

NEIL ABERCROMBIE  
GOVERNOR



BARBARA A. KRIEG  
DIRECTOR

LEILA A. KAGAWA  
DEPUTY DIRECTOR

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

February 10, 2014

TESTIMONY TO THE  
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on Tuesday, February 11, 2014  
8:45 a.m. Conference Room 309

BY

BARBARA A. KRIEG  
DIRECTOR

**House Bill No. 1966, Proposed HD1**  
**Relating to Public Employees**

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

House Bill 1966, Proposed House Draft 1, requires the state auditor to (1) review the current civil service exemption process in section 76-16, Hawaii Revised Statutes and recommend procedures and guidelines to ensure the appropriate utilization of this process, (2) determine the reasons State departments and agencies have “circumvented the civil service exemption process” and (3) work with the departments and agencies to update the process for updating position descriptions to accurately reflect duties that employees are expected to perform. The Department of Human Resources Development (DHRD) has comments on the proposed draft.

DHRD is ready and willing to assist the State Auditor in connection with any subject matter review. However, as summarized below, we have concerns about the

inaccuracy of statements in Section 1 and the language in Section 2.

First, the State Executive branch departments under DHRD have recently converted or are in the process of converting close to 500 positions from exempt to civil service. This is a substantial number of positions.

Second, DHRD is not aware of any correlation between civil service exemptions and any lack of updated position descriptions. We agree that departments should maintain accurate position descriptions at all times, although we understand this is not always done, whether for exempt or civil service positions, due to the challenges of competing priorities. We also note there are existing policies and procedures for the establishment of position descriptions, including the update of position descriptions when there are significant changes to the job duties and responsibilities.

Finally, we disagree with the stated assumption that State departments and agencies are "circumventing" the civil service or civil service exemption process. Exempt positions can only be established where there is statutory authority for the exemption. Departments and agencies should not be faulted for complying with the law. There are also good reasons for civil service exemptions in appropriate circumstances, including but not limited to where funding is temporary, the function is of short duration, or the positions require highly specialized skills.

Thank you for the opportunity to present testimony on H.B.1966, H.D.1.

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**HAWAII GOVERNMENT EMPLOYEES ASSOCIATION**  
AFSCME Local 152, AFL-CIO

**RANDY PERREIRA**, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Seventh Legislature, State of Hawaii  
Hawaii State House of Representatives  
Committee on Labor and Public Employment

Testimony by  
Hawaii Government Employees Association  
February 11, 2014

H.B. 1966 (Proposed H.D. 1) – RELATING TO PUBLIC EMPLOYEES

The Hawaii Government Employees Association supports the purpose and intent of H.B. 1966, Proposed H.D. 1. This legislation, as proposed, would require the State Auditor to review the current civil service exemption process and make recommendations to ensure that civil service exemption process is used appropriately and only in extraordinary circumstances.

According to information from DHRD as of December 2013, there are 1,525 exempt employees in HGEA bargaining units under the two largest exemptions contained in Section 76-16, HRS (Sections 76-16 (b) 12 and (b) 17), which refers to other statutes. There are approximately 100 individual statutory exemptions from civil service under Section 76-16 (b) (17), HRS. Some of these exemptions are mandatory while others are permissive.

Under all 27 exemptions listed in Section 76-16, HRS, there are 2,894 exempt employees within the state Executive Branch, according to the Report to the 2014 Legislature on Positions Exempted from Civil Service. We estimate that between 8-9% of all state employees are exempt from civil service. In contrast, the State of California, limits exempt employees in Executive Branch departments to just one-half of one percent. Despite having more than 195,000 full time state employees, there are only about 1,000 exempt employees in California's executive branch.

There are specific problems and challenges created by exempt positions. While many are included in HGEA bargaining units, and the union collects dues from them, they are not protected under the discipline and reduction-in-force articles for bargaining units 3, 4 and 13. Exempt employees do not receive step movements and are precluded from earning overtime if they are in bargaining unit 13. This creates serious inequities between exempt and civil service employees that have become worse over time as their numbers have grown. In essence, we have a two-tiered system of state employment, one for civil service employees and another for exempt employees despite the State Constitutional mandate for civil service in Article XIII, Section 2 and the statement of purpose in Section 76-1, HRS. This statement of purpose is reiterated in Section 76-16, HRS.

The exempt status of employees can also easily compromise their ability to render objective judgments if they perform regulatory functions. Exempt employees are considered "at will" employees by the Department of Human Resources Development. Consequently, how much independence and objectivity can "at will" employees exercise? Employees who are "at will" are less likely to exercise independent judgment, especially to offer critical opinions, out fear of being fired. This is why positions with regulatory authority should be filled by civil service employees.

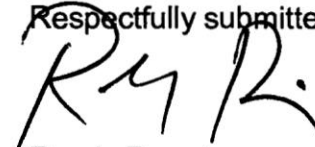
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The number of voluntary conversions from exempt to civil service by DHRD and the various line departments has been small. Here are the numbers of conversions over the past several years: 24 – 2013, 50 – 2012, 20 – 2011 and 4 – 2010. The voluntary conversion process is not effective. Many exempt employees have been employed by the State of Hawaii for years and provide valuable service to their respective departments, yet they are not treated fairly by the employer.

We suggest amending the bill to allow the State Auditor to work with the Hawaii Government Employees Association in this important project. Another suggested amendment to this measure is in Section 2, subsection (b) (2). Before position descriptions can be updated, there needs to be a review of the class specifications that are the benchmark upon which job descriptions are based. Many of these class specifications are outdated and need to be revised.

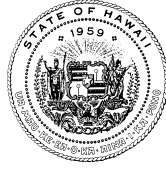
We appreciate the opportunity to testify in support of H.B. 1966, Proposed H.D. 1 with the suggested amendments.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy R.", is written over the typed name and title.

Randy Perreira  
Executive Director

NEIL ABERCROMBIE  
GOVERNOR



DWIGHT TAKAMINE  
DIRECTOR

JADE T. BUTAY  
DEPUTY DIRECTOR

MILA KA'AHANUI  
EXECUTIVE DIRECTOR

STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
**OFFICE OF COMMUNITY SERVICES**  
830 PUNCHBOWL STREET, ROOM 420  
HONOLULU, HAWAII 96813  
[www.hawaii.gov/labor](http://www.hawaii.gov/labor)  
Phone: (808) 586-8675 / Fax: (808) 586-8685  
Email: [dhir.ocs@hawaii.gov](mailto:dhir.ocs@hawaii.gov)

**LATE**

February 10, 2014

To: The Honorable Mark M. Nakashima, Chair  
Kyle T. Yamashita, Vice Chair; and  
Members of the House Committee on Labor & Public Employment

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

Subject: HB1966 HD1 Proposed, Relating to Public Employees

Date: Tuesday, February 11, 2014  
Time: 8:45 a.m.  
Place: House Conference Room 309

POSITION: **Support with Comments**

The Office of Community Services (OCS), a State office administratively located in the DLIR, supports the intent of this bill and respectfully offers comments. OCS currently has 12 staff members, all but two of whom have begun State employment within the past three years. All of the OCS staff are Civil-Service exempt.

## **I. OVERVIEW OF THIS PROPOSAL**

This bill proposes to direct the State Auditor to review the current civil service exemption process and recommend procedures and guidelines to ensure the appropriate use of this process in extraordinary circumstances. The bill would also direct the State Auditor to examine how to update and modernize the job descriptions and expectations of various State personnel. The State Auditor would be required to report to the Legislature 20 days before the commencement of the 2015 Session of the Legislature.

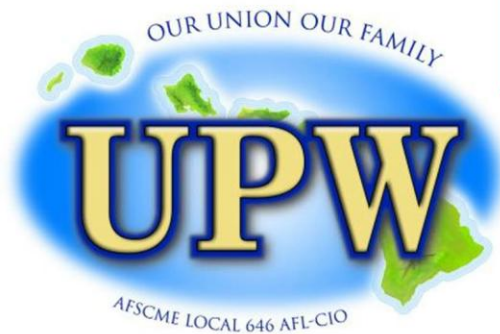
## **II. CURRENT LAW**

Converting more staff to Civil Service is a goal set out in Act 253, SLH 2000, and Act 300, SLH 2006. However, the actual rate of conversions is not as swift as may have been anticipated.

**III. COMMENTS ON THE HOUSE BILL**

OCS believes that it is appropriate to have a greater dialogue to provide exempt employees an opportunity to fully understand the advantages and disadvantages of conversion to civil service.

Thank you for the opportunity to provide our comments.



**LATE**

THE HAWAII STATE HOUSE OF REPRESENTATIVES  
The Twenty-Seventh Legislature  
Regular Session of 2014

COMMITTEE ON LABOR & PUBLIC EMPLOYMENT  
The Honorable Rep. Mark M. Nakashima, Chair  
The Honorable Rep. Kyle T. Yamashita, Vice Chair

DATE OF HEARING: Tuesday, February 11, 2014  
TIME OF HEARING: 8:45 A.M.  
PLACE OF HEARING: Conference Room 309

**TESTIMONY ON HB1966, PROPOSED HD1 RELATING TO PUBLIC EMPLOYEES**

By DAYTON M. NAKANELUA,  
State Director of the United Public Workers, AFSCME Local 646, AFL-CIO

My name is Dayton M. Nakanelua and I am the State Director of the United Public Workers, AFSCME, Local 646, AFL-CIO (UPW). The UPW is the exclusive representative for approximately 11,000 public employees, which include blue collar, non-supervisory employees in Bargaining Unit 01 and institutional, health and correctional employees in Bargaining Unit 10, in the State of Hawaii and various counties. The UPW also represents about 1,500 members of the private sector.

The UPW strongly supports HB1966, proposed HD1, which requires the state auditor to review the current civil service exemption process and recommend procedures and guidelines to ensure the appropriate use of this process in extraordinary circumstances.

We ask that you pass this bill.

Thank you for the opportunity to testify on this measure.