

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

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March 17, 2011

To: The Honorable Karl Rhoads, Chair,  
and Members of the Senate Committee on Labor and Public Employment

Date: Friday, March 18, 2011  
Time: 10:00 a.m.  
Place: Conference Room 309, 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 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.

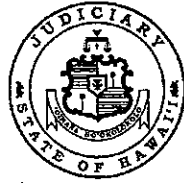
### III. SENATE BILL

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 amount of 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.



*The Judiciary, State of Hawaii*

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

House Committee on Labor and Public Employment

The Honorable Karl Rhoads, Chair

The Honorable Kyle T. Yamashita, Vice Chair

Friday, March 18, 2011, 10:00 a.m - 12:00 p.m..

Conference Room 309

by

Rodney A. Maile

Administrative Director of the Courts

**WRITTEN TESTIMONY ONLY**

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**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



Senate Bill No. 1090, S. D. 1, Relating to Public Employment  
House Committee on Labor and Public Employment  
Friday, March 18, 2011  
Page 2

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.

NEIL ABERCROMBIE  
GOVERNOR

BRIAN SCHATZ  
LT. GOVERNOR

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KEALI'I S. LOPEZ  
DIRECTOR

EVERETT S. KANESHIGE  
DEPUTY DIRECTOR

TO THE  
HOUSE COMMITTEE ON LABOR AND  
PUBLIC EMPLOYMENT

THE TWENTY-SIXTH STATE LEGISLATURE  
REGULAR SESSION OF 2011

Friday, March 18, 2011  
10:00 a.m.

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

THE HONORABLE KARL RHOADS, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Keali'i Lopez, Director of Commerce and Consumer Affairs ("Department"). The Department opposes Sections 3, 6, 15, and 16 of the bill. These 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.

Furthermore, Section 3 proposes to repeal the Office of Consumer Protection's Restitution Fund and the Real Estate Appraisers Fund. The deletion of the Restitution Fund, found in Section 3, page 7, lines 12-13, is unnecessary and runs counter to the

interests 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 will require much more effort on its behalf to insure that the monies owed by businesses to consumers are actually paid.

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

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

our review. Of the 160 conversions between Nov. 1, 2006 to Oct. 31, 2009, 32% of these conversions done by this Department. Approximately 66% of the positions in the Department are civil service positions.

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

Thank you for the opportunity to submit testimony.

NEIL ABERCROMBIE  
GOVERNOR



SUNSHINE P.W. TOPPING  
INTERIM DIRECTOR

BARBARA A. KRIEG  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

March 16, 2011

TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
For Hearing on Friday, March 18, 2011  
10:00 a.m., Conference Room 309

BY

SUNSHINE P.W. TOPPING  
INTERIM DIRECTOR

**Senate Bill No. 1090, SD 1**  
**Relating to Public Employment**

TO CHAIRPERSON KARL RHOADS AND MEMBERS OF THE COMMITTEE:

Senate Bill No. 1090 amends various sections of the Hawaii Revised Statutes (HRS) to effect the mandatory conversion of positions that are exempt from civil service. It also terminates the exemption of positions from civil service under Section 76-16(b)(17), HRS, three years after the measure is approved.

The Department of Human Resources Development (DHRD) supports the intent of this bill; however, we have some concerns.

The intent of the proposed amendment to Section 76-16(b)(17), HRS, is unclear. While the amendment appears to indicate that positions which are exempt from civil service based on this subsection will no longer be exempt from civil service in three years, provisions of statutes that have authorized the establishment of these exempt positions will continue to exist, and thus allow further establishment of exempt positions.

While Senate Bill No. 1090, SD 1 seeks to reduce the number of exempt positions as prescribed by Act 253, Session Laws of Hawaii 2000, and Act 300, Session Laws of Hawaii 2006, it eliminates the flexibility of the State to determine how best to fill positions and maintain services for the public. It also eliminates the latitude to establish and utilize exempt positions to

conduct the affairs of departments, which is absolutely necessary if we are to be successful in achieving our respective responsibilities and service to the public. This is an essential management tool.

The Department of Human Resources Development (DHRD) believes that many exempt positions can be replaced with civil service positions; however, there may be situations where unusual circumstances would make the change unfeasible or undesirable. For example, it would not be feasible for stadium events workers, who are employed on an intermittent basis to be employed in civil service positions. Another example of where it is appropriate to employ exempt employees is when authorized positions are totally funded through the sale of non-governmental products or services, such as are found in the Department of Public Safety's Correctional Industries program. Appointments to such positions are dependent upon the sales and revenue generated from the sales, thus necessitating flexibility not afforded by the civil service system.

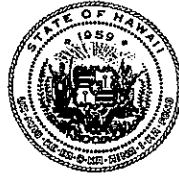
In order to meet the requirements of Act 253 and Act 300, and balance the competing purposes of civil service and exempt systems, DHRD would like to work collaboratively with the Hawaii Government Employees Association (HGEA) and the executive branch departments to take a measured approach to convert exempt positions to civil service positions when possible. DHRD and the HGEA have worked collaboratively to establish a Supplemental Agreement to facilitate the conversion of exempt employees to civil service positions.

Lastly, DHRD will continue to apprise the Legislature about the number of exempt positions that have been converted to civil service positions by submitting annual reports, in accordance with Act 300, SLH 2006.

Thank you for the opportunity to testify on this measure.

Written Testimony

NEIL ABERCROMBIE  
GOVERNOR OF HAWAII



LORETTA J. FUDDY, A.C.S.W., M.P.H.  
INTERIM DIRECTOR OF HEALTH

STATE OF HAWAII  
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HONOLULU, HAWAII 96801-3378

In reply, please refer to:  
File:

**Committee on Labor and Public Employment**

**S.B. 1090, SD1, Relating to Public Employment**

**Testimony of Loretta J. Fuddy, A.C.S.W., M.P.H.  
Interim Director of Health**

**March 18, 2011**

1 **Department's Position:** The department respectfully opposes this measure, most significantly  
2 during this time of economic uncertainties and evolving departmental priorities.

3 **Fiscal Implications:** This measure will significantly negatively impact immediate and ongoing  
4 operations, functions, performance, and personnel within the department.

5 **Purpose and Justification:** Along with all executive departments, the Department of Health (DOH)  
6 embraces and respects the foundation of Chapter 76-16(b), Hawaii Revised Statutes, statutorily  
7 establishing civil services in state government. Indeed, our hard working and dedicated civil servants  
8 are at the core of every functioning department.

9 The DOH has encountered great challenges in recruiting and retaining the broad variety of  
10 qualified individuals that are necessary to fill the ever increasing, both educationally and technically,  
11 demanding field of public health through the civil service process. This is not to condemn the civil  
12 service model as it has served and continues to serve our State as best as it can in its current form. It is  
13 to very strongly contend that major, significant improvements must in fact be made to the civil service  
14 model first, before this Legislature moves to dismantle the band-aides that have been previously  
15 constructed in the form of exemptions. We respectfully but strongly suggest that key components to the  
16 existing civil service model must be changed. A serious and result-focused dialogue should be put

1 forward by this Legislature to work collectively to make concrete changes that will assist rather than  
2 hinder the executive departments' abilities to perform core functions for the benefit of this State, to  
3 greatly improve our options and abilities to compete with comparative employment opportunities, and to  
4 bring management and unions to an enhanced understanding of need and response. The Department of  
5 Health urgently calls upon each of us, Executive, Legislature, Judiciary, and Unions, to come to the  
6 table for this meaningful dialogue so that we, State Government, can progress into this era of change and  
7 challenges a manner that honors and fulfills our responsibilities to the entire State of Hawaii.

8 Specific to this measure, DOH suggests the following:

9 1) §348F-5, HRS enables the Disability and Communication Access Board (DCAB) to "hire an  
10 executive director, who may hire staff to assist in the performance of the board's duties. The staff shall  
11 be hired without regard to chapter 76; provided that the executive director and staff shall be eligible for  
12 participation in state employee benefit plans." The DCAB is a Governor-appointed Board and it is  
13 imperative to have staffs who meet the program and policy directives consistent with the direction of the  
14 Board. The exempt status of the positions in the DCAB organization enables the Board to employ  
15 individuals with unique skills and abilities, especially as it strives to employ individuals with disabilities.

16 2) §334-4, HRS enables the director to appoint an administrator, associate administrators, a  
17 director of psychosocial rehabilitation, a chief of the department of nursing and other highly technical  
18 and skilled individuals for the Hawaii State Hospital, which is the sole hospital in Hawaii dedicated to  
19 serving adults with serious mental illness. Positions for psychiatrists in our Adult Mental Health  
20 Division and Child and Adolescent Mental Health Division are exempted from chapter 76, also under  
21 this law. The psychiatrists provide psychiatric treatment and rehabilitation to adults and children  
22 suffering from serious mental illness and co-occurring disorders. It is imperative to maintain the  
23 psychiatrists as exempt from civil service. The civil service system and negotiated salary schedules  
24 restrict management's ability to attract and retain highly qualified individuals and to appropriately

1 compensate them for services provided; specialized knowledge, skills and abilities; required licensure;  
2 and numerous medical practices requirements. Therefore, we oppose Page 12, Section 6 (b) (17), of the  
3 bill which states that positions specifically exempted by another law shall cease to be exempt  
4 commencing July 1, 2014. The extent of damage this singular line can do to the mental health system is  
5 simply untenable.

6 3) §321-4.3,HRS enables the director to appoint individuals to exempt positions known as  
7 epidemiologists for the purpose of investigating diseases and injuries which threaten the public health  
8 and safety. Epidemiologists design studies to address recurring public health problems unique to our  
9 environment, conduct applied research, design and evaluate health surveillance systems, and synthesize  
10 the results of surveillance, investigations, and new scientific developments for use by public health  
11 decision-makers. The civil service system does not provide appropriate means for recruiting, retaining,  
12 and compensating staff with the high degree of specialization, scientific training, expertise and  
13 multidisciplinary skills necessary to build and maintain DOH's capacity for public health and  
14 surveillance and response.

15 4) Other positions exempted by specific laws include the Toxicologist, Ecological Risk Assessor,  
16 and Environmental Ombudsman, in our Environmental Health Administration. These positions are  
17 environmental experts performing highly technical work requiring specialized knowledge, skills, and  
18 abilities.

19 Finally, in the absence of the greater dialogue on civil service reforms, the Department of Health  
20 assures the Legislature that we are continuously evaluating our operations, services, resources, and  
21 staffing in order to operate at a higher level of efficiency. It is through this process that the department  
22 will determine which exempt positions will be transitioned to civil service.

23 For these reasons, we respectfully oppose this specific measure, but enthusiastically welcome  
24 further serious dialogue on this matter.

1 Thank you for the opportunity to testify.



**NEIL ABERCROMBIE**  
GOVERNOR



**JODIE F. MAESAKA-HIRATA**  
DIRECTOR

**MARTHA TORNEY**  
Deputy Director  
Administration

**JOE W. BOOKER, JR.**  
Deputy Director  
Corrections

**KEITH KAMITA**  
Deputy Director  
Law Enforcement

**\*WRITTEN  
TESTIMONY**

STATE OF HAWAII  
**DEPARTMENT OF PUBLIC SAFETY**  
919 Ala Moana Boulevard, 4th Floor  
Honolulu, Hawaii 96814

No. \_\_\_\_\_

**TESTIMONY ON SENATE BILL 1090 SD1  
RELATING TO PUBLIC EMPLOYMENT**

by  
Jodie F. Maesaka-Hirata, Director  
Department of Public Safety

**COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT**  
Representative Karl Rhoads, Chair  
Representative Kyle T. Yamashita, Vice Chair

Friday, March 18, 2011, 10:00 AM  
State Capitol, Conference Room 309

Chair Rhoads, Vice Chair Yamashita, and Members of the Committee:

The Department of Public Safety opposes Senate Bill 1090 SD1 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

Senate Bill 1090 SD!  
March 18, 2011  
Page 2

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.