

SB1090
TESTIMONY

NEIL ABERCROMBIE
GOVERNOR



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INTERIM DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
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February 1, 2011

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on Wednesday, February 2, 2011
10:00 a.m., Conference Room 16

BY

SUNSHINE P.W. TOPPING
INTERIM DIRECTOR

Senate Bill No. 1090
Relating to Public Employment

TO CHAIRPERSON CLAYTON HEE 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 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.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

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The Twenty-Sixth Legislature, State of Hawaii
The Senate
Committee on Judiciary and Labor

Testimony by
Hawaii Government Employees Association
February 2, 2011

S.B. 1090 – RELATING TO
PUBLIC EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B. 1090. The issue of converting exempt employees has been pending since the passage of Act 253, SLH 2000. Exempt employees who are included in collective bargaining units do not have the same rights and benefits as their civil service counterparts. These employees are not protected by several articles in our collective bargaining agreements, including discipline, overtime and reduction-in-force.

Act 253, SLH 2000, required the Director of Human Resources Development to review exempt positions and determine whether these positions should remain exempt permanently. If DHRD determines that a position should no longer be exempt, they are required to consult with the appointing authority and remove the exemption from civil service. It also required DHRD to submit annual reports to the Legislature on the status of the conversion process. The first report, submitted in 2004, revealed that there were 2,150 positions exempted from civil service (Chapter 76, HRS) under Section 76-16(b)(17), HRS, and only 250 positions were converted to civil service.

Act 300, SLH 2006, required additional reporting requirements about exempt positions to the Legislature. It also set forth a fair process to convert positions from exempt to civil service, and enabled HGEA to negotiate a supplemental agreement with DHRD to facilitate the conversion of exempt positions to civil service through compensation incentives. Despite these improvements, progress in converting exempt positions to civil service has been extremely slow. The most recent report submitted to the 2011 Legislature reported no exempt positions covered by Act 300, SLH 2006 were converted to civil service during the reporting period between November 1, 2009 and October 31, 2010, leaving a total of 2,126 exempt positions under this particular exemption (Section 76-16 (b) 17, HRS).

The primary obstacle to converting exempt employees to civil service is the unwillingness of line departments to take such action. Unfortunately, voluntary conversion does not work. These departments must be required to convert the positions contained in S.B. 1090 and to convert the remaining exempt positions under Section 76-16(b)17, HRS within three years after the passage of this bill.

TO: Senator Clayton Hee, Chair
Senator Maile Shimabukuro, Vice Chair
Senate Committee on Judiciary and Labor

FROM: Sara L. Collins, Ph.D., Legislative Chair
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: February 2, 2011, 10:00 AM, Conference Room 016
SUBJECT: Testimony in Support of SB 1090 (Relating to Public Employment)

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing testimony in strong support of SB 1090, Relating to Public Employment.

SB 1090 amends sections of the Hawaii Revised Statutes (HRS) in order to conform with Act 253, Session Laws of Hawaii 2000, which placed restrictions on the creation of civil service exempt positions and required an annual review of exempt positions in order to determine whether they should remain exempt or be converted to civil service positions. Among the positions that are still exempt from civil service are those held by qualified historic preservation professionals at the State Historic Preservation Division (SHPD).

We strongly support SB 1090 and the overdue conversion of exempt professional positions at SHPD for the following reasons:

- Civil service status promotes stability among staff and fosters the retention of "institutional memory" in government agencies – something that can be critical to an agency's ability to function over the years as normal levels of staff turnover occur, due to retirements and the like.
- Greater fiscal responsibility and improved future planning: Conversion of the current exempt positions – particularly exempt positions that have existed for decades – will result in greater fiscal responsibility and better planning for future departmental and governmental needs. With conversion to civil service, the costs for these positions would be more predictable because salaries ranges assigned to the civil service classes would be consistent with that of other state workers and therefore easier to budget.
- Protection of regulatory workers from inappropriate pressure and treatment: At SHPD, regulatory staff hold the majority of exempt positions, and much of their work includes the regulation of compliance with historic preservation laws in the state. Exempt status makes these individuals very vulnerable to inappropriate pressure during regulatory decision-making, from both inside and outside state government. Since an exempt employee can be fired "at will" it is sometimes difficult for them to express a professional opinion contrary to the wishes of a manager or a powerful member of the public, without fear of adverse consequences.
- Establishment of appropriate position descriptions to be filled by qualified personnel: Regulators within the SHPD must meet professional standards set by the National Park Service for historic preservation professionals; specific disciplines include architecture, architectural history, history, and archaeology. The exempt status of these positions has

or could be used to make inappropriate and unwarranted changes to position descriptions when filling vacancies. This can result in the selection of individuals who are hired at salaries that may not be commensurate with their qualifications and experience. Converting the exempt positions to civil service status would ensure that solid, professionally adequate position descriptions are developed and adhered to in hiring, performance, and evaluation, and that qualified individuals are selected to fill them at appropriate compensation levels.

An established process exists for converting exempt positions to civil service. It is high time that these conversions got underway at SHPD.

We respectfully ask you that you pass SB 1090 unamended. Thank you for considering our comments. Should you have any questions, please feel free to contact me at the above email address.