 2011).

Thank you for the opportunity to testify in support of S.B. 2626, S.D. 1.

Respectfully submitted,



for Nora A. Nomura
Deputy Executive Director

LATE

LINDA LINGLE
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March 12, 2010

TESTIMONY TO THE
COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
For Hearing on Friday, March 12, 2010
10:00 a.m., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

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

(WRITTEN TESTIMONY ONLY)

TO CHAIRPERSON KARL RHOADS AND MEMBERS OF THE COMMITTEE:

The purposes of S.B. 2626, S.D. 1, are to: 1) require state agencies to report on a quarterly basis all non-civil service, temporary employees employed; 2) establish the duration of an initial probation period; 3) amend section 27(a)(1), HRS, to impose a one-year initial probation period for exempt employees transferring to civil service positions during the period December 15, 2009 to December 31, 2011.

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 December 15, 2009 through December 31, 2011 must serve an initial probation of not less than 12 months. The retroactive nature of this provision is particularly problematic because it will negatively impact employees who may already have successfully completed their probation by the time this bill takes effect. For these employees, the terms of their employment will suddenly

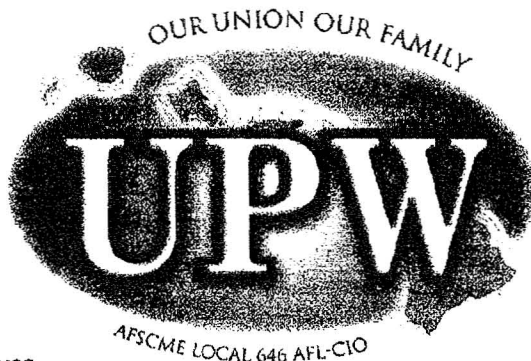
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change because they will now have a longer probation period, contrary to their expectations at the outset of their employment. In addition, requiring only exempt employees to complete a longer probation period after being selected for a civil service 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. The bill deletes the section requiring the one-year probation for civil service appointments made during December 15, 2009 to December 31, 2011 however, fails to delete the definition of "initial probation" which requires the 6 month to one year range.

For these reasons, we respectfully request that S.B. 2626, S.D. 1 be held by this committee.

Thank you for the opportunity to testify.



LATE

House of Representatives
The Twenty-Fifth Legislature
Regular Session of 2010

Committee on Labor & Public Employment

Rep. Karl Rhoads, Chair
Rep. Kyle Yamashita, Vice Chair

DATE: Friday, March 12, 2010
TIME: 10:00 a.m.
PLACE: Conference Room 309

**TESTIMONY OF THE UNITED PUBLIC WORKERS, LOCAL 646, ON SB 2626,
SD1, RELATING TO PUBLIC SERVICE**

This measure requires every state agency to report to the legislature all non-civil service, temporary employees employed by the agency for each quarterly period of the fiscal year; establishes a definition for initial probation period; amends section 27(a)(1), HRS, to provide that the initial probation period for a person transferring between a position exempt under section 76-16, HRS, to a civil service position between 12/15/2009 and 12/31/2011 shall be 12 months.

The United Public Workers, Local 646, supports the intent and purpose of SB 2626, SD1.

We also suggest amending this measure to include language from the proposed SB 2626, SD1 that prohibits requests for proposals that call for individuals who are not government employees or private companies to perform work that is traditionally performed by civil service employees.

With this amendment we urge this measure's passage.

LATE**CHARLES K. Y. KHIM***Attorney-At-Law*


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Letterhead Created & Printed in-house

March 11, 2010

HOUSE COMMITTEE ON LABOR**Testimony in Favor of SB 2626, SD 1
(Relating to Public Service)****To:** Chair: Hon. Karl Rhoads

Vice-Chair: Hon. Kyle T. Yamashita

Members: House Committee on Labor**From:** Charles K.Y. Khim, Esq. – Attorney at Law, Legal
Counsel for Many Public and Private Sector Labor
Organizations 

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. In order to address the looming budget deficit by immediately making government work more efficient, this bill provides for the extension of the probationary period.

This bill also requires 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.

This proposed legislation represents the Hawaii State Senate at its finest, and is a stellar example of how legislation ought to be enacted.

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