

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

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**Testimony of
WILLIAM J. AILA, Jr.
Chairperson**

**Before the Senate Committee on
WAYS AND MEANS**

**Tuesday, February 25, 2014
9:15 AM
State Capitol, Conference Room 211**

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

Senate Bill 3099, Senate Draft 1, proposes, among other things, to require that all personnel hired within the State Historic Preservation Division (Division), which is within the Department of Land and Natural Resources (Department), to 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.
- Governor Abercrombie's Supplemental Budget proposal for Fiscal Year 2015 takes the first steps toward that goal by converting twelve (12) 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, 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 comparable

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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 Senate Bill 3099, Senate Draft 1, SECTION 1 be revised by inserting a new paragraph (2) to read as follows:

The purpose of this Act is to:

- (1) Require, rather than permit, hiring to be done in accordance with civil service laws when the state historic preservation division of the department of land and natural resources hires professional and technical staff; and
- (2) 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
- (3) Require any civil service exempt positions created after July 1, 2014, to expire after three years of its enactment unless affirmatively extended by the legislature.



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The Twenty-Seventh Legislature, State of Hawaii
Hawaii State Senate
Committee on Ways and Means

Testimony by
Hawaii Government Employees Association
February 25, 2014

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

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B.3099, S.D. 1. This legislation mandates the conversion of exempt positions to civil service in the State Historic Preservation Division 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.

The problems and challenges created by exempt positions are that while most 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 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). The exemption from civil service for SHPD is under Section 76-16 (b) (17), HRS. 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.

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 less than 1,000 exempt employees in California's executive branch. We appreciate the opportunity to testify in support of S.B.3099, S.D. 1.

Respectfully submitted,



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Deputy Executive Director