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March 25, 2014

TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE

For Hearing on Thursday, March 27, 2014
3:00 p.m., Conference Room 308

BY

BARBARA A. KRIEG
DIRECTOR

Senate Bill No. 3099, SD1, HD1
Relating to Public Employment

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEE:

Senate Bill 3099, Senate Draft 1, House Draft 1 would, among other purposes, place restrictions on the establishment of exempt positions.

The Department of Human Resources Development (DHRD) respectfully opposes section 3 of this bill for the following reasons.

Section 3 of the bill would amend Section 76-16(b)(17) of the Hawaii Revised Statutes to require any exemption created after July 1, 2014 to expire three years after its enactment unless extended by the legislature.

Under certain circumstances, it is appropriate for specific positions to be exempted from civil service. This determination is dependent on the nature of the program and the qualifications of positions required to perform the functions of the

program. The blanket expiration date of three years imposed on all future exemptions, without first reviewing the circumstances of the exemption, will overburden departments and the legislature. It will also cause uncertainty for employees hired into these temporary positions and make it harder for the State to attract qualified candidates for these positions. It would be more efficient for the legislature to consider each exemption as laws are enacted or amended, based on the specific nature of the program and the specific qualifications of positions required to carry out the functions of the program.

Based on the foregoing, DHRD respectfully requests that this measure be held.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

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Testimony of
WILLIAM J. AILA, Jr.
Chairman

Before the House Committee on
FINANCE

Thursday, March 27, 2014
3:00 PM
State Capitol, Conference Room 308

In consideration of
SENATE BILL 3099, HOUSE DRAFT 1, SENATE DRAFT 1
RELATING TO PUBLIC EMPLOYMENT

Senate Bill 3099, House Draft 1, Senate Draft 1 proposes to require, among other things, that all personnel hired within the Department of Land and Natural Resources (Department), State Historic Preservation Division (Division) be hired in accordance Chapter 76, Hawaii Revised Statutes. **The Department appreciates the intent of this measure and suggests an amendment that advances its purposes.**

- The Department is committed to converting nearly all positions within the Division to regular civil service.
- The Administration's supplemental budget proposal for Fiscal Year 2015 takes the first steps toward that goal by converting ten (10) of the currently exempt positions within the Division to regular civil service status.
- The Department will continue to work to convert most of the rest of the Division's position to civil services.
- The Department believes, however, that the executive and senior management positions within the Division should remain exempt, as is the practice throughout the Executive Branch.
- Finally, the Department believes that the Senate Bill 3099, House Draft 1, Senate Draft 1 should be amended to make it clear that no current Division staff will be adversely affected by the conversion. Specifically, during the classification process the Department of Human Resources should be directed to work with the Division to ensure that salaries within the Division are competitive with comparable positions in the private sector or

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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
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comparable civilian federal positions. Failure to do this will result in continuing the historical recruitment and retention problems for the Division, which has resulted in positions remaining unfilled for long periods and rapid staff rapid turnover.

The Department suggests that SECTION 1 of Senate Bill 3099, House Draft 1, Senate Draft 1, be revised by inserting a new subparagraph (2) to read as follows:

(2) To ensure that staff employed by the State Historic Preservation Division are compensated at rates reflecting the specialized education and experience requirements of their job duties as well as the highly competitive nature of recruitment and retention of those positions; and

Renumbering subparagraph (2) to (3).



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The Twenty-Seventh Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Finance

LATE

Testimony by
Hawaii Government Employees Association
March 27, 2014

S.B. 3099, S.D. 1, H.D. 1 – RELATING TO PUBLIC
EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B. 3099, S.D. 1, H.D. 1. This important legislation mandates the conversion of exempt positions to civil service in the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources consistent with Act 253, SLH 2000 and Act 300, SLH 2006. This particular program has encountered numerous operational and personnel-related problems over the years that have been well documented. Some of these are directly attributable to the exempt status of its employees, which creates instability and turnover in staffing.

We also question the reliance of exempt employees in positions that perform regulatory functions. For example, the exempt status of employees can also easily compromise the objective review of proposed developments by SHPD because they are considered “at will” employees by the Department of Human Resources Development. 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.

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 XVI, Section 1 and the statement of purpose in Section 76-1, HRS. This statement of purpose is reiterated in Section 76-16, HRS.

According to information from DHRD as of December 2013, there are 1,013 exempt employees in HGEA bargaining units under the largest exemption contained in Section 76-16, HRS (Section 76-16 (b) 17). This is the exemption from civil service for SHPD. This statutory exemption adversely affects employees primarily in bargaining units 3 and 13. There are approximately 100 statutory exemptions from civil services under Section 76-16 (b) (17), HRS. Some of the exemptions are mandatory while others are permissive. This is the primary reason we strongly support the amendment to Section 76-16 (b) (17), HRS that would limit these exemptions to three years and require any extension beyond that time frame to be approved by the Legislature. Legislative oversight is needed to stop the proliferation of exempt positions within the executive branch of state government.

LATE

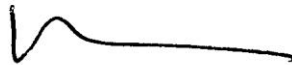
The number of voluntary conversions from exempt to civil service by DHRD and the various line departments has been small. Here are the numbers of conversions over the past several years: 24 – 2013, 50 – 2012, 20 – 2011 and 4 – 2010. The process of voluntary conversion is not effective. Many exempt employees 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.

Under all 27 exemptions listed in Section 76-16, HRS, there are 2,894 exempt employees within the state Executive Branch. 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 less than 1,000 exempt employees within California's executive branch.

The state's civil service system needs significant reform so that it can preserve the merit principle while at the same time being flexible and responsive enough to meet the demands of line departments. In other words, the civil service system must be adaptable to change, including changes in the state's demographics, the organization of work, and the conceptions of work and career on the part of employees. The lack of flexibility within state's civil service system should not be used to justify exempting positions from civil service. State departments need the mechanisms and incentives of a high quality and motivated workforce that is subject to Chapter 76, HRS.

We appreciate the opportunity to testify in support of S.B. 3099, S.D. 1, H.D. 1.

Respectfully submitted,



Wilbert Holck
Deputy Executive Director