



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

ON THE FOLLOWING MEASURE:

S.B. NO. , .

BEFORE THE:

SENATE COMMITTEE ON WAYS AND MEANS

DATE: Monday, February , 2010 **TIME:** a.m.

LOCATION: State Capitol, Room 211

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

Chair and Members of the Committee:

The Department of the Attorney General opposes this bill.

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.

Secondly, 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.

We respectfully urge the Committee to hold this bill.

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

February 22, 2010

RELATING TO PUBLIC SERVICE

Senate Bill No. 2626, Proposed S.D. 1, prohibits the permanent filling of any and all civil service positions from the effective date of the Act through January 2, 2011; requires every State agency to report to the Legislature all non-civil service, temporary employees employed by the agency for each quarter of the fiscal year; and establishes the Hawaii Enforcement Board within the Department of Labor and Industrial Relations for administrative purposes only.

We are strongly opposed to this bill. While we understand the desire to generate savings from not filling civil service positions, enactment will create severe operational difficulties for departments. 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.

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

February 21, 2010

TESTIMONY TO THE
SENATE COMMITTEE ON WAYS AND MEANS
For Hearing on Monday, February 22, 2010
10:20 a.m., Conference Room 211

BY

MARIE C. LADERTA
DIRECTOR

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

(WRITTEN TESTIMONY ONLY)

CHAIRPERSON DONNA MERCADO KIM AND MEMBERS OF THE COMMITTEE:

The stated purposes of S.B. 2626, Proposed S.D. 1 are to: (1) prohibit permanently filling any and all civil service positions from the effective date of the measure through January 2, 2011; and (2) require 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.

The Department of Human Resources Development (DHRD) is **strongly opposed** to the following provisions in Part 1 of the proposed senate draft 1:

1. Prohibits any person from filling or accepting any and all civil service positions from the effective date of the measure through January 2, 2011.

Mandating a short-term hiring freeze on civil service positions is unnecessary

because each employer should be responsible for determining its own staffing needs to provide essential services. For example, the state executive branch has imposed a general hiring freeze on all positions, civil service and exempt, with the exception of certain positions that provide health and safety services, support revenue-generating functions, or are completely federally-funded. Prohibiting the filling of all civil service positions will further obstruct the ability of state executive branch agencies to provide critical services, especially in light of a reduced workforce and furlough days.

Moreover, by prohibiting the filling of vacant civil service positions directly or indirectly, and prohibiting the acceptance or attempt to accept any and all civil service positions, this bill will effectively eliminate the opportunity for continued employment of eligible civil service employees who wish to exercise their placement rights under reduction-in-force (RIF) or layoff procedures as provided by collective bargaining agreements (CBAs). Under current CBAs, eligible civil service employees who are affected by a RIF or layoff can exercise their right to displace an employee with less seniority in order to remain employed. Since this bill will negate such placement rights by prohibiting the filling/acceptance of civil service positions, it would impair the current CBAs. Further, the bill's preemptive authority appears to conflict with preemptive language already contained in Section 89-19, HRS.

2. 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.

3. 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.

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, we respectfully and strongly urge the Committee to not adopt S.B. 2626, Proposed Senate Draft 1. We also defer to the Department of Budget 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.



The Judiciary, State of Hawaii

Testimony to the Senate Committee on Ways and Means

The Honorable Donna Mercado Kim, Chair

The Honorable Shan S. Tsutsui, Vice Chair

Monday, February 22, 2010, 10:00 a.m.

State Capitol, Conference Room 211

by

Sharen M. Tokura

Human Resources Director

AMENDED WRITTEN TESTIMONY ONLY

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

Purpose: Prohibits permanently filling, directly or indirectly, any and all positions insulated from partiality from the effective date of the Act through January 2, 2011; and 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.

Judiciary's Position:

The Judiciary is opposed to this measure.

There are sufficient protections in place to guard against the displacement of civil service positions with employees exempt from civil service or with privately contracted labor. Chapter 76 clearly establishes a system of public employment based on merit principles.

With regard to employment/appointments outside the civil service, certain exemptions are permitted under Chapter 76, and the employer is held to these specific exemptions. With regard to procurement contracts outside the employment/appointment process, the Kono decision, as cited in this bill, ensures that the contracted labor will not displace employees performing services customarily and historically provided by civil servants.



Senate Bill No. 2626, Proposed S. D. 1, Relating to Public Service
Senate Committee on Ways and Means
Monday, February 22, 2010
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Employers who violate Chapter 76 are subject to collective bargaining grievances, administrative complaints, and legal action. Similarly, the alleged displacement of civil service employees by private contractors is subject to grievances, complaints and legal action. As evidenced by the Kono decision, recourse and remedy now exist without the enactment of another statutory provision or the establishment of a regulatory board.

In fiscally austere times, when hiring is not occurring in any significant numbers and where there are generally insufficient funds to procure services through private contracts, the establishment of an enforcement board with attendant salary and office maintenance costs is not warranted.

Thank you for the opportunity to testify on this measure.



The Judiciary, State of Hawaii

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

Senate Committee on Ways and Means

The Honorable Donna Mercado Kim, Chair

The Honorable Shan S. Tsutsui, Vice Chair

Monday, February 22, 2010, 10:00 a.m.

State Capitol, Conference Room 211

by

Sharen M. Tokura

Human Resources Director

WRITTEN TESTIMONY ONLY

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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 22, 2010

S.B. 2626 Proposed S.D. 1 – RELATING
TO PUBLIC SERVICE

The Hawaii Government Employees' Association, AFSCME Local 152, AFL-CIO supports the general purpose and intent of S.B. 2626 Proposed S.D. 1. More specifically, we concur that there is a definite need to strengthen and protect state civil service. There are several practices that weaken the state's civil service system and require corrective action. Under the Hawaii State Constitution, the merit principle governs civil service.

We agree that the Legislature should determine the scope of the state civil service, adopting the approach set forth in the Konno decision. The Hawaii Supreme Court in this decision defined "civil service" to mean "those services that have been customarily and historically provided by civil servants."

In the short term, we can support a limited freeze on hiring for nine months or less. However, there are some civil service positions that were vacated either through retirements or resignations, and were not a part of the 2009 reduction-in-force (RIF), which need to be filled in areas such as child welfare and adult protective services.

The HGEA also supports the prohibition on requests for proposals that call for private companies to perform work traditionally performed by civil service employees or contracts that fulfill such requests for proposals. We know about service contracts worth millions of dollars in the Department of Human Services and the Department of Taxation that could be performed by civil service employees at a lower cost.

The administration targeted more than 1,200 permanent civil service positions in the recent RIF, with little or no rational basis causing devastating cuts to important programs throughout state government. Meanwhile, they left thousands of exempt (non-civil service) positions untouched. It is timely that in the midst of considerable fiscal uncertainty and serious operational problems caused by the 2009 RIF that the Legislature intends to stop the further deterioration of core government functions.

Over the past 30 years, there has been a proliferation of positions exempt from civil service. According to the most recent report to the Legislature as required by Act 300, SLH 2006, there were 2,565 exempt positions. 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.

Exempt employees comprise approximately 9% of all state employees. Moreover, they are similar to contract employees because they do not have the same contractual rights as those who are civil service. Many of the employees in these exempt positions have been employed for more than 10 years. We question the need for 2,565 exempt positions in state government. Besides the statutory changes proposed in Part I of SB 2626 (Proposed SD 1), we strongly recommend amending Section 76-16 (b) (17), HRS to read as follows:

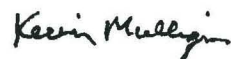
(17) Positions specifically exempted from this part by any other law; provided that such positions shall cease to be exempt three years from June 30, 2010 ; provided further that all of the positions defined by paragraph (9) shall be included in the position classification plan;

There are more than 100 separate civil service exemptions spread throughout Hawaii Revised Statutes even though many of the programs have existed for decades.

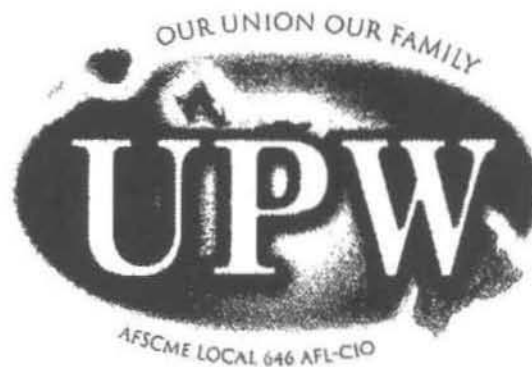
The HGEA also supports Part II of the bill which requires every state agency to report to the Legislature all non-civil service, temporary employees employed by each agency for each quarter of the fiscal year.

The data requested in Part II is needed by the Legislature to make informed decisions about the number of non-civil service employees in state government. We need to know the extent to which departments are repeatedly extending contract employees (emergency hires) instead of filling the position through civil service and end this practice, which undermines civil service. Thank you for the opportunity to testify on S.B. 2626, Proposed SD 1 with the suggested amendment.

Respectfully submitted,



 Nora A. Nomura
Deputy Executive Director



THE HAWAII STATE SENATE
The Twenty-Fifth Legislature
Regular Session of 2010

COMMITTEE ON WAYS AND MEANS
The Honorable Donna Mercado Kim, Chair
The Honorable Shan S. Tsutsui, Vice Chair

DATE OF HEARING: Monday, February 22, 2010
TIME OF HEARING: 10:20 a.m.
PLACE OF HEARING: Conference Room 211

**S.B. 2626, PROPOSED S.D. 1 – RELATING TO PUBLIC SERVICE
FAVORABLE TESTIMONY OF THE UNITED PUBLIC WORKERS,
AFSCME LOCAL 646, AFL-CIO, VIA UPW STATE DIRECTOR
DAYTON M. NAKANELUA**

My name is Dayton M. Nakanelua, and I am the State Director (CEO) of the United Public Workers, AFSCME Local 646, AFL-CIO ("UPW"). The UPW represents approximately 11,700 employees of: the State of Hawaii; the City & County of Honolulu; and the other Counties of the State --- all of which constitute approximately 8,800 blue-collar non-supervisory employees in bargaining unit 1 [as that unit is defined in HRS, § 89-6 (a)], and approximately 2,900 institutional, health and correctional workers in bargaining unit 10 [as that unit is defined in HRS, § 89-6 (a)]. In addition, the UPW represents many private industry employees who are either blue collar, institutional or health workers.

I wish to state on behalf of the UPW and its approximately 11,700 members who are public employees, as well as its multitude of private sector employees, that we are all in strong support of S.B. 2626, Proposed Senate Draft 1.

We are in favor of S.B. 2626, Proposed S.D. 1 because this legislation will preserve fairness in government employment, and will save the tax payers

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approximately hundreds of millions of dollars by imposing a hiring freeze, thereby preventing the State government from accruing new long term debt.

As pointed out by the Governor and the State Director of Finance, the biggest expense of State government is its payroll. This legislation does exactly what the Federal government does to save money, it imposes an approximately nine month freeze on spending money on this biggest government expense.

This legislation freezes government spending on new permanent employees performing work for the government, irrespective of whether they are paid via the government payroll, or paid via the payroll of a private sector contractor who has a new State contract to provide services to the State.

This legislation ensures that State government spending on expanding permanent government jobs is frozen, by fully defining what employment constitutes government employment, thereby guaranteeing that cronyism will play no part in creating exceptions to this freeze on government spending.

Absent this legislation, which prohibits the creation of private sector jobs that are the functional equivalent to government civil service jobs, the creation of such private sector jobs would be immune to this spending freeze, and the Hawaii Constitutional and statutory merit principle, thus allowing said private sector jobs to effectuate unbridled government spending, and allowing said jobs to be filled via cronyism, in violation of the foregoing merit principle.

This freeze on government spending will not have a deleterious effect on the providing of government services because this freeze on incurring new permanent government debt via the creation of new civil service jobs, is temporary.

In addition, this legislation has a provision which allows the State government to provide needed governmental services that may be lacking due to vacancies in civil service positions, by allowing those vacant positions to be filled via temporary assignments and emergency hires. Thus, there will be no harm done to the public while this temporary freeze on incurring permanent long term debt is effectuated.

Thank you for this opportunity to provide testimony to this honorable Senate committee on ways and means. At the appropriate time, I will be more than glad to answer any questions that this committee may have.

CHARLES K. Y. KHIM
Attorney-At-Law

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February 22, 2010

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

To: Chair: Hon. Donna Mercado Kim

Vice-Chair: Hon. Shan S. Tsutsui

Members: Senate Committee on Ways & Means

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, Proposed SD 1. In order to address the looming budget deficit by immediately stopping the spending of money and the incurring of new, long term debt in the form of increased salary payments for permanent employees, this bill provides for a temporary hiring freeze of government employees who have permanent, civil service protected job positions, and permanent government job positions which have civil service-like protection. This bill also clarifies the definition of these civil service and civil service-like

positions in order to prevent cronyism, from exempting job positions from the hiring freeze.

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

The Senate perceived that there might be a problem in the way the administration was conducting its business, in particular how it was spending the tax payers' money. The Senate then investigated whether there was actually such a problem by conducting a series of investigative hearings, and requested that the Legislative Auditor, a woman who is above reproach in her honesty, integrity and accuracy, investigate the situation.

When the results of these Senate inquiries indicated that there was a problem, then the Senate, in order to remedy this problem, crafted legislation which adopted the tried and true Federal Government method of dealing with such problems, namely by instituting a temporary hiring freeze in order to immediately halt overspending by the administration on a cost item that the administration itself declared was the most expensive cost of government.

Furthermore, in ensuring that there would be no avoidance of this cost cutting measure in order to institute cronyism to "take care" of certain cronies, the Senate again resorted to utilizing well established precedent from the Hawaii Supreme Court to remedy this situation.

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