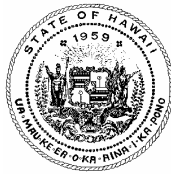


**SB3099**

NEIL ABERCROMBIE  
GOVERNOR



BARBARA A. KRIEG  
DIRECTOR

LEILA A. KAGAWA  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
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January 30, 2014

TESTIMONY TO THE  
SENATE COMMITTEE ON JUDICIARY AND LABOR

For Hearing on Friday, January 31, 2014  
10:30 a.m., Conference Room 016

BY

BARBARA A. KRIEG  
DIRECTOR

**Senate Bill No. 3099**  
**Relating to Public Employment**

TO CHAIRPERSON CLAYTON HEE AND MEMBERS OF THE COMMITTEE:

The purpose of S.B. No. 3099 is to reduce the number of civil service exempt positions and place restrictions on the creation of exempt positions.

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

DHRD defers to the respective departments regarding the effect on their programs of the proposed amendments reflected in sections 2 through 5 and 7 through 17 of the bill. However, we anticipate that the elimination of current exemptions will cause a number of valued employees to leave State employment, which will result in the State's inability to deliver critical services to the public. We also caution that the current personnel staffing at the departments and DHRD is not sufficient to process a large

number of civil service conversions within a limited time period, especially where the conversions would require the creation of new civil service classes.

With respect to section 6 of the bill, DHRD opposes the proposed amendment to Section 76-16(b)(17) of the Hawaii Revised Statutes, that would 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

SHAN S. TSUTSUI  
LT. GOVERNOR

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PRESENTATION OF  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-SEVENTH LEGISLATURE  
Regular Session of 2014

Friday, January 31, 2014  
10:30 A.M.

TESTIMONY ON SENATE BILL NO. 3099  
RELATING TO PUBLIC EMPLOYMENT

TO THE HONORABLE CLAYTON HEE, CHAIR,  
AND MAILE SHIMABUKURO, VICE CHAIR  
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("Department") appreciates the opportunity to testify on Senate Bill No. 3099, Relating to Public Employment. My name is Keali'i Lopez, Director of the Department of Commerce and Consumer Affairs ("Department").

The Department is opposed to Sections 3, 6, 15, and 16 of the bill and takes no position regarding the other sections of the bill. These sections propose to replace prior authorization to hire outside of Chapter 76, Hawaii Revised Statutes ("Chapter 76"), with a requirement to hire in accordance with Chapter 76. The only positions that would be authorized as exempt would be hearings officers and attorneys. The bill would also require that any exempt position created after

July 1, 2014, which is specifically exempted from Chapter 76 by any other law shall expire three years from the date the bill is enacted, unless affirmatively extended by an act of the legislature.

By precluding the Department from hiring outside of Chapter 76, 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. 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, paying, and retaining people in these jobs. In this highly technological and electronic age, the Department must vie with the private sector for qualified and experienced candidates. Without the flexibility of hiring outside of Chapter 76, the Department would not be able to meaningfully compete with the private sector.

The flexibility afforded the Department by its ability to exempt positions from Chapter 76 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.

If, in order to prevent the expiration of exempt positions, without relying upon legislative extension, the Department were to identify those positions to be converted to civil service, it is likely that some of the incumbents would elect not to accept conversion as it would result in a reduction of their pay rate based on the compensation adjustment provisions in the respective Supplemental Agreements. It would be difficult to persuade exempt employees to elect to participate in the conversion of their positions to civil service. To that extent, the Department is not in full control over how many and which exempt positions can be immediately converted to civil service. As such, if mandated to participate in such a conversion those employees would seek jobs in the private sector that offer pay that is comparable to what they are currently making as exempt employees.

With respect to existing exempt positions with incumbents, the bill appears to require that upon enactment, the affected positions would immediately have to be converted and that upon completion of the conversion process, the incumbents

would have to accept the civil service appointment or leave. As noted above, it is likely that the incumbents would elect to leave to seek jobs in the private sector that offer pay that is comparable to what they are currently making as exempt employees since in most part it would result in a reduction of their pay rate based on the compensation adjustment provisions in the respective Supplemental Agreements. The Department finds that with at least 142 exempt positions that could be affected, the impact would be crippling to the Department if not devastating to the divisions that rely heavily upon such specialized and technical personnel.

The delay or failure to fill critical positions could have adverse impacts not only upon the Department, but upon the State as a whole. For example, the Insurance Division must comply with the National Association of Insurance Commissioners (NAIC) Accreditation requirements, which include the requirement to have adequate and qualified staff to conduct examinations and financial analysis, and the timely completion of examinations and analysis. Thus, the filling of vacancies and training of new staff is essential to meet the NAIC accreditation requirements.

Similarly, the Division of Financial Institutions, which received accreditation from the Conference of State Bank Supervisors ("CSBS") in December 2012, needs adequate and qualified staff to conduct examinations and financial analysis to ensure that banks comply with regulatory laws and rules and are financially sound. As part of its accreditation, the Division reports its staffing levels and qualifications to CSBS on an annual basis. This year, the Division's accreditation is at risk due to numerous vacancies. The Division has earnestly sought to fill its vacant positions with civil service employees, but has 4 unfilled civil service positions since September 2012. The Division has posted the positions on its website seeking qualified individuals. The Division notes that it takes about 4-6 years to train examiners to conduct a bank examination and it currently has three of six examiners qualified and four vacant positions.

The Department understands and appreciates the value of Chapter 76 for those positions that do not require specialized knowledge and expertise. In fact, in accordance with the legislative intent of Act 300, Session Laws of Hawaii 2006,

Testimony on S.B. No. 3099  
January 31, 2014  
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and Senate Concurrent Resolution 222, 2008 Legislative Session, the Department has converted 69 exempt positions to date, including "clerical and paraprofessional" positions.

As a matter of policy and practice, the Department has been consistent in its most recent efforts in reviewing existing exempt positions and taking action to convert the appropriate positions. Since 2011 to the present, the Department identified 23 exempt positions for conversion to civil service, 15 of which resulted in conversions, with the remaining 8 positions to be converted when the positions become vacant.

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 testify on Senate Bill No. 3099. I am happy to answer any questions that the members of the Committee may have.

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](mailto:sara.l.collins.sha@gmail.com)

HEARING: January 31, 2014, 10:30 AM, Conference Room 016  
SUBJECT: Testimony in Support of SB 3099 (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 3099, Relating to Public Employment.

SB 3099 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). The amendment proposed to HRS 6E-3(14) would require this conversion process to occur.

We strongly support SB 3099 and the overdue conversion of exempt professional positions at SHPD for the following reasons:

- Promotion of stability among staff and fostering 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 predicable 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.

Historically, SHPD has had difficulty hiring and retaining qualified personnel to fill professional-level positions. We believe that granting civil service status to these employees would make these positions more attractive to prospective applicants.

An established process exists for converting exempt positions to civil service. It is high time that these conversions got underway for staff at SHPD. SHA has testified on bills similar to this for over seven years and, over this period, the need for this step has only grown more compelling.

We respectfully ask you that you pass SB 3099 unamended. Thank you for considering our comments. Should you have any questions, please feel free to contact me at the above email address.

Testimony in support of SB 3099 – Civil Service Conversion

Morgan Davis, January 29, 2014

I support this bill. I will try to be brief, but I am offering a personal example of why I left a job I love with the State, for two years, simply because I was (and remain) an exempt employee, an Archaeologist, hired “at will.” I could be fired at any time. I first joined SHPD in 2007.

The standard annual notice regarding the fact that I was an “exempt employee” as a scientist would include a statement somewhere along the lines of ‘your contract is extended one year, but is not guaranteed.’ When the economy went down, those notes started coming every six months, extending my contract by only six months. Then it became three months, extending by three months. Then the extension – ultimately the final straw for me – was subject to budget negotiations. I gave notice that I was going to need to leave my position – it turned out to be six months’ worth actually, in the hopes that I would be able to train my replacement’s Assistant Archaeologist so my Maui office would not suffer – and resigned after years of working through the furloughs, working through the 5% pay cuts.

I could not take the uncertainty anymore. I am my family’s sole support. I have an advanced degree, qualify for my position as Lead Archaeologist under both State and Federal regulations, and I really do love this job. But I have seen first-hand how we cannot keep qualified staff onboard long enough to retain the institutional knowledge necessary to do this job, to the clear detriment of the State Historic Preservation Division.

If you can convince the awesome people we have on staff – qualified, and dedicated enough to public service to work for pay below what we could make elsewhere – why are we not being given the job security of becoming civil service that others in similar positions in DLNR (State Parks is my example here)? Everyone complains about SHPD’s revolving door of employees – trust me, passing the revisions in the attached SB 3099 will make a tremendous difference. Based on my own experience, it takes between 6-12 months to fully understand all the state and federal requirements of these positions; losing one member will set that office’s productivity back significantly, especially as that new person must be trained by someone else during that time period.

My job remained vacant those two years I was gone, with the expected negative results regarding the state backlog. I’m back for now, and I dearly hope to be able to stay. But when I am annually (sometimes even quarterly) reminded that I could lose my job at any time, that breeds fear for my security that both impedes my job performance and impacts my family. Ultimately it became too much.

Please do what is right and treat us with respect. This change would be beneficial on a human level for me personally, but also for employee stability of qualified personnel overall.

Aloha,

Morgan Davis

SHPD Lead Archaeologist, Maui Island Annex

TESTIMONY IN SUPPORT OF S.B. 3099 RELATING TO PUBLIC EMPLOYMENT

Senate Judiciary and Labor Committee

DATE: January 31, 2014      Room: Capitol 016

Aloha Senators of the Senate Judiciary and Labor Committee:

My name is Phyllis Coochie Cayan, a registered voter and a state exempt employee at the Department of Land & Natural Resources for the past five years. I support S.B. 3099 relating to public employment which would convert exempt employees positions to state civil service positions. This would afford more rights and benefits to each employee rather than be hired on an exempt with little job security and/or rights to full collective bargaining agreements.

There is over 20 years of collective effort by the public employees unions, by exempt employees and others interested in fairness and justice for public employees. There has been slow progress as in past legislation, however, the facts remain the exempt employees still represent about 8 to 9 percent of employees in the state Executive Branch. There has been a huge growth in exempt positions over the past twenty years resulting in the undermining of the state civil service system

Voluntary conversion has been minimal by the state departments. Only you as legislators can provide the legislation to convert exempt positions to civil service.

Mahalo for the opportunity to testify in support of SB 3099.

Submitted by Phyllis Coochie Cayan via email ccayan@hotmail.com