



GOV. MSG. NO. 1270

EXECUTIVE CHAMBERS  
HONOLULU

NEIL ABERCROMBIE  
GOVERNOR

June 27, 2011

The Honorable Shan Tsutsui, President  
and Members of the Senate  
Twenty-Sixth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

The Honorable Calvin Say, Speaker  
and Members of the House  
Twenty-Sixth State Legislature  
State Capitol, Room 431  
Honolulu, Hawaii 96813

Dear President Tsutsui, Speaker Say and Members of the Legislature:

This is to inform you that on June 27, 2011, the following bill was signed into law:

HB467 HD2 SD1

RELATING TO WHISTLEBLOWERS'  
PROTECTION  
Act 166 (11)

*Sincerely,*  
*Neil Abercrombie*

NEIL ABERCROMBIE  
Governor, State of Hawaii

on \_\_\_\_\_

HOUSE OF REPRESENTATIVES  
TWENTY-SIXTH LEGISLATURE, 2011  
STATE OF HAWAII

ACT 166  
H.B. NO. 467  
H.D. 2  
S.D. 1

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# A BILL FOR AN ACT

RELATING TO WHISTLEBLOWERS' PROTECTION.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1 SECTION 1. The legislature finds that public employees may  
2 possess information about improper activities such as waste,  
3 fraud, and misconduct occurring in state and local government,  
4 but may not report the information because of fear of  
5 retaliation by their supervisors. Greater protection for public  
6 employees is necessary to encourage them to come forward with  
7 information that will help ensure the efficiency and integrity  
8 of state and local government.

9 The purpose of this Act is to provide additional protection  
10 to public employees who report violations of the law and other  
11 improper activities.

12 SECTION 2. Chapter 78, Hawaii Revised Statutes, is amended  
13 by adding a new section to be appropriately designated and to  
14 read as follows:

15 "§78- Whistleblowers; notice. (a) Upon receipt of any  
16 complaint made pursuant to section 378- , the department of  
17 labor and industrial relations shall inform the complainant of  
18 the complainant's rights under the law.



1        (b) The department of labor and industrial relations shall  
2 prescribe the content and the posting of notices pertaining to  
3 the application of sections 378-     and 396-8(e)."

4        SECTION 3. Chapter 378, Hawaii Revised Statutes, is  
5 amended by designating sections 378-61 to 378-69, as subpart A  
6 and inserting a title before section 378-61, to read as follows:

7                    "A. General Provisions"

8        SECTION 4. Chapter 378, Hawaii Revised Statutes, is  
9 amended by adding a new subpart to part V to be appropriately  
10 designated and to read as follows:

11                    "B. Public Employees

12        §378-     Protected disclosure by a public employee. (a)  
13 In addition to any other protections under this part, a public  
14 employer shall not discharge, threaten, or otherwise  
15 discriminate against a public employee regarding the public  
16 employee's compensation, terms, conditions, location, or  
17 privileges of employment because the public employee, or a  
18 person acting on behalf of the public employee, reports or is  
19 about to report to the public employer or a public body,  
20 verbally or in writing:



1        (1) Any violation or suspected violation of a federal,  
2                    state, or county law, rule, ordinance, or regulation;  
3                    or

4        (2) Any violation or suspected violation of a contract  
5                    executed by the State, a political subdivision of the  
6                    State, or the United States,  
7                    unless the employee knows that the report is false.

8        (b) Every public employer shall post notices pertaining to  
9                    the application of sections 378-    and 396-8(e), as shall be  
10                   prescribed by the department of labor and industrial relations,  
11                   in conspicuous places in every workplace."

12        SECTION 5. Section 378-61, Hawaii Revised Statutes, is  
13        amended by adding two new definitions to be appropriately  
14        inserted and to read as follows:

15        "Public employee" means any employee of the State or any  
16                   county, or the political subdivision and agencies of the State  
17                   or any county, any employee under contract with the State or any  
18                   county, any civil service employee, any probationary or  
19                   provisional employee of the State or county, and any employee of  
20                   any general contractor or subcontractor undertaking the  
21                   execution of a contract with a governmental contracting agency,  
22                   as defined in section 104-1.



1       "Public employer" means the State and any county, the  
2 political subdivisions and agencies of the State and any county,  
3 and any general contractor or subcontractor undertaking the  
4 execution of a contract with a governmental contracting agency,  
5 as defined in section 104-1, and includes any agent thereof."

6       SECTION 6. Section 378-64, Hawaii Revised Statutes, is  
7 amended to read as follows:

8       "~~+~~§378-64~~+~~ Remedies ordered by court. A court, in  
9 rendering a judgment in an action brought pursuant to this part,  
10 shall order, as the court considers appropriate, reinstatement  
11 of the employee~~[-]~~ or public employee, payment of back wages,  
12 full reinstatement of fringe benefits and seniority rights,  
13 actual damages, or any combination of these remedies. A court  
14 may also award the complainant all or a portion of the costs of  
15 litigation, including reasonable attorney's fees and witness  
16 fees, if the court determines that the award is appropriate."

17       SECTION 7. Section 378-65, Hawaii Revised Statutes, is  
18 amended by amending subsection (a) to read as follows:

19       "(a) A person or public employer who violates this part  
20 shall be fined not less than \$500 nor more than \$5,000 for each  
21 violation."



1 SECTION 8. Section 378-66, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "[+]§378-66[+] **Collective bargaining and confidentiality**  
4 **rights, takes precedence.** (a) This [~~part~~] subpart shall not be  
5 construed to diminish or impair the rights of a person under any  
6 collective bargaining agreement, nor to permit disclosures which  
7 would diminish or impair the rights of any person to the  
8 continued protection of confidentiality of communications where  
9 statute or common law provides such protection.

10 (b) Where a collective bargaining agreement provides an  
11 employee rights and remedies superior to the rights and remedies  
12 provided herein, contractual rights shall supersede and take  
13 precedence over the rights, remedies, and procedures provided in  
14 this [~~part-~~] subpart. Where a collective bargaining agreement  
15 provides inferior rights and remedies to those provided in this  
16 [~~part,~~] subpart, the provisions of this [~~part~~] subpart shall  
17 supersede and take precedence over the rights, remedies, and  
18 procedures provided in collective bargaining agreements."

19 SECTION 9. Section 378-67, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "[+]§378-67[+] **Compensation for employee participation in**  
22 **investigation, hearing, or inquiry.** This [~~part~~] subpart shall



1 not be construed to require an employer to compensate an  
2 employee for participation in an investigation, hearing, or  
3 inquiry held by a public body in accordance with section 378-62  
4 of this [~~part-~~] subpart."

5 SECTION 10. Section 378-68, Hawaii Revised Statutes, is  
6 amended to read as follows:

7 "[+]§378-68[+] **Notices of employee protections and**  
8 **obligations.** An employer shall post notices and use other  
9 appropriate means to keep the employer's employees informed of  
10 their protections and obligations under this [~~part-~~] subpart."

11 SECTION 11. Statutory material to be repealed is bracketed  
12 and stricken. New statutory material is underscored.

13 SECTION 12. This Act shall take effect upon its approval.  
14

APPROVED this 27 day of JUN , 2011



GOVERNOR OF THE STATE OF HAWAII

