

SB 1090



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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February 23, 2011

To: The Honorable David Y. Ige, Chair,
and Members of the Senate Committee on Ways and Means

Date: Friday, February 25, 2011
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: Dwight Takamine, Director
Department of Labor and Industrial Relations

Re: S.B. No. 1090, S.D. 1, Relating to Public Employment

I. OVERVIEW OF PROPOSED LEGISLATION

The proposed bill amends sections of the Hawaii Revised Statutes to convert more civil service exempt positions to civil service positions. Section 6 of the bill also revises Section 76-16(b) relating to exemptions under civil service by adding a requirement that all positions specifically exempted by any other law will cease to be exempt three years from the effective date of the bill's enactment.

The purpose of the bill is to comply with Act 253, Session Laws of Hawaii 2000, which restricted creation of exempt positions and required an annual review of exempt positions to determine whether the exempt positions should remain exempt or be converted to civil service positions.

II. CURRENT LAW

Section 371-18, Hawaii Revised Statutes, authorizes the Department of Labor and Industrial Relations to establish positions that may be civil service exempt positions to implement *federally funded* employment and/or training programs.

III. SENATE BILL

The Department supports the intent of the bill but has the following concerns about its impact:

- The language in Section 6, item 17 (page 16) of the bill, imposes a three-year limit from date of enactment for exempt positions to remain exempt. This requirement would apply to Section 371-18, which currently authorizes the Department of Labor and Industrial Relations to establish exempt positions for federally funded employment and training programs. Passage of this bill would seriously hinder the quick establishment of positions and their filling when they are needed, which would delay the receipt of federal funds and subject the unused funds to possible recapture by the federal government.
- The amount of federal funds received can vary significantly from year to year based on the allotments made by formula as well as for special discretionary grants. The allotment formula is based on the proportion of unemployed in each state, which fluctuates every year. The discretionary funds awarded for special needs, such as Aloha Airlines, and Molokai Ranch, also depends upon the unpredictable nature of closings and mass layoffs and the amounts available each year.
- In addition, funds for pilot projects, or additional appropriations made by Congress, such as those under the Recovery Act, become available with very short notice.
- To apply for, plan, and use these funds, a quick start-up is essential to demonstrate that the funds are needed and being expended properly. Slow start-ups indicate to the federal government that the funds may remain unspent, and subject the funds to Congressional rescissions or recapture.
- Although three years may seem to be a reasonable duration for a position to remain exempt, the reality is that some exempt positions remain unfilled between periods of receiving additional funds. Yet, it is extremely critical that they remain available to implement programs should the additional funds materialize. Every new grant, such as those under ARRA, requires more staff to carry out the additional work. Without sufficient staffing, the additional funds would not be utilized to its fullest extent for the benefit of Hawaii's people.

- Almost all exempt positions are in the program development office where plans, financial agreements, reporting systems, and policies are developed and disseminated. Without these initial steps being completed, funds cannot be authorized for expenditure. Therefore, the exempt positions are generally restricted to this office.

For the reasons stated above, we request that exempt positions in LBR 111 be allowed for federally funded programs.



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February 24, 2011

To: The Honorable David Ige, Chair
Senate Committee on Ways and Means (WAM)

Date: Friday, February 25, 2011
Time: 9:00 a.m.
Place: Conference Room 211, State Capitol

From: Mila Kaahanui, Executive Director
Office of Community Services
Department of Labor and Industrial Relations

TESTIMONY IN OPPOSITION

Re: S.B. No. 1090-Relating to Public Employment

Good Morning Chair Ige, Vice-Chair Kidani, and members of the committee, my name is Mila Kaahanui, Executive Director for the Office of Community Services in the Department of Labor and Industrial Relations. We appreciate the opportunity in opposition to the portion of this legislation affecting our office.

You have already received our testimony from the previous hearings; we will not reiterate that portion here. However, we would like to add a few comments as the measure progresses.

We appreciate the Senate Judiciary and Labor committee's sensitivity to the issue raised by our respective public labor unions regarding the low priority with which this issue has been treated in the past. However, after attending previous hearings and listening to the discourse, we believe this bill is unnecessary and premature.

As stated by both parties in the previous hearing, the Hawaii Government Employee's Association (HGEA) is already in conversations with the Department of Human Resources Development (DHRD) at the current time. We believe it is through intelligent examination of each program, rather than blanket position conversion; that appropriate candidates for civil service will emerge. We respectfully request you allow the DHRD and HGEA to conduct their investigation.

Thank you for the opportunity to testify.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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KEALI'I S. LOPEZ
DIRECTOR

EVERETT S. KANESHIGE
DEPUTY DIRECTOR

PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-SIXTH LEGISLATURE
Regular Session of 2011

Friday, February 25, 2011
9:00 a.m.

**WRITTEN COMMENTS ON SENATE BILL NO. 1090, S.D. 1, RELATING TO PUBLIC
EMPLOYMENT.**

TO THE HONORABLE DAVID Y. IGE, CHAIR, AND MICHELLE KIDANI, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to provide comments in opposition to the repeal of the Office of Consumer Protection's restitution fund as stated in Senate Bill No. 1090, S.D. 1, Relating to Public Employment. My name is Stephen Levins, and I am the Executive Director of the Office of Consumer Protection ("OCP") representing the Department.

Pursuant to a recent proposal, Senate Bill 1090, S.D.1, appears to repeal the Office of Consumer Protection's restitution fund. (See, P. 7, lines 12 to 14 of Senate Bill 1090, S.D. 1.)

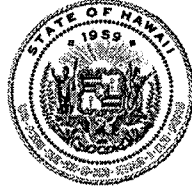
~~[and fees collected for deposit in the office of consumer protection
restitution fund, section 487-14, the real estate appraisers fund, section
466K-4,]~~

The OCP does not believe that such a repeal is necessary or in the interest of Hawaii consumers.

As you may know, the OCP routinely obtains restitution on behalf of Hawaii consumers as part of its enforcement efforts. In many instances, the restitution is facilitated by returning recovered monies wrongfully obtained by businesses to consumers through its restitution fund. Eliminating this fund will make it virtually impossible for the OCP to continue to perform this vital function. Instead, restitution monies will have to be tendered directly from the business to the consumer. OCP will no longer be able to act as a conduit and it will require much more effort on its behalf to ensure that the monies owed by businesses to consumers are actually paid.

Eliminating this fund will achieve little but harm to the consumer. In view of this, the OCP respectfully requests that it be retained.

Thank you for providing us with the opportunity to express our concerns.



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**PRESENTATION OF THE
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

**TO THE SENATE COMMITTEE ON
WAYS AND MEANS**

**TWENTY-SIXTH LEGISLATURE
Regular Session of 2011**

**Friday, February 25, 2011
9:00 a.m.**

WRITTEN COMMENTS

**TESTIMONY ON SENATE BILL NO. 1090, S.D. 1, RELATING TO PUBLIC
EMPLOYMENT.**

**TO THE HONORABLE DAVID Y. IGE, CHAIR,
AND MEMBERS OF THE COMMITTEE:**

My name is Alan Taniguchi, Executive Officer for the Real Estate Appraiser Program, Professional and Vocational Licensing Division ("PVLD") of the Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to present testimony on Senate Bill No. 1090, S.D. 1, Relating to Public Employment. The Department opposes a specific section of this bill.

Section 3 of this bill proposes to repeal the Real Estate Appraisers Fund. The deletion of this fund, in Section 3, page 7, line 13-14, will jeopardize a federal mandate to collect a national registry fee from all licensed and certified appraisers. This fund is

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used as a pass through because all the monies collected are forwarded on to the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. We do not keep any of the funds collected. If this fund is repealed, we will not be in compliance with the federal Financial Institutions Reform, Recovery and Enforcement Act of 1989 and the federal rules adopted thereunder.

Thank you for the opportunity to provide written comments in opposition to Section 3 of Senate Bill No. 1090, S.D. 1.



The Judiciary, State of Hawaii

Testimony to the Twenty-Seventh Legislature, Regular Session of 2011

Senate Ways and Means Committee

The Honorable David Ige, Chair

The Honorable Michelle Kidani, Vice Chair

Friday, February 25, 2011, 9:00 a.m.

Conference Room 211

by

Rodney A. Maile

Administrative Director of the Courts

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1090, S. D. 1, Relating to Public Employment.

Purpose: Converts a number of civil service exempt positions to civil service positions. Clarifies that certain positions shall be filled according to the state civil service law.

Judiciary's Position:

Senate Bill No. 1090, S. D. 1, proposes to convert a number of exempt civil service positions to civil service by amending various sections of Hawaii Revised Statutes (HRS), Chapter 76-16.

The Judiciary supports the intent of this bill as a means to support and preserve the integrity of civil service and the merit principle. However, the amendment to Section 76-16 (b) (17), which would "cease" the exemption of positions authorized by this section commencing July 1, 2014, will create statutory ambiguity and conflict.

For example, the Judiciary relies on this section to exempt positions such as justices, judges and the Administrative Director of the Courts. These positions should consistently remain exempt from civil service by the very nature of their work and by provisions of the State Constitution. The selection and appointment of judges, justices as prescribed by Article VI-Section 3 of the State Constitution, and the selection process to fill these appointed positions



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would not conform to civil service recruitment procedures. Further, the position of the Administrative Director of the Courts, whom also by constitutional mandate "serves at the pleasure of the Chief Justice," should remain exempt from civil service.

In addition, converting other exempt positions without consideration or analysis of whether a legitimate, operational need continues for the position to remain exempt from civil service has the potential for undermining our organization's ability to effectively manage our workforce and operations. In order for the Judiciary to carry out its mission of administering justice, it should have available any and all legitimate workforce management tools to support a sound human resources program. A unilateral conversion undermines our ability to remain responsive and nimble in meeting the needs of our clients and the public at large.

The Judiciary requests retaining the exemptions permitted in Section 76-16 (b) (17) by removing the mandatory conversion to civil service language. As an alternative, the Judiciary requests to be excluded from this measure as we believe we have responsibly applied the exemptions afforded by law.

For the foregoing reasons, the Judiciary respectfully requests your consideration of our comments as noted above.



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TO THE
SENATE COMMITTEE ON
WAYS AND MEANS

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2011

Friday, February 25, 2011
9:00 a.m.

WRITTEN COMMENTS

TESTIMONY ON S.B. NO. 1090, S.D. 1 - RELATING TO PUBLIC EMPLOYMENT

THE HONORABLE DAVID IGE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Keali`i Lopez, Director of Commerce and Consumer Affairs ("Department"). The Department opposes section 3 of the bill. This section purports to replace prior authorization to hire outside of chapter 76, Hawaii Revised Statutes ("HRS"), with a requirement to hire in accordance with chapter 76, HRS. The only positions that would be authorized as exempt would be hearings officers and attorneys.

The Department also opposes section 6 of the bill, which states that positions specifically exempted by any other law from chapter 76 shall cease to be exempt three years from the date the bill is enacted.

By precluding the Department from hiring outside of chapter 76, HRS, the bill represents a significant departure from the Legislature's previous vision for the

Department and its compliance resolution fund over the last ten years. We strongly recommend that you give serious consideration to the effects of undoing a long history of what, we submit, has been a successful model for operating the Department.

Exempt employees were central to the understanding reached by the Legislature with the business community as part of the creation of the compliance resolution fund. On top of the taxes that they already pay, businesses would pay fees to support the Department's services, including consumer protection services that arise from the conduct of business, in return for assurances that the Department would be run in a business-like manner.

In order to meet those expectations, the Department needs employees with specialized skills and technical expertise in areas ranging from banking to utilities to insurance. By exempting positions from chapter 76, the Legislature gave the Department a fighting chance at locating, hiring, and paying and retaining people in those jobs.

The flexibility afforded the Department by its ability to exempt positions from chapter 76, HRS, is a central feature in its success. The difficulty that we have in competing for employees with private industry and the difficulty that we have in finding qualified applicants for specialized work, would only be exacerbated if virtually all of our positions were converted to civil service.

With respect to section 6 of the bill, it is unclear what would happen to those employees in positions that are exempt by laws other than chapter 76, HRS. In three years from the date the bill is enacted, the exemption for those positions would be repealed. At a minimum, this would cause major disruptions to the Department's

operations and ability to service the public. It would also create a great deal of havoc in the personal lives of those employees.

If, in order to prevent the repeal of those exempt positions, the Department converted those positions to civil service, we would likely see some of the incumbents choosing to leave their positions unless they are guaranteed no reduction in pay rate. Currently, there are no contract provisions agreed to between the State and the union addressing the compensation of exempt employees appointed to civil service positions. The State previously entered into a Supplemental Agreement with the Union that was generous to exempt employees. However, the Supplemental Agreement which guaranteed those generous provisions to exempt employees did not exist after June 30, 2009. Without a guarantee that those generous provisions would be a part of any future conversation process, it would be difficult to persuade exempt employees to elect to participate in the conversation of their positions to civil service. As such, if mandated to participate in such a conversation those employees would seek jobs in the private sector that offer pay that is comparable to what they are currently making as exempt employees.

The Department understands and appreciates the value of chapter 76, HRS. In fact, the Department has been identifying appropriate exempt positions for conversion to civil service in response to Act 300, Session Laws of Hawaii ("SLH") 2006. Specifically, the Department has converted 51 exempt positions to civil service in response to Act 300, SLH 2006. Additionally, in response to Senate Concurrent Resolution (SCR) 222 of the 2008 Legislative Session, the department converted all 35

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"clerical and paraprofessional" exempt positions to civil service that were identified in our review.

Given the number of positions that have converted from exempt to civil service over the last two years, the Department believes it has complied with the mandates of Act 253 and Act 300. However, it will continue to review its positions and programs and will make additional conversions as necessary.

Thank you for the opportunity to submit testimony.