



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

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February 1, 2011

To: The Honorable Clayton Hee, Chair
Senate Committee on Judiciary and Labor (JDL)

Date: Wednesday, February 2, 2011

Time: 10:00 a.m.

Place: Conference Room 016, State Capitol

From: **Mila Kahaanui, 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 Hee, Vice-Chair Shimabukuro, and members of the committee, my name is **En Young** and I am the legislative liaison for the Office of Community Services in Department of Labor and Industrial Relations. We appreciate the opportunity to testify on behalf of OCS, in **opposition** to the portion of this legislation affecting our office.

OCS appreciates the committee's diligence in periodically reviewing exempt positions, and agrees that for the past few years this matter may have not gotten the attention it deserved. Civil Service provides additional security and membership in a group of dedicated individuals that continually sacrifice their time and effort in support of our State. However, at this time we feel OCS is inappropriate for conversion at this time for two reasons:

- 1) OCS funding structure is inconsistent with civil service. As an office of entirely Federally-funded individuals, OCS provides auxiliary support for State programs. The bulk of OCS' funding and workload come from Federal sources.
- 2) OCS is community-based and does not provide direct services. Program managers at OCS are often called upon to work non-traditional hours or weekends to complete work that cannot be done during the standard business day. The civil service system would restrict management's ability to grant flex and comp time in a short period of time, should such an emergency situation occur.

We respectfully ask to be removed from this bill, and sincerely appreciate the opportunity to testify on this measure.

NEIL ABERCROMBIE
GOVERNOR



LATE TESTIMONY
JODIE F. MAESAKA-HIRATA
INTERIM DIRECTOR

***WRITTEN
TESTIMONY**

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DEPARTMENT OF PUBLIC SAFETY
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Deputy Director
Administration

Deputy Director
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KEITH KAMITA
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON **SENATE BILL 1090**
RELATING TO PUBLIC EMPLOYMENT

by
Jodie Maesaka-Hirata, Interim Director
Department of Public Safety

COMMITTEE ON JUDICIARY AND LABOR
Senator Clayton Hee, Chair
Senator Maile S.L. Shimabukuro, Vice Chair

Wednesday, February 02, 2011, 8:30 AM
State Capitol, Conference Room 016

Chair Hee, Vice Chair Shimabukuro, and Members of the Committee:

The **Department of Public Safety** opposes **Senate Bill 1090**, that will convert a number of civil service exempt positions to civil service positions.

This measure will impose undue restrictions and hamper the Department's ability to operate efficiently and effectively.

Establishing positions exempt from civil service allows the Department to create positions to fulfill the program or funding requirements, including the specialized knowledge, skills and abilities and any required licensures or certifications.

The exempt positions provide the Department with flexibility in establishing position descriptions and level of compensation to attract highly qualified individuals or meet the funding requirement of the program, as well as flexibility to recruit and fill such exempt positions on a timely basis. This includes exempt

positions established to fill highly specialized, technical and/or professional work, or to fulfill requirements of court ordered actions and/or settlement agreements.

The exempt positions also allow the Department to establish positions based on the funding source and meeting program requirements, such as a program operating like a self-sustaining private business whereby revenue generated funds such exempt positions. The funding sources may include special funds and/or revolving funds.

The Department must be able to have the latitude to establish and utilize exempt positions to conduct its affairs and to successfully accomplish its mission and meet the service needs of those we serve.

Thank you for the opportunity to testify on this matter.



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LT. GOVERNOR

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INTERIM DIRECTOR

EVERETT KANESHIGE
DEPUTY DIRECTOR

TO THE
SENATE COMMITTEE ON
JUDICIARY AND LABOR

THE TWENTY-SIXTH STATE LEGISLATURE
REGULAR SESSION OF 2011

Wednesday, February 2, 2011
10:00 a.m.

TESTIMONY ON S.B. NO. 1090 RELATING TO PUBLIC EMPLOYMENT

THE HONORABLE CLAYTON HEE, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Keali'i Lopez, Director of Commerce and Consumer Affairs ("Department"). The Department opposes sections 3, 15, and 16 of the bill. Those sections purport 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.

The Department is concerned over the effects of sections 3, 15, and 16 of the bill, to the extent that they remove the director's authority under sections 26-9(o), 412:2-109, and 440G-12, HRS, to hire engineers, financial analysts, examiners, administrative support personnel, and other necessary staff without regard to chapter 76, HRS. The only positions explicitly authorized as exempt would be hearings officers, attorneys, and the administrator of the Department's Cable Television Division (although section 6 of the bill would repeal that position in three years unless the Legislature extends the position, or if the position is converted to civil service).

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 "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.