

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

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

February 23, 2016

**TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE**

For Hearing on Wednesday, February 24, 2016
3:00 p.m., Conference Room 308

BY

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 2008, HD 1
Relating to Public Employment

TO CHAIRPERSON LUKE, VICE CHAIRPERSON NISHIMOTO AND MEMBERS OF
THE COMMITTEE:

H.B. 2008, HD1 prohibits the State from hiring persons for more than two 89-day terms for a fully or partially general-funded position per lifetime of the person (with limited exceptions).

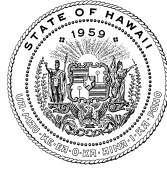
The Department of Human Resources Development (DHRD) **HAS CONCERNS** regarding this measure because it may impede the ability of many departments to provide critical services to the public. The use of 89-day appointments allows departments to provide services to the public pending the filling of an authorized position on a permanent basis. The ability to use 89-day hires is a “bridge” that enables departments to provide services while recruiting to fill positions on a permanent basis.

DHRD also notes that one of the limited exceptions contained in HB 2008, HD1 is for “bona fide employees held over after retirement for training purposes with a training plan that is filed with the department of human resources development.” The purpose of this exception is unclear in that it may conflict with Act 179, SLH 2010, which provides that a department cannot have an agreement between the department and a

retirant prior to his/her retirement. **Retirants must not be employed with the State or a county during the six calendar months prior to the first day of re-employment without having to re-enroll in the Employees Retirement System.**

Thank you for the opportunity to offer comments on this measure.

DAVID Y. IGE
GOVERNOR



WESLEY K. MACHIDA
DIRECTOR

RODERICK K. BECKER
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND
OFFICE OF THE PUBLIC DEFENDER

STATE OF HAWAII
DEPARTMENT OF BUDGET AND FINANCE
P.O. BOX 150
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE
BUDGET, PROGRAM PLANNING AND
MANAGEMENT DIVISION
FINANCIAL ADMINISTRATION DIVISION
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
TO THE HOUSE COMMITTEE ON FINANCE
ON
HOUSE BILL NO. 2008, H.D. 1

February 24, 2016
3:00 p.m.

RELATING TO PUBLIC EMPLOYMENT

House Bill No. 2008, H.D. 1, prohibits the State from hiring persons for more than two 89-day terms for a fully or partially general-funded position per lifetime of the person (with limited exceptions).

The Department of Budget and Finance supports the general intent of the measure since the Employees' Retirement System (ERS) does not receive pension contributions for 89-day term employees. It is estimated that the ERS loses out on between \$3-4 million per year in contributions based on the three hundred (300) 89-day term employees hired instead of permanent or temporary employees.

It should be noted that limiting the number of 89-day term appointments will directly impact the operations of various departments and we defer to the Department of Human Resources Development and other departments/agencies for details on their operational concerns with this measure.

DAVID Y. IGE
GOVERNOR



DOUGLAS MURDOCK
Comptroller

AUDREY HIDANO
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
P.O. BOX 119, HONOLULU, HAWAII 96810-0119

WRITTEN TESTIMONY
OF
DOUGLAS MURDOCK, COMPTROLLER
DEPARTMENT OF ACCOUNTING AND GENERAL SERVICES
TO THE
HOUSE COMMITTEE
ON
FINANCE
ON
FEBRUARY 24, 2016
H.B. 2008, HD1

RELATING TO PUBLIC EMPLOYMENT

Chair Luke and members of the Committee, thank you for the opportunity to submit written testimony on H.B. 2008, HD1. The Department of Accounting and General Services does not support H.B. 2008, HD1.

The Department of Accounting and General Services strongly opposes this bill because it takes away an important stopgap mechanism to provide human resources to keep operations running during the temporary vacancy of essential positions. Currently, eighty nine day appointments allow our department to immediately fill temporary vacancies in support of critical functions some of which may impact safety and health e.g., Payroll, Procurement, and Public Works projects.

Historically, the civil service vacancies that require open competitive recruitment take longer than eighty nine days. Therefore, it is not uncommon for our department to use more than one eighty nine day appointment before a critical vacancy can be filled.

Managed responsibly, eighty nine day hires can save the government money. This is particularly true in highly specialized positions such as accounting. The current framework allows us to hire experienced personnel, some who have previously worked for or even retired from the department to fill temporary vacancies awaiting a permanent fill or extended absences such as medical leave.

The proposal to restrict two eighty nine day appointment for a person's lifetime would unnecessarily restrict the pool of applicants to those who do not have experience in the department. This would result in the department hiring, providing orientation, and training a new person nearly every time an eighty nine day appointment is required. In cases when a key position is vacant for more than eighty nine days, this bill would require the department to disrupt operations to repeat this process before a vacancy could be filled, restricting the department's ability to continue operations until a selection to fill the position is made from open recruitment.

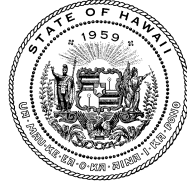
This restriction will also limit the pool of qualified applicants willing to accept temporary appointments and those who possess specialized, unique, and technical knowledge and skills including retirees and those previously hired and trained.

This measure will not achieve the desired effect of saving the government money and will have a detrimental impact on operations.

Thank you for the opportunity to submit written testimony on this matter.

DAVID Y. IGE
GOVERNOR

SHAN TSUTSUI
LT. GOVERNOR



STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1540
FAX NO: (808) 587-1560

MARIA E. ZIELINSKI
DIRECTOR OF TAXATION

JOSEPH K. KIM
DEPUTY DIRECTOR

To: The Honorable Sylvia Luke, Chair
and Members of the House Committee on Finance

Date: February 24, 2016
Time: 3:00 P.M.
Place: Conference Room 308, State Capitol

From: Maria E. Zielinski, Director
Department of Taxation

Re: H.B. 2008, H.D. 1, Relating to Public Employment.

The Department of Taxation (Department) has concerns about H.B. 2008, H.D. 1 and provides the following comments for your consideration.

H.B. 2008, H.D. 1 prohibits the State from temporarily hiring any person for more than one term of 89 consecutive days or less ("89-day hire") for a position that is funded by general funds, subject to limited circumstances. The current draft of the bill, H.D. 1, includes an exception for "seasonal hires by the department of taxation," which the Committee on Labor & Public Employment added after a hearing. The bill takes effect on July 1, 2017.

The Department appreciates the exception created for its seasonal hires, as the Department currently employs 89-day hires to serve in seasonal positions which are necessary to address the large volume of filings and inquiries from taxpayers from December to August. A majority of the seasonal employees retain regular employment outside the Department, but return each tax season to assist the Department with the increased workload. By hiring these seasonal employees, who have valuable knowledge and experience from previously serving in their positions, the Department is able to conserve time and resources that would otherwise be spent interviewing and training new personnel.

The Department requests, however, that an additional exception is created to allow the Department to use 89-day hires for more than one term to temporarily fill vacant entry level civil service positions that are critical to the Department's daily operations. The Department currently has 8 vacant entry level positions, of which 6 are currently filled with 89-day hires. Although the Department continues to actively recruit for these vacant entry level positions, it has been difficult to find and retain qualified permanent staff. By reappointing 89-day hires into these positions while the Department continues its recruitment efforts, the Department is able to perform its daily operations with minimal interruption.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR OF
HAWAII



SUZANNE D. CASE
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

KEKOA KALUHIWA
FIRST DEPUTY

JEFFREY T. PEARSON, P.E.
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

Testimony of
SUZANNE D. CASE
Chairperson

Before the House Committee on
FINANCE

Wednesday, February 24, 2016
3:00 PM
State Capitol, Conference Room 308

In consideration of
HOUSE BILL 2008, HOUSE DRAFT 1
RELATING TO PUBLIC EMPLOYMENT

House Bill 2008, House Draft 1 proposes to prohibit the State from hiring persons for more than two (2) eighty-nine (89) day terms for a fully or partially general-funded position per lifetime of the person. **The Department of Land and Natural Resources (Department) respectfully opposes this measure.**

This prohibition will cripple the Department's ability to continue operations to plan, direct and provide services to manage and administer the public lands of the State, and the water resources and minerals thereon; to manage and administer the forest, fish and game resources of the State; and to manage the forest reserve and state parks, including historic sites.

It is critical that the Department be able to fill vacant positions that are in the recruitment process with persons on 89-day terms to continue fulfilling its critical responsibilities until a permanent employee is hired to fill the vacancy. Often, it may take longer than eighty-nine (89) days to complete the recruitment process. Eighty-nine (89) day hires are a viable alternative as the employee is able to fulfill the minimum functions of the position until a permanent employee is hired to fill the vacancy. Utilizing the eighty-nine (89) day hire practice has proven to be a successful recruitment tool for the Department.

It would be detrimental to limit the number of 89-day terms to only two (2) terms. Thank you for the opportunity to testify on this measure.



**DEPARTMENT OF BUSINESS,
ECONOMIC DEVELOPMENT & TOURISM**

DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

No. 1 Capitol District Building, 250 South Hotel Street, 5th Floor, Honolulu, Hawaii 96813
Mailing Address: P.O. Box 2359, Honolulu, Hawaii 96804
Web site: www.hawaii.gov/dbedt

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Fax: (808) 586-2377

Statement of
LUIS P. SALAVERIA
Director

Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE

February 24, 2016
3:00 p.m.
State Capitol, Conference Room 308

in consideration of
HB 2008, HD1

RELATING TO PUBLIC EMPLOYMENT.

Chair Luke, Vice Chair Nishimoto, and Members of the Committee.

The Department of Business, Economic Development, and Tourism (DBEDT) opposes HB 2008, HD1, which prohibits the State from hiring persons for more than two 89-day terms per lifetime of a person.

DBEDT opposes this bill because it would leave the employees in a work unit having to try to fill the gap left when an 89-day hire completes their second term while the process of recruitment to fill a permanent civil service position continues. This is unfair to the remaining employees and the public who will find government slower in meeting their needs. When government is unresponsive to the public, the public loses their trust in government, and once lost, it is very hard to regain that trust.

DBEDT respectfully defers to the Department of Human Resource Development for the impact of this measure on the ability of the State as a whole to deliver critical services on a timely basis.

DAVID Y. IGE
GOVERNOR



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY
919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

NOLAN P. ESPINDA
DIRECTOR

Cathy Ross
Deputy Director
Administration

Jodie F. Maesaka-Hirata
Deputy Director
Corrections

Shawn H. Tsuha
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 2008, HOUSE DRAFT 1
RELATING TO PUBLIC EMPLOYMENT

By
Nolan P. Espinda, Director

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair

Wednesay, February 24, 2016; 3:00 p.m.
State Capitol, Room 308

Chair Luke, Vice Chair Nishimoto, and Members of the Committee:

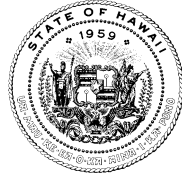
The Department of Public Safety (PSD) **opposes** House Bill (HB) 2008, House Draft 1, which would limit the temporary hire to two terms of eighty-nine consecutive days or less for one person during his/her lifetime for a position that is funded in whole or in part by general funds.

HB 2008 will impose undue restrictions and hamper PSD's ability to operate efficiently and effectively. The temporary hires have provided continued support to essential programs, especially with hard-to-fill jail and prison staff positions (e.g., Social Workers/Human Services Professionals, Medical, Food Services, Adult Corrections Officers, and other support staff within a correctional facility) until they are able to be filled permanently. Additionally, temporary hires for Deputy Sheriffs help ensure the Departments ability to protect and serve our community. Our uniform positions, from the time of recruitment to the placement at the work site, take approximately eight months for the Adult Corrections Officer Recruits and approximately sixteen months for the Deputy Sheriffs.

Limiting the temporary hires to two terms of eighty-nine consecutive days will clearly provide insufficient time to fill these essential positions permanently.

Thank you for the opportunity to present this testimony.

DAVID Y. IGE
GOVERNOR
STATE OF HAWAII



JOBIE M. K. MASAGATANI
CHAIRMAN
HAWAIIAN HOMES COMMISSION

SHAN S. TSUTSUI
LT. GOVERNOR
STATE OF HAWAII

WILLIAM J. AILA, JR.
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879
HONOLULU, HAWAII 96805

**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN
HAWAIIAN HOMES COMMISSION
BEFORE THE HOUSE COMMITTEE ON FINANCE**

IN OPPOSITION TO

HB 2008 HD 1, RELATING TO PUBLIC EMPLOYMENT

February 24, 2016

Aloha Chair Luke and Members of the Committee:

Thank you for the opportunity to submit testimony regarding HB 2008 HD 1. The Department of Hawaiian Home Lands (DHHL) respectfully opposes the proposed measure, which would eliminate the ability of State agencies to hire 89-day temporary employees for more than one term.

The ability to hire, and re-hire, 89-day employees for more than one term often fulfills a critical need within the State. The 89-day hire can be essential when departments find it challenging to find qualified candidates to fill the civil service positions. In times like these when the labor market is tight, 89-day hires are an important tool for agencies. While discussion of certain limitations or criteria may be useful, a complete ban is neither necessary nor desirable.

Thank you, again, for the opportunity to submit testimony regarding HB 2008 HD1.



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committee on Finance
February 24, 2016 at 3:00 p.m.

by
Jan Gouveia
Vice President for Administration
University of Hawai'i

HB 2008 HD1 – RELATING TO PUBLIC EMPLOYMENT

Chair Luke, Vice Chair Nishimoto, and members of the House Committee on Finance:

I am respectfully submitting written testimony on behalf of the University of Hawai'i regarding House Bill 2008 House Draft 1 – Relating to Public Employment – which proposes to amend HRS, Chapter 78, Public Service, by adding a new section that will prohibit the State, including the University of Hawai'i, from hiring individuals for more than two (2) terms of eighty-nine (89) days for a fully or partially general-funded position per the lifetime of the person, with limited exemptions to: 1) contracts executed under HRS, Chapters 103, 103D, 103F, 104, and any other contracts for services wherein the contracting process is established by law; 2) the respective counties; 3) the legislative branch; 4) seasonal hires by the Department of Taxation; and 5) bona fide employees that were held over after retirement for training purposes with a training plan filed with the Department of Human Resources Development.

The University of Hawai'i has significant concerns regarding the passage of HB 2008 HD1, as we believe it will hinder and jeopardize our ability to provide ongoing and necessary service and support to the University constituents, especially our students, and the greater community at large. Specifically, the bill would impact our ability to provide academic and student support services in campus departments; a safe and healthy learning and working campus environment; compliance with existing and new federal and state statutes, regulations, and other government guidelines; and timely services during personnel transitions including resignations, retirements, and transfers.

While the University acknowledges the legislature's intent to curtail the abuse of short-term temporary appointments, HB 2008 HD1 will take away the flexibility and tools critical for management to address the intermittent and immediate short-term services that allow the University to fulfill its mission, purpose, and goals in serving our students and the greater community at large. The use of temporary appointments of 89-days or less allows the University campuses and colleges to provide and fulfill Board of Regent's mandates and services by the creation of short-term employment positions in areas such as academics, student services, institutional support, administration, and operations.

In the alternative, we recommend exceptions to the prohibitions in the bill in situations that present a health and safety concern and/or compliance with federal and state laws, rules, and regulations; or rather than immediately imposing the restrictive language that HB 2008 HD1 suggests on the University and other State departments, we suggest a more collaborative approach by creating a task force to study the concerns raised with various stakeholders. The task force would then develop a plan and approach in addressing all issues in a balanced and fair manner.

Thank you for the opportunity to provide testimony on this measure.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/24/2016
Time: 03:00 PM
Location: 308
Committee: House Finance

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: HB 2008, HD1 RELATING TO PUBLIC EMPLOYMENT.

Purpose of Bill: Prohibits the State from hiring persons for more than two 89-day terms for a fully or partially general-funded position per lifetime of the person. Provides for limited exceptions. (HB2008 HD1)

Department's Position:

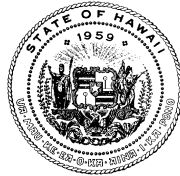
While the the Department of Education ("Department") appreciates the intent of this measure, respectfully, the Department has significant concerns regarding H.B. 2008 H.D. 1., as we believe it will have unintended but certainly unequivocally harmful impact on school operations and student supports.

The Department hires employees under 89-day appointments only to the extent needed to maintain a high-quality learning environment for our students. Under some circumstances, however, employees are needed for multiple 89-day periods. Examples of such circumstances are the need to backfill a position when an employee is on long-term leave for medical or other approved reasons, or a position is in active recruitment but in a "hard to fill" class of work or geographic location.

Some classes of work for which an 89-day hire may be needed are Educational Assistants, Behavioral Health Specialists, Speech Pathologists, School Psychologists, and others who are needed to ensure that the academic, physical, emotional, psychological, and behavioral needs for regular and special education students are met.

The Department has internal controls to monitor 89-day appointments and only a small percentage of positions are filled by "repeat 89-day hires". However, these repeated appointments are necessary to ensure the delivery of critical services.

Should H.B. 2008 H.D. 1 advance, the Department respectfully requests that 89-day hire appointments for the Department's school-level positions and positions related to the delivery of special education services be exempted.



**STATE OF HAWAII
DEPARTMENT OF HEALTH**

P. O. Box 3378
Honolulu, HI 96801-3378
doh.testimony@doh.hawaii.gov

**Testimony OPPOSING HB2008, H.D. 1
Relating to Public Employment**

REPRESENTATIVE MARK M. NAKASHIMA, CHAIR
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

REPRESENTATIVE GREGG TAKAYAMA, CHAIR
HOUSE COMMITTEE ON PUBLIC SAFETY

Hearing Date: February 12, 2016, 10:00 a.m. Room Number: 309

1 **Fiscal Implications:** Undetermined at this time.

2 **Department Testimony:** The Department of Health (DOH) opposes this measure. The purpose
3 of this bill is to prohibit the State from hiring persons for more than two 89-day terms for a fully
4 or partially general-funded position per lifetime of the person with limited exceptions.

5 The DOH utilizes 89-day appointments to provide programs with adequate staffing when
6 there is an immediate need to fulfill operational needs on a short term basis. During the period
7 of the 89-day appointment, the DOH is actively attempting to fill the position on a longer term
8 basis. We acknowledge the concern that at times an individual is appointed beyond the initial 89
9 days and appointed to subsequent 89-day terms. However, these individuals possess skills that
10 enable them to perform the duties that are characteristic of the position to meet immediate
11 staffing needs. All 89-day appointees must meet public employment requirements and the
12 required licensing certification or registration if applicable.

1 The Hawaii State Hospital (HSH) has a Memorandum of Understanding which allows for
2 the provision of a full time investigator from the Attorney General’s Office. This investigator is
3 employed as an 89-day hire. The investigator is responsible for the timely completion of
4 abuse/neglect, administrative, and criminal investigations at the HSH. It is imperative that all
5 investigations be thorough and timely to assure appropriate actions are identified and addressed
6 so patients and staff are protected and therefore elimination of the 89-day hire may jeopardize
7 the Department of the Attorney General’s implementation of the investigations.

8 The DOH will work with the Department of Human Resources Development (DHRD) to
9 streamline the recruitment process so that positions are filled in an expeditious manner while
10 adhering to DHRD’s P&P 300.001.

11 Thank you for the opportunity to testify.

12 **Offered Amendments:** None.



HAWAII STATE ETHICS COMMISSION

State of Hawaii • Bishop Square, 1001 Bishop Street, ASB Tower 970 • Honolulu, Hawaii 96813

HOUSE COMMITTEE ON FINANCE
The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair

H.B. No. 2008, Relating to Public Employment

Hearing: Wednesday, February 24, 2016, 3:00 p.m.

The Hawaii State Ethics Commission **opposes** H.B. No. 2008 to the limited extent that it prohibits the Investigations Division of the Department of the Attorney General from hiring qualified investigators for more than one term of 89-days or less. The Commission takes no position on the bill as it applies to employees working in other state agencies.

The Commission has worked with the Investigations Division on a number of investigations involving violations of the State Ethics Code, some of which also resulted in criminal prosecution. In addition, when the Attorney General has declined to prosecute an employee, the department and the Investigations Division occasionally have forwarded information, including parts of an investigation, for the Commission's consideration and, where appropriate, administrative action. The Investigation Division's assistance and collaboration have been a tremendous benefit to the Commission.

The Commission understands that the Investigations Division currently employs 50 investigators, 43 of whom are hired through 89-day contracts. The Commission also understands that, if passed, this bill will likely prohibit the Investigations Division from continuing to employ most, perhaps all, of the 43 investigators who are currently hired through 89-day contracts. Should that happen, the Investigations Division's ability to work with and assist the Commission on certain investigations will be seriously compromised. As a practical matter, the Commission expects that the Investigations Division will not be able to provide any assistance to the Commission; the Investigations Division simply will not have a sufficient number of qualified investigators.

The Commission suggests that preserving public trust in state government should be, now and always, a legislative priority. Like the Commission, the Investigations Division's underlying mission, i.e., its "foundation," is to protect the public interest and, through its work, to foster public confidence in state government. The Commission urges the Committee to consider the substantial impact - negative impact -

that the bill will have on the Investigations Division's ability to continue performing its duties, including working and collaborating with the Commission and other agencies. The Commission suggests that such a result is harmful to the public interest and, more generally, to government's ability to build public trust.

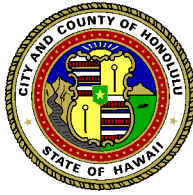
The Commission suggests that the Committee amend the bill to exempt the Investigations Division in its employment of qualified investigators from the bill.

Thank you for your continuing support of the Commission's work and for considering the Commission's testimony on H.B. No. 2008.

ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov
Internet: www.honolulu.gov/ethics

KIRK CALDWELL
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

HOUSE COMMITTEE ON FINANCE
The Honorable Sylvia Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair

H.B. No. 2008 HD1, Relating to Public Employment

Hearing: Wednesday February 24, 2016, 3:00 p.m.

Good Afternoon Chair Luke, Vice Chair Nishimoto and members of the committee.

My name is Charles Totto and I am the Executive Director and Legal Counsel for the Honolulu Ethics Commission. The Commission Staff **opposes** this bill as it applies to the Department of Attorney General, Investigations Division. The bill would drastically reduce, if not eliminate, the ability of the Attorney General's office to investigate ethical misconduct at the state and county level, as well preventing it from discharging its other critical duties.

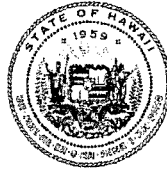
The City Ethics Commission works closely with the Investigations Division. Recently the Division's analysis resulted in the removal of a City employee who spent much of the work day operating a private business from a City office. This one case saves the taxpayers \$30,000 a year. Another case handled by the Investigations Division will likely have a similar result. In addition, the Commission refers criminal cases to the Attorney General's office for investigation by the Division.

Specific skills are essential for ethics investigators and those skills are not common. The City Ethics Commission has first-hand experience with trying to find qualified ethics investigators. We have one investigator on staff. In 2013 and again in 2015, I reviewed the applications of prospective investigators. Out of dozens of candidates, only those with prior police experience were at the level of qualifications needed to conduct thorough, accurate and fair investigations. Civil service candidates generally do not have the level of skill or experience needed for the job.

Without an exemption for the Investigations Division, Bill 2008 will make it harder to uncover and correct unethical conduct and government corruption because government will not have the skilled work force required.

Thank you for allowing to testify against Bill 2008 HD1.

KRISTIN E. IZUMI-NITAO
EXECUTIVE DIRECTOR



PHONE: (808) 586-0285
FAX: (808) 586-0288
WWW.HAWAII.GOV/CAMPAIGN

**STATE OF HAWAII
CAMPAIGN SPENDING COMMISSION**

235 SOUTH BERETANIA STREET, ROOM 300
HONOLULU, HAWAII 96813

February 23, 2016

TO: The Honorable Sylvia Luke, Chair
House Committee on Finance

The Honorable Scott Y. Nishimoto, Vice Chair
House Committee on Finance

Members of the House Committee on Finance

FROM: Kristin Izumi-Nitao, Executive Director *kei*
Campaign Spending Commission

SUBJECT: **Testimony on H.B. No. 2008, HD 1, Relating to Public Employment.**

Wednesday, February 24, 2016
3:00 p.m., Conference Room 308

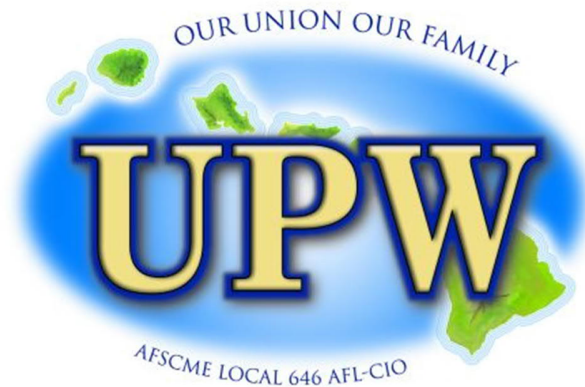
Thank you for the opportunity to testify on this bill. The Campaign Spending Commission ("Commission") opposes this bill.

The impact of this bill would weaken the Investigations Division of the Department of the Attorney General. The Hawaii campaign finance laws provide that the duties of the Commission include investigating and holding hearings for receiving evidence of any campaign finance violations as well as requesting prosecutions of any violations pursuant to Hawaii Revised Statutes ("HRS") §11-411. See, HRS §11-314. Because the Commission does not have investigators on staff, it has regularly relied on the investigative services of this division.

In the last fiscal year, 8 complaints were referred to this division for criminal investigation. There have also been at least 3 instances in which we have required their investigative services to ascertain whether there was enough evidence to pursue a campaign finance civil violation. In some of these cases, it was necessary for the investigators to administer Miranda rights to the interviewee in the event the investigation would lead to criminal charges. To this extent that it is important to investigate and prosecute campaign finance violations, the interest of the public requires the continued provision of these services.

If this bill were to pass, State agencies such as ours would be severely impacted. The Commission has relied on this division to provide essential and vital investigative services, and therefore, respectfully ask that these Committees exempt the Investigations Division of the Department of the Attorney General from the requirements of this bill.

LATE



THE HAWAII STATE HOUSE OF REPRESENTATIVES
The Twenty-Eighth Legislature
Regular Session of 2016

COMMITTEE ON FINANCE

The Honorable Sylvia J. Luke, Chair
The Honorable Scott Y. Nishimoto, Vice Chair

DATE OF HEARING: Wednesday, February 24, 2016
TIME OF HEARING: 3:00 p.m.
PLACE OF HEARING: State Capitol, 415 South Beretania Street
Conference Room 308

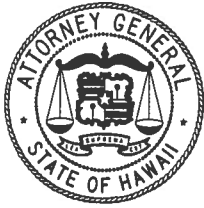
TESTIMONY IN SUPPORT OF HB2008, HD1 RELATING TO PUBLIC EMPLOYMENT

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

My name is Dayton M. Nakanelua, State Director of the United Public Workers, AFSCME, Local 646, and AFL-CIO. The UPW is the exclusive bargaining representative for approximately 12,000 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 supports HB2008, HD1. The provision of the law to utilize the 89-day emergency hire process has been abused for many years. Eighty-nine day contracts have been made continuously after one-day hiatus in-between contracts by the departments. However, this bill should not apply to soft funding e.g. federal funds that may dry up or are unstable. If the work is long term then, the proper civil service recruitment process should be adhered to.

Thank you for the opportunity to submit this testimony.



**TESTIMONY OF
THE DEPARTMENT OF THE ATTORNEY GENERAL
TWENTY-EIGHTH LEGISLATURE, 2016**

ON THE FOLLOWING MEASURE:
H.B. NO. 2008, H.D. 1, RELATING TO PUBLIC EMPLOYMENT.

LATE

BEFORE THE:
HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, February 24, 2016 **TIME:** 3:00 p.m.

LOCATION: State Capitol, Room 308

TESTIFIER(S): Douglas S. Chin, Attorney General, or
Russell A. Suzuki, First Deputy Attorney General, or
Nelson Y. Nabeta, Deputy Attorney General, or
Daniel Y. Hanagami, Chief Special Agent

Chair Luke and Members of the Committee:

For the reasons described in this testimony, the Department of the Attorney General opposes this bill as currently drafted. Before providing its objections, however, the Department wishes to note that it recognizes and appreciates the concerns expressed by the Legislature with respect to the use of 89-day hires. As explained below, we believe that employees retained as 89-day hires have been used effectively as part of our Investigations Division, but we also want to work actively to address the Legislature's apprehensions about this practice. To that end, the Department is currently working with the Department of Public Safety (PSD) and the Department of Human Resources Development (DHRD) to develop a pilot project. The purpose of this pilot project, broadly speaking, is for PSD and the Department to form a team between the Sheriff's Division and the Department's Investigators so that no additional 89-day hires would need to be hired, beyond those who are currently on staff. We are currently in the midst of these discussions. We should have more information available that we can share in greater detail as this bill continues to progress through the legislative process.

The Investigations Division of the Department of the Attorney General is comprised of fifty sworn law enforcement investigators and three civilian support personnel. Seven of the investigators are permanent civil service employees. Forty-three of the investigators are hired under contract. As such, eighty-five percent of the investigation force are 89-day hires. The reason for this is that the continuous recruitment efforts through the DHRD has not proven

successful in filling the vacancies. For a more complete explanation of this issue, please see the attached Action Plan for ATG Investigations Division dated January 26, 2016, pp. 3-8.

But in the midst of this recruitment issue, the Department has found that the Investigations Division can be operated successfully by employing retired law enforcement personnel through the use of 89-day hires. These individuals are qualified to discharge all of the duties of an investigator and bring with them substantial expertise and experience in investigative work. Rather than being a stop gap measure, the use of 89-day hires has proven to be the most effective method for the Department to serve the public and other agencies. For a more detailed explanation concerning the value of hiring retired law enforcement personnel, please see the attached Action Plan for ATG Investigations Division dated January 26, 2016, p. 4.

The ability to employ retired law enforcement personnel enables the Department to conduct criminal investigations, administrative investigations concerning issues arising in the workplace, and investigations to prepare the defenses which the State will assert in civil litigation. For a detailed explanation of the types of investigative work done by the Department, please see the attached 2015 Annual Report, pp. 10-21.

These investigations were conducted on behalf of a wide range of state agencies: Department of Transportation, Department of Health, Department of Education, Department of Human Services, Department of Agriculture, Department of Public Safety, the Judiciary, the Legislature, the State Ethics Commission and the Campaign Spending Commission. For a complete description of the investigative services rendered to these agencies, please see the attached 2015 Annual Report, pp. 22-27.

Finally, the Investigations Division either conducts or assists in hundreds of investigations at the request of the police departments of the various counties. Many of these cases involve complex financial transactions and fraudulent schemes that are difficult to prove, as well as old and unsolved homicide investigations. Other county agencies also ask for investigative assistance in a number of governmental fraud cases. In addition to such work, federal agencies such as the FBI, U.S. Marshals Service and the U.S. Attorney's Office for the District of Hawaii have asked for support in federal undercover operations, surveillance of suspected criminal activities and in serving arrest warrants.

Passage of this bill, as currently drafted, will put an end to the ability of the Department to discharge its investigative duties on behalf of a large number of state, county, and federal agencies. For these reasons the Department must oppose this bill, but we will also keep the Legislature apprised of the status of the project we described at the start of our testimony.

Thank you for the opportunity to testify on this matter.

ACTION PLAN FOR ATG INVESTIGATIONS DIVISION

January 26, 2016

I. INTRODUCTION

Assignment

Identify the issues, comprehensively explore, and implement the best workable solution to eliminate the practice of sustained use of 89-day emergency hires ("Contract Hires") to fill vacant civil service positions.

The goal of this report is to prepare a reasonable and feasible draft plan and time line to reduce the 89-day hiring of Special Agents in the Investigations Division of the Department of the Attorney General (ATG) without jeopardizing operations.

Public Concerns

The ATG Investigations Division has a long history spanning back at least to the 1990s of utilizing 89-day emergency appointments, primarily through the hire of police ERS retirees to sustain operations. Over many years, the public and legislators have, from time to time, questioned the practice of sustained employment of these Contract Hires. Investigative news reporting has adversely publicized the 89-day hiring practice at ATG. The media has reported that the Contract Hires were supposed to be temporary, yet some have been employed for years and the practice appears to circumvent the intent of the law.

Money Savings

Strictly in terms of savings, the practice of 89 day hires for special agents saves the State of Hawai'i approximately **\$968,963.00** annually.

II. STRUCTURING OF THE INVESTIGATIONS DIVISION

Personnel Composition

As of January 26, 2016, the ATG Investigations Division is comprised of fifty (50) sworn law enforcement investigators (Special Agents) and three (3) civilian support personnel (two clerical and one secretary).

Out of the 50 sworn law enforcement Special Agents, seven (7) are civil service exempt permanent employees, and forty-three (43) are Contract Hires. This reflects that 15% of the law enforcement Special Agents are permanent hires, and 85% of the law enforcement Special Agents are Contract Hires.

Funding Sources Influencing Operability

The ATG Investigations Division is dependent upon various types of funding sources needed in its daily operation. These are:

- 1) **General Funded** (State monies);
 - a) Five (5) permanent civil service Special Agents are generally funded;
 - b) Twenty and a half (20.5) 89 day hire Special Agents are generally funded;
- 2) **Special Funded** (Funds coming from the Tobacco Agreement Settlement);

- a) Two (2) permanent civil service Special Agents are specially funded;
- b) Five (5) 89 day hire Special Agents are specially funded;

3) **Memorandum of Understanding (MOU) Funded.** Memorandum of Understanding (MOU) are position funded by other State or federal agencies (mainly the U.S. Marshall Service) in which the Investigations Division agrees to provide investigative support for their agencies;

- a) There are no permanent civil service Special Agents who are MOU funded;
- b) Fourteen (14) 89 day hire Special Agents are funded by MOUs;

4) **Grant Funded.** These receive funding from agencies, such as the Bureau of Justice Administration, to fund Special Agents involve in Sex Offender Registration; DNA Buccal Swabbing; and the Internet Crimes Against Children Unit (ICAC); and the Evidence Custodian;

- a) There are no permanent civil service Special Agents funded by a grant;
- b) Three and a half (3.5) 89 day hire Special Agents are funded by grants.

III. THE ADMINISTRATIVE RULE GOVERNING EIGHTY-NINE DAY HIRING

The 89 day hire rule is from Hawai'i Administrative Rules, Title 14; Department of Human Resources Development, Subtitle 1; State of Hawai'i Human Resources Rules; Chapter 1; General Civil Service Provisions, Section 14-3.05-2:

Non-civil service appointment:

- (a) The appointing authority may make a non-civil service appointment of not more than eighty nine consecutive calendar days or of less than 20 hours a week for thirty-seven consecutive weeks in order to meet the immediate operational needs, provided:
 - (1) The appointing authority certifies that the employee will perform duties, characteristic of the class; and
 - (2) There are no interested and available eligibles on the appropriate eligible list to fill the vacancy, or the appointing authority is unable to make a selection of appropriate eligible list.

- (b) A non-civil service appointment made under subsection (a) may be extended for specific period without a break in service under the following conditions:
 - (1) The director or the director's authorized designee determines that the period of extension makes it impracticable to fill the position by civil service recruitment procedures and allow for completion of an initial probation; and
 - (2) There are no interested and available eligibles on an appropriate eligible list to fill the vacancy or the appointing authority is unable to make a selection from an appropriate eligible list.

- (c) When the director or the director's authorized designee determines that a position can be filled by civil service recruitment procedures, an employee serving a non-civil service appointment in the position may be extended without a break in service until the void date of the first certificate of eligibles for the position, unless this period is extended by the director or director's authorized designee.

- (d) When there is an anticipated need for temporary services beyond eighty-nine calendar days or less than 20 hours a week for 37 weeks, the appointing authority may make a non-civil service appointment for the specific period necessary to complete the work under the following conditions:
- (1) The director or the director's authorized designee determines that it is impracticable to fill the position by civil service recruitment procedures and allow for completion of an initial probation period;
 - (2) There are no interested and available eligibles on an appropriate eligible list to fill the vacancy or the appointing authority is unable to make a selection from an appropriate eligible lists;
 - (3) The employee has not received a non-civil service appointment in the same class of work and department within the last three months, unless this restriction is waived by the director or the director's authorized designee; and
 - (4) The appointing authority certifies that the employee will perform duties, characteristic of the class.
- (e) A non-civil service appointment may be made without regard to the minimum qualification requirements of the position, except that the employee must meet the public employment requirements under section 78-1, Hawaii Revised Statutes, and possess the necessary occupational license, certification, or registration required by statute or regulation.
- (f) Service acquired in a non-civil service appointment shall not be credited towards meeting the requirement of an initial probation period.

IV. HISTORY OF THE EIGHTY-NINE DAY HIRING

In 1998, the late Donald K.L. Wong, former Chief Investigator of the ATG Investigations Division, projected that State investigators would take on greater roles in addressing criminal investigations. This was a result of county police departments proposing to the State of Hawai'i that crimes committed on State facilities and property or by State personnel should be addressed by the State through its ATG Investigations Division.

With this proposal from the County police departments, Wong envisioned the need for growth in his Investigations Division to fulfill his mission of addressing the increase in criminal and administrative investigations. If his division was to take on greater responsibilities, Wong believed he would need to increase his investigative personnel and they would have to be versed in conducting criminal investigations.

In Wong's pursuit of addressing increased investigative demands, he realized that the State could not attract the quality of personnel needed to fulfill the vacant civil service positions of criminal investigators, mainly because ATG was not being competitive enough in matching the salaries and fringe benefits to that of a county police investigator.

Prior to 1998, the State of Hawai'i was able to attract and laterally transfer police investigators from the various county police departments in Hawai'i to investigative positions within the State of Hawaii (to include ATG). The lateral transfers were successful because a State investigator position was about equal in pay, if not higher, to that of a detective in a county police department. But as the years went by, the State of Hawai'i Police Officers Union (SHOPO) prevailed in getting its police membership

better benefits and salaries than what the Hawai'i Government Employees Association (HGFA) could get for its State investigators. From that time through today, the disparity in salary and benefits grew to a substantial difference between a State investigator and a county police detective. Based on this disparity, few or no quality personnel with criminal investigative background are attracted into becoming investigators with ATG.

With the State of Hawaii not being competitive enough to offer equal salaries and benefits to its investigators, as compared to the county police departments, it became impossible to attract or retain experienced and qualified candidates to be civil service status Special Agents with the investigations Division.

From 1998 through today, the practice in filling the void of civil service status Special Agents was to employ retired law enforcement officers as Contract Hires. By employing Contract Hires as Special Agents, the hiring process has been viewed by some as a "win-win" situation because:

1. The State of Hawaii would not have to pay employee benefits to Contract Hires;
2. The Contract Hires join ATG with valuable law enforcement training and criminal investigative experience and maturity;

3. The Contract Hires are immediately "up and running" when assigned investigations. This is because the criminal investigative requirements and procedures at ATG are about the same as the county police departments from which many Contract Hires come, and that these Special Agents from county police departments require little training in criminal investigation, processing of legal instruments (writing search warrants), the laws of arrests, search and seizure, and civil rights of the accused in the State of Hawaii;

4. If a Contract Hire did not dedicate the time required to complete assigned investigations per their contractual agreement, his or her contract would not be renewed, preventing any discipline or grievance issues, in comparison to that of a civil service member Special Agent who has greater due process requirements for disciplinary action;

5. Many positions in the Investigations Division are based upon Memorandums of Understanding (MOUs) and grants, which make these investigative positions short termed, in that, if the MOU was to terminate, that position would be eliminated. The purpose of a civil service system is to maintain its employees from the time those employees begin their employment until the time the employees retire. Permanent civil service employee, in pursuit of careers, would not want to take a position with the understanding that if the MOU, grant funding, or special funding for that position was to terminate, then his or her stay with the Department of the Attorney General's Investigations Division would also be terminated. When young career seekers apply for a position which they have been trained for academically, they would want a long term career. This uncertainty of continued funding for MOUs, grant positions, and special funded positions, somewhat justify Contract Hires.

V. AWARENESS OF THE DIFFICULTY IN FILLING CIVIL SERVICE POSITIONS

On September 22, 2002, then Attorney General Earl I. Anzai received a memo from then Chief Investigator Donald K.W. Wong, requesting that a law enforcement exemption be considered for Hawai'i Administrative rules, Title 14, Department of Human Resources Development, section 14-3.05-2, Non-civil service appointment. Wong provided justification in that there was a substantial increase in investigative caseloads, yet he was unable to recruit qualified investigators through the civil service process.

The failure in recruiting qualified civil service applicants was due to applicants not having the required experience and skills required to adequately perform investigative tasks under civil service guidelines. Due to this failure in recruiting civil service applicants, Wong proposed the continued hiring of Contract Hires, utilizing retired police investigators to fill the void of civil service status investigators.

Attorney General Mark Bennett's Term (2002-2010)

In a letter dated January 10, 2003, then Attorney General Mark J. Bennett, requested from then Governor, Linda Lingle, for an exemption on non-civil service appointments for the Investigator V positions at ATG. Attorney General Bennett requested that the Contract Hires continue until the Department of Human Resources Development (DHRD) was able to provide enough qualified applicants for consideration. Attorney General Bennett cited that while he has not been successful in obtaining qualified investigators through the civil service process, he has been fortunate in obtaining retired Honolulu Police Department investigators, many with 25 to 30 years of experience, who were willing to fill the gap of the non-civil service appointment (89 day emergency hires) until they could obtain qualified applicants.

Attorney General Bennett informed then Governor Linda Lingle that ATG simply could not compete for qualified investigators as civil service employees, and, even if ATG was able to compete (which it was not able to do), the only way ATG would be able to get qualified investigators would be by taking resources away from the County law enforcement agencies. "Luring" highly skilled retired investigators to the State allowed ATG to function successfully. The immediate use of these retired, highly skilled investigators had produced much success in fulfilling the demands of his Investigations Division. Attorney General Bennett further indicated that without Governor Lingle's approval, his Investigations Division would not be able to adequately function.

Based on Attorney General Bennett's opinion, on February 10, 2003, then Governor Lingle approved Attorney General Bennett's request.

Attorney General David Louie's Term (2010-2014)

The practice of Contract Hires continued during this time.

VI. RECRUITMENT CHALLENGES FOR SKILLED CIVIL SERVICE SPECIAL AGENTS

Potential reasons why Special Agent candidates do not apply for vacant positions at the ATG Investigations Division:

A. Compensation and Benefits

1. Salary

One of the major problem in filling the vacant permanent civil service Special Agents positions within the ATG Investigations Division is the low pay, as compared to the salary of the Detective class in the State of Hawaii Organization of Police Officers (SHOPO) agreement.

The Special Agents in the Investigations Divisions are in the "excluded class." Those Special Agents who are civil service employees have the option of paying union membership dues with HGEA's collective Bargaining Unit 13, should they desire.

In comparing the Bargaining Unit 13 contract from July 1, 2013 to June 30, 2017 with the July 1, 2013 to June 30, 2017 SHOPO contract, the annual base wages for a Special Agent with a SR-24 rating (Investigator V) is \$55,236.00. The annual base wages for a Detective (PO-11), is \$69,564.00. This is a difference of \$14,328.00 per year, in which the greater amount favors the SHOPO contract.

If we go to the end of the pay scale for both positions, the SHOPO contract allows the PO-11 position to draw an income of \$97,176 (LS) a year, as compared to a Bargaining Unit 13, SR-24 position a maximum amount of \$81,756.00 (Step M) a year. This is a difference of \$15,420.00, again in favor of the SHOPO contract.

2. Special Duty Income

An attractive fringe benefit that detectives in the Honolulu Police Department have is an opportunity to supplement income by working off-hour Special Duty at a premium rate of \$44.00 per hour.

3. Salary of Supervisory Special Agents

In comparing the Unit 13 contract from July 1, 2013 to June 30, 2017 with the July 1, 2013 to June 30, 2017 SHOPO contract, the base salary for a Supervisory Special Agent with a SR-26 rating (Investigator VI) is \$59,736.00. The base salary for a Lieutenant (the rank that directly supervises detectives, PO-13), is \$75,504.00. This is a difference of \$15,768.00 per year, the greater amount in favor of the SHOPO contract.

If we go to the end of the pay scale for both positions, the SHOPO contract allows the PO-11 position to draw an income of \$108,612.00 (LS) a year as compared to a Unit 13, SR-26 position a maximum amount of \$88,404.00 (Step M) a year. This is a difference of \$20,208.00 per year, the greater amount in favor of the SHOPO contract.

4. Special Duty Income for Supervisors

An attractive fringe benefit that Lieutenants in the Honolulu Police Department have is an opportunity to supplement their income by working off-hour Special Duty at a premium rate of \$46.00 per hour.

5. Fringe benefits

The SHOPO contract also offers police Detectives and Lieutenants fringe benefits as:

1. Firearms Maintenance Allowance. Officers are armed with firearms twenty-four hours a day and receive a \$420.00 per fiscal year as an allowance to maintain their firearms. ATG Special Agents are not compensated in this manner.

Action Plan For ATG Investigations Division

January 26, 2016

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2. Automobile Allowance. The SHOPO contract allows for a monthly motor allowance of \$562.00 per month for their Detectives. ATG Special Agents do not receive such benefits.
3. Gasoline. Police officers are allowed to draw one gallon of gas for every 10 miles they drive. ATG Special Agents are reimbursed for gas at a rate of .56 cents per mile and this payment is to cover the cost of the car insurance. If the Special Agent does not drive a substantial amount of miles, then it would not cover the cost of his vehicle insurance.
4. Vehicle Insurance. The Police Departments pays the public liability and property damage and no-fault insurance of their officers' subsidized vehicle. The officer pay the comprehensive and collision insurance portion of the insurance. ATG Special Agents pay their entire policy.

During prior recruitments, the Investigations Division has been able to attract viable candidates. But when these candidates are told what the pay will be after being interviewed, they move on to other agencies or return back to the private sector from where they came. The offer is declined.

A final issue is the RAM. If a potential candidate's salary is negotiated and becomes greater than the pay of 10 year veterans in the divisions, this would cause a morale issue that would bring up questions as to why a new higher who has not proven himself in the division is being paid more than an experienced investigator.

B. Career Path

A disadvantage in attracting viable Special Agent candidates for the Investigations Division is its limited career opportunities for advancement. In the Investigations Division, if entering at the Investigator IV position, the Special Agent can advance to an Investigator V position should there be a vacancy. An Investigator V can advance to one of five supervisor Investigator VI position should the position becomes available. Currently after those advancements, there are no positions available towards advancement except the Chief Special Agent position.

In comparison, at the Honolulu Police Department, with a sworn police officer force of 2,100 (as compared to the Investigations Division's staff of 50), vacancies tend to open frequently, on an annual basis, for the following positions:

1. Motor Patrol Officer;
2. PO-9;
3. Sergeant/Detective (approximate years in service 7 yrs. to attain this rank);
4. Lieutenant (approximately 12 yrs. to attain this rank);
5. Captain (approximately 18 years to attain this rank);
6. Major (approximately 23 years to attain this rank);

The following positions does not follow attrition as the aforementioned ranks:

7. Assistant Chief (approximately 25 years to attain this rank);
8. Deputy Chief (selected by the Chief of Police-Usually 20 years+ veteran);
9. Chief of Police (Appointed by the Police Commission-Usually 20 years+ veteran).

Each progression in rank at the Honolulu Police Department carries a substantial increase in salary. The rank of Captain can carry a salary amount double that of an Investigator VI with 20 years of service.

Even if the State offered a comparable salary and benefits, a candidate interested in an investigative position with the State would instead choose to enter the recruit training program of the county police department. He or she would then put in seven years in the lower level position, acquire enough time to take the promotional exam (after three years of service), take the sergeant/detective promotional exam, and from there, accumulate seniority to gain the higher rate of pay.

C. The Recruitment Reality

In practice, if a failed applicant to any of Hawaii's four (4) county police departments applied for a State law enforcement position applicant, it was because that applicant could not pass the stringent Police Department's:

1. Initial entrance examination;
2. Oral interview;
3. Physical examination;
4. Psychological testing;
5. Physical Agility testing;
6. Drug testing;
7. Polygraph examination;
8. Recruit class training.

The potentially negative recruitment situation is that the State gets the county police department's "washouts" and interviews a lower quality of applicants when the State's mission is to attract high quality personnel with integrity that can serve the citizens of Hawai'i.

VII. OPTIONS TO ATTRACT SKILLED INVESTIGATORS TO CURRENT CIVIL SERVICE POSITIONS

For the ATG Investigations Division to attract experienced investigators for its civil service Special Agents position, the State must be competitive and offer competitive salaries and fringe benefits as that of the county Police Departments.

A. OPTION - Establish a Recruit Training Facility

The State of Hawai'i maintains criminal, administrative and civil investigative agencies but does not have a training facility to specifically develop investigators for these agencies. Instead, when a vacancy arises, an advertisement is made for the vacant position. The advertisement is posted and sets the minimum requirements needed to compete for the vacant position. In most instances, the position requires prior investigative experience (i.e. the State of Hawai'i depends upon other agencies training its potential investigators).

County police agencies (Honolulu Policed Department), federal law enforcement agencies (FBI) and mainland state (other than Hawai'i) law enforcement agencies train their own recruits then later allow them to become investigators for that specific agency.

An example is the State of Illinois which has a training standard for all law enforcement entities in its State. The State of Illinois believes that a "Trained officer is an effective officer." The State of Illinois established an Illinois Law Enforcement Training and Standards Board which is the state agency mandated to promote and maintain a high level of professional standards for law enforcement and correctional officers. Its purpose is to promote and protect citizen health, safety and welfare by encouraging municipalities, counties, park districts, State-controlled universities, colleges, public community colleges, and other local governmental agencies of this State and participating State agencies in their efforts to upgrade and maintain a high level of training and standards for law enforcement personnel.

United States law enforcement agencies, that are deemed professional agencies, are certified by a nationally recognized CALEA (Commission on Accreditation for Law Enforcement Agencies) standard. Most police agencies throughout the nation that are CALEA certified have recruit training programs and facilities to conduct training of their recruits. The recruits they train become law enforcement officers for that law enforcement agency.

In regards to CALEA's high training standards set for police agencies, certified police agencies are required to comply with the following comprehensive list of the titles of all 158 Standards that constitute the CALEA® Public Safety Training Academy Accreditation Program:

- 1.1.1 Credentialing
- 1.1.1 Credentialing Program Documentation
- 1.1.2 Instructors Certification
- 1.1.3 Timely Filing of Information
- 1.1.4 Criminal History Records Check

2 Organization

- 2.1 Organizational Structure
 - 2.1.1 Organizational Structure
 - 2.1.2 Organizational Chart
 - 2.1.3 Direct Authority, Component
 - 2.1.4 Supervisory Accountability
 - 2.1.5 Responsibility Commensurate with Authority
 - 2.1.6 Position Management System
- 2.2 General Management and Administration
 - 2.2.1 Training Academy/Client Agency Relationship
 - 2.2.2 Risk Management Program
 - 2.2.3 Equipment Use Expectations
 - 2.2.4 Administrative Reporting Program
 - 2.2.5 Accreditation Maintenance
 - 2.2.6 Public Information Procedures
 - 2.2.7 Public Health Authority
- 2.3 Organizational Integrity
 - 2.3.1 Complaint Investigation
 - 2.3.2 Complaint Notification Process
 - 2.3.3 Notification of Allegations/Rights
 - 2.3.4 Relieved from Duty
 - 2.3.5 Records, Maintenance and Security
 - 2.3.6 Administrative Review of Complaints

3 Direction and Authority

3.1 Role, Value, and Authority
3.1.1 Documents to Establish Academy
3.1.2 CEO Authority and Responsibility

3.1.3 Mission Statement

3.1.4 Code/Cannon of Ethics

3.1.5 Executive Protocol

3.1.6 Written Directive System

3.1.7 Dissemination and Storage

3.2 Fiscal Management and Academy Property

3.2.1 CEO Authority and Responsibility

3.2.2 Budget Process and Responsibility Described

3.2.3 Requisition and Purchasing Procedures

3.2.4 Accounting System

3.2.5 Revenue Fund/Accounts Maintenance

3.2.6 Audit of Fiscal Activities

3.2.7 Inventory and Control

3.2.8 Property Issue Procedures

3.3 Academy Performance Measurement

3.3.1 Performance Measurement Program

4 Human Resources

4.1 Classification and Delineation of Duties and Responsibilities

4.1.1 Classification Plan

4.1.2 Job Description Maintenance and Availability

4.2 Compensation

4.2.1 Salary Program

4.2.2 Leave Program

4.2.3 Benefits Program

4.2.4 Employee Assistance Program

4.2.5 Fitness for Duty Testing

4.2.6 Outside Employment

4.3 Collective Bargaining and Contract Management

4.3.1 Academy Role in Collective Bargaining Process

4.3.2 Ratification Responsibilities

4.4 Performance Evaluation

4.4.1 Performance Evaluation System

4.4.2 Annual Evaluation

4.4.3 Employee Discussion

4.4.4 Unsatisfactory Performance

4.4.5 Performance Evaluation Report

4.4.6 Performance Evaluation Report Comments

4.4.7 Evaluation of Probationary Academy Employees

4.4.8 Recognizing/Rewarding Good Performance

4.4.9 Early Intervention System

4.5 Grievance Procedures

4.5.1 Grievance Procedures

4.5.2 Coordination/Control of Records

4.5.3 Analysis of Grievances

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4.6 Disciplinary Procedures

4.6.1 Code of Conduct

4.6.2 Sexual/Unlawful Harassment

4.6.3 Disciplinary System

4.6.4 Role and Authority of Supervisors

4.6.5 Appeal Procedures

4.6.6 Dismissal Procedures

4.6.7 Maintenance/Security of Records

4.7 Professional Development

4.7.1 Continued Training

4.7.2 Specialized Training Assignments

4.7.3 Attendance Requirements and Reimbursement Information

4.7.4 Accreditation Process Information

4.7.5 Accreditation Manager Training

4.8 Contracted Services

4.8.1 Written Agreement with Contract Personnel

4.8.2 Written Agreement with Client Agencies

5 Recruitment, Selection, Employment, and Promotion

5.1 Recruitment

5.1.1 Recruitment Plan

5.1.2 Equal Employment Opportunity Policy

5.1.3 Job/Recruitment Announcements

5.1.4 Maintaining Applicant Contact

5.2 Selection

5.2.1 Selection Process Described

5.2.2 Applicant Information

5.2.3 Notification of Ineligibility

5.2.4 Disposition of Records

5.2.5 Selection Material Security

5.2.6 Background Investigation

5.2.7 Background Information Retention

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Costs

If there is consideration in building a training academy for State agency investigators, it will come with high costs, especially when it is developed from infancy. During the 1980's, the Honolulu Police Department decided to build its own recruit training facility. Prior to this date, the Honolulu Police Department's Training Academy was at the Hawaii National Guard site in Kahala. The Honolulu Police Department already had a Training Division staff that comprised of approximately ten to fifteen sworn officers. Training instructors would come from other divisions within the Department, Prosecutor's Office, FBI, U.S. Attorney's Department, etc.

The new recruit training facility built in Waipahu came with an approximate cost of \$11 million dollars during the 1980's. The training facility was built on City property. The new recruit training facility processed about two recruit classes a year, each class lasting six months of classroom training and another six months of field training. A recruit class may comprise of about 40 police recruits that replaced an annual attrition rate of approximately 100 sworn police officers annually, and that the sworn law enforcement officers in the Honolulu Police Department were approximately 1,900 during this time period of the 1980's.

During 2013, the Honolulu Police Department renovated its recruit training center. The estimated cost was \$43 million dollars.

Implementing a recruit training facility for ATG Special Agents might not be a viable option. The Investigations Division has a staff of 50 sworn Special Agents. During the last 7 years, there has not been any attrition from the civil service Special Agents. One civil service Special Agent will retire on February 20, 2016. For the Contract Hires, 16 Special Agents have either retired or decided not to renew their contracts.

If ATG were to build a full service recruit training facility for Special Agents, in compliance with CALTA standards, which would include classrooms, physical training room, firing range, mock crime scene training area, vehicle tactical driving course, administrative offices, library, and computer training room, the minimum expenditure would be at least \$10 million for structure, and another \$2 million for staffing and maintenance. This would not be a viable alternative to replace an average of one Special Agent per year. However, a State training facility may be viable to train all State investigators for the various State agencies in the same manner as Illinois.

B. OPTION – Train Special Investigators In-House

The Investigations Division has employed Special Agents with no prior law enforcement background. Currently, there are only 3 Special Agents who did not have any law enforcement background who were retained when the division began conducting full scale criminal investigations. They are successful in doing their assigned duties, but their training amounted to on-the-job training, nurtured by the 89-day hired Special Agents, who all had prior law enforcement training. Even today, these 3 Special Agents continue to advance their career knowledge based upon interaction with these 89 day hire Special Agents. If the CALTA standard, or the Illinois standard were to gauge their efficiency as trained law enforcement officers, they would not qualify, mainly because the Investigations Division had no approved curriculum, or documented training, defining what they were trained in. There is no competency examination given to them validating their qualification to that of an acceptable law enforcement standards.

The Investigations Division could begin doing in-house training with potential candidates with no credible law enforcement experience, but a team of permanent trainers will need to be trained and maintained in order for the training program to be recognized as having certified professional law enforcement curriculum. The planning of a structured curriculum, and the maintenance of that curriculum will be a task to be accomplished with no identified budget.

If an in-house training facility is implemented, it must be established in a "sterile environment" in which these "recruits" can fully concentrate on what they are taught by these instructors. Special Agents must be dedicated to the training of these recruits and should not be conducting investigations, splitting their time participating in training and conducting investigations, mainly because investigations have issues if they are not addressed in a diligent manner. The recruits may be subjected to training time when the Special Agent is available.

New positions may be needed for the recruit training position.

However, looking deeper as to what type of candidates ATG would be attracting for an in-house training program, based upon other law enforcement markets inside and outside of Hawaii, the State

does not offer much in pay and career advancement. If the State seeks “cream of the crop” college graduates to be recruited, that may not happen. Instead the State may attract:

1. Applicants who could not qualify, or who were washed out of federal law enforcement positions;
2. Applicants who could not qualify, or who were washed out from County police departments;
3. Applicants who will stay until they qualify for a better paying job with financial future;

Only a very small percentage may possess the attitude of being mission driven as to what the Investigations Division stands for, and would want to be a part of this division to make Hawai'i a better place to live.

C. OPTION – Work with HGEA for Better Benefits

The State, through DHRD and ATG can work with the Hawaii Government Employees Association or other collective bargaining units alleging that Contract Hires hinder prospective union members, so that these union obtain a greater role as SHOPO did in attaining better benefits and pay for these civil service Special Agents. This would attract qualified civil service applicants to fill the vacant positions held by Contract Hires.

D. OPTION – Discontinue Investigations Operations and Contract with Private Entities

The State or ATG might consider contracting out with private detective agencies and grant law enforcement powers to these private citizens. This option requires legislation due to Hawaii's law that prohibits private investigators to conduct criminal investigations when hired by clients. By entering into a contractual relationship with a private entity, this will save the State in employee payment benefits, since the private detective agency would bear the burden of those costs.

Issues to consider include:

1. Elimination of civil service positions;
2. Subjecting the selection process to State procurement laws, due to the dollar value and length of the contract services;
3. Costs exceeding that of Contract Hires or civil services employees depending if the investigative contract is flat rate or hourly based. If there is a restriction on the dollar amount paid for the prospective investigation, the investigation may not be completed if funds run out during the course of the investigation;
4. Unknown factors involving whether the private detective agency can actually complete the investigation, and this is only determined after the investigation is underway if that private investigative agency has the qualification and competency to complete the investigation;
5. The Attorney General might not be in complete control in the delivery of the final investigative product.

E. OPTION – Establish MOU with Counties to Take Over State Investigations

The State or ATG may consider establishing an MOU with each county police agency to investigate criminal matters of State interest. However, the county police departments will not investigate administrative or civil complaints, something that existing ATG Special Agents are required to investigate. The reduced cost from the Contract Hires will increase substantially because county police detectives have a higher pay scale than the State's civil service Special Agent.

F. OPTION – Train PSD Sheriffs Division to Conduct Complex Criminal Investigations

Since the Department of Public Safety's Sheriff Division already has a recruit training facility, its training facility could be improved so that Sheriffs are trained to conduct complex criminal investigations and take over the State's wide criminal, civil and administrative investigations, since they are assigned to all islands. A transition period could be established so that all 89 day Special Agents will be replaced by Sheriffs at a pre-designated time period.

The Deputy Sheriff would have to qualify as an investigator by passing a written examination testing him on advance investigative technique and knowledge.

When they qualify as investigators and become versed in handling these complex investigations, they would confer their cases with ATG in the same manner a county police detective would confer his or her case with a county deputy prosecuting attorney.

Costs would be increased to the State due to the elimination of lower paid Contract Hires and replacement of civil service status Sheriff employees. The Sheriff's standards of training should, if necessary, be brought to comparable standards as a County police department.

VIII. CONCLUSION

Existing Contract Hires in the ATG Investigations Division are:

1. Highly trained retired criminal investigators with twenty-five (25) or more years of experience who are dedicated in advancing the reputation of the Department of the Attorney General;
2. Trained and qualified to possess firearms;
3. Experienced in working with the general public and citizens with behavioral problems;
4. Agreeable to termination if they are non-productive;
5. Experienced in law enforcement with prior contacts and the ability to maximize existing relationships with federal, state and county law enforcement agencies;
6. Paid less than premium hourly wages for high-quality investigations. A 2011 analysis determined that Contract Hires save the State over \$800,000.00 a year in wages and benefits;
7. Flexible when offered diverse working schedules and conditions;

Today, the majority of Contract Hires have verbally emphasized that they want to continue with a meaningful law enforcement activity and serve their community. At the same time, the appropriateness of continuing to employ Contract Hires has been questioned. Numerous recruitment challenges exist if the ATG Investigations Division immediately converts to a 100% civil servant operation – primarily related to unequal salaries, benefits, training and advancement opportunities at the State – but several options may allow a practice of employing Contract Hires, in place for nearly 20 years, to eventually change this highly significant entity to the State of Hawaii.

Investigations Division

Annual Report

Calendar Year 2015

Daniel Y. Hanagami
Chief Special Agent

Investigations Division
Department of the
Attorney General
State of Hawaii



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Introduction

The Investigations Division exists within the Department of the Attorney General and is established under the authority of the Attorney General.

The Attorney General is the chief legal and law enforcement officer in the State of Hawaii. This office and the Department of the Attorney General were established in 1959 by the Hawaii State Government Reorganization Act of 1959 (Act 1, Second Special Session Laws of Hawaii 1959).

The office of the Attorney General has a long history of service to Hawaii. The first Attorney General was appointed by King Kamehameha III in 1844, and since that time Attorneys General served the Hawaiian monarchs, the Republic of Hawaii, the Territory of Hawaii, and now the State of Hawaii.

The Hawaii Revised Statutes establish the Department of the Attorney General:

§26-7 Department of the attorney general. The department of the attorney general shall be headed by a single executive to be known as the attorney general.

The department shall administer and render state legal services, including furnishing of written legal opinions to the governor, legislature, and such state departments and officers as the governor may direct; represent the State in all civil actions in which the State is a party; approve as to legality and form all documents relating to the acquisition of any land or interest in lands by the State; and, unless otherwise provided by law, prosecute cases involving violations of state laws and cases involving agreements, uniform laws, or other matters which are enforceable in the courts of the State. The attorney general shall be charged with such other duties and have such authority as heretofore provided by common law or statute.

There shall be within the department of the attorney general a commission to be known as the commission to promote uniform legislation which shall sit in an advisory capacity to the attorney general and to the legislature on matters relating to the promotion of uniform legislation. The composition of the commission shall be as heretofore provided for the commission to promote uniform legislation existing immediately prior to November 25, 1959. The members of the commission shall be nominated, and by and with the advice and consent of the senate, appointed by the governor for terms of four years each, provided that each member shall hold office until the member's successor is appointed and qualified; and provided also that the provisions of section 26-34, limiting the appointment of members of boards and

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commissions to two terms and the duration of membership to not more than eight consecutive years shall not be applicable.

The functions and authority heretofore exercised by the attorney general, high sheriff, and the commission to promote uniform legislation as heretofore constituted are transferred to the department of the attorney general established by this chapter. [L Sp 1959 2d, c 1, §13; am L 1965, c 127, §1; Supp, §14A-12; HRS §26-7; am L 1969, c 123, §1 and c 175, §12; am L 1975, c 20, §1; gen ch 1985; am L 1989, c 211, §10; am L 1990, c 281, §11]

The Department of the Attorney General is charged with a wide range of responsibilities and is organized into divisions to efficiently and effectively carry out these responsibilities. One of these is the Investigations Division.

The Attorney General is the chief law enforcement officer in the State of Hawaii. §28-11 of the Hawaii Revised Statutes confers on the Attorney General the authority to appoint and commission investigators as law enforcement officers “as the exigencies of the public service may require”.

The Investigations Division of the Department of the Attorney General and Investigators appointed under the authority of the Attorney General conduct investigations in support of the department’s civil, criminal, and administrative responsibilities. Investigations include crimes of corruption in public office, crimes against the interests of the State of Hawaii and the people of Hawaii, serious crimes for which the Department of the Attorney General has primary responsibility, and serious crimes deferred to the Attorney General by other law enforcement agencies.

This report summarizes the activities of the Investigations Division in 2015, highlighting the focus and direction of the division, performance metrics, program areas, and progress in accomplishing the strategic plan.

Investigations Division

The Investigations Division is the preeminent law enforcement investigative agency in the State of Hawaii, with statewide authority and the highest level of expertise. The division conducts investigations in criminal, administrative, civil and certain regulatory matters.

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The primary clients of the Investigations Division from an organizational standpoint are the Attorney General and the Deputies Attorney General. Ultimately, the principal clients of the Investigations Division are the people of Hawaii and the State of Hawaii.

The Investigations Division protects the rights and safety of the people of Hawaii under the Constitution and laws of the State of Hawaii. The division conducts investigations to protect the safety of Hawaii's people, to protect them against crime and criminals, to promote criminal justice, to promote freedom from crime and protect against the fear of crime, with respect to the rights and dignity of all.

Under the direction of the Attorney General, the division conducts investigations into a wide range of matters, including government corruption, complex white collar crimes, career criminal suppression, public safety and homeland security, sex offenders and sex offender registration violations, child sexual exploitation, Internet crimes against children, high technology computer crimes, identity thefts and other crimes against property rights, drug nuisances that degrade the safety and quality of life in our neighborhoods, environmental crimes, tobacco tax enforcement, cold case homicides, crimes within correctional facilities, and other crimes that significantly affect the safety and well-being of our community.

As provided in the Hawaii Revised Statutes **§28-11 Investigators; appointment and powers**, investigators are appointed by the Attorney General and have all of the powers and authority of police officers and deputy sheriffs. Investigators are selected for their skills and abilities, and many were previously police officers in the county police departments. As a group, the investigators are highly capable, experienced law enforcement professionals who effectively combine authority, ability and experience with full police powers to enforce laws and conduct investigations throughout the State of Hawaii as needed and as directed by the Attorney General. Personnel are sworn, armed law enforcement officers with the authority to investigate all crimes, arrest criminal suspects and execute search warrants and warrants of arrest. Investigators work closely with federal investigators, the Department of Public Safety and other state agencies, the Honolulu Police Department and the other county law enforcement agencies, and prosecutors.

The investigators are Special Agents at the Investigator V level, under the supervision of Supervisory Special Agents at the Investigator VI level.

Due to the challenges of finding highly qualified personnel who can perform the work at the necessary level of ability, many of the Special Agents are hired as emergency hires on an 89-day contract basis. These contracted Special Agents perform at the highest professional level, and are required to maintain the current expertise through continuing education provided through the Department of Justice, National White Collar Crime Center (NW3C), Federal Bureau of Investigation (FBI) and other qualified sources. Contracted Special Agents must meet all of the

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requirements of the law enforcement profession, maintain current firearms certification, and are subjected to ongoing criminal history background investigations to insure compliance with the Lautenberg Amendment.

Contract Special Agents serve at the lowest possible pay scale, with no salary steps or other fringe benefits that would accrue to civil service employees. The contracts provide no sick leave or vacation leave. As a result, the State derives the benefit of having the most experienced and capable investigators at roughly half the cost of non-contract personnel.

Many limited-term contract Special Agents are hired to fulfill contracts with other State departments. The Department of the Attorney General engages in Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU) partnerships with the Department of Public Safety, the Department of Transportation, the Department of Agriculture and other departments to provide investigative services on a contract basis. MOA and MOU partnerships are not necessarily permanent, and could not practically be serviced with permanent civil service positions.

Limited term contract Special Agents are hired with full knowledge, experience and expertise in their fields. This overcomes the limitations imposed by the present absence of a State training center for criminal investigations, and the need for investigator training programs at the state level. The county-level police departments in Hawaii rank with the finest in the United States, and contract Special Agents are drawn from their ranks who are fully trained, experienced, and conversant with Hawaii laws and the Hawaii Criminal Justice System.

The Investigations Division provides public safety services during emergency mobilization in response to hurricanes, tsunamis and other critical events. The division provides essential law enforcement services to protect the community, prevent crime and bring criminals to justice, provide a deterrent to child predators and other serious criminal elements, effectively discharging the division's responsibilities in program areas and focused efforts that reflect the dynamic, evolving needs of our community and the evolution of crime trends in our state.

The Investigations Division was reorganized at the close of 2015. The structure of the organization was changed and positions were reconfigured to balance limited funding and resources while at the same time addressing new responsibilities that were added. The reorganization improves and enhances operational efficiency, improves the overall effectiveness of the division, establishes more efficient lines of supervision and chain of command, provides optimal supervisory span of control, improves the accomplishment of objectives and assignments, establishes greater accountability, assigns specific areas of focus to specific positions, supports the optimal utilization of personnel and resources, enhances transparency and provides the framework for the most cost-effective accomplishment of the division's responsibilities.

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The Investigations Division makes the most of the personnel, resources and funding that have been made available. Additional staffing is needed to address increased demands placed on the division such as the increased demand for services by other departments for administrative and criminal investigations. In the interests of the state and the community, the Investigations Division has also increased its involvement in program areas where county-level resources are insufficient to cope with the scale of the problem, including complex financial frauds and political corruption cases.

Performance Metrics

The performance metrics represent the productivity of the Investigations Division as a whole.

Enforcement and *Caseload* are key performance metrics.

Enforcement represents a measure of effectiveness by highlighting enforcement actions. The enforcement benchmarks represent contacts with impact.

Caseload reflects the core investigative activity of the division. Investigations reveal crimes – criminal acts that are violations of specific criminal statutes. An investigation may reveal multiple criminal acts committed by one or more suspects. A case is generated for each distinct crime. Cases also document administrative investigations and regulatory actions.

Enforcement

ENFORCEMENT METRICS	2014	2015
Arrests	284	288
Arrest Warrants	137	180
Penal Summons Served	112	118
Search Warrants Executed	69	51
Subpoenas Served	1,568	1,553
Prosecution Via Complaint	42	43
Extraditions	15	14
Nuisance Abatement (Narcotics)	68	72

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Tobacco Enforcement Actions	1,258	1,303
Felon DNA Buccal Swabbing Actions	11,847	11,905
Sex Offender Registration Actions	2,183	2,177

Caseload

CASE METRICS	2014	2015
Cases	4,186	4,801
Closed – Conferred For Prosecution	210	282
Closed – Pending Further Developments	173	144
Closed – Records	3,474	
Closed – Other Venues	111	96
Open Cases	218	192
Closing Rate	94.7%	96%

The **Caseload** summary includes cases of all types – criminal, civil, administrative and regulatory.

The **Closing Rate** is determined by dividing the number of cases closed by the number of cases assigned during the same period. Some investigations are lengthy, and cases opened are carried forward into the following year. As a result, some cases, will be closed after these metrics are compiled. The final numbers of closed cases may change as a result. The closing rate is less than 100% because some cases remain open at the end of each year. The open cases carried forward continue to be investigated.

Closed – Conferred For Prosecution refers to the number of cases, not investigations, that were conferred and forwarded to the Criminal Justice Division or, in some instances other agencies for prosecution such as the county or federal prosecutor. A single investigation and prosecution may involve multiple cases per defendant, or may involve multiple defendants in a single case.

Closed – Pending Further Developments refers to cases closed when there is insufficient evidence to positively identify and prosecute a suspect or suspects, all leads for further investigation are exhausted.

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Closed – Records refers to cases in which the investigation is complete and there is no prosecution. These include regulatory cases (including cases made to document tobacco licensee compliance inspections), administrative investigations (since these involve no criminal prosecution and are closed upon completion) and criminal cases when the complaint is withdrawn by the complainant.

Closed – Other Venues refers to all other types of disposition.

Dispositions are subject to change. Cases that are closed with no further leads are reopened if new evidence or avenues of investigation develop.

Investigations

CRIMES INVESTIGATED		2015
Murder 2 (Attempt)	707-701.5	2
Assault 2	707-711	8
Assault 3	707-712	1
Kidnapping	707-720	2
Sexual Assault 1	707-730	4
Sexual Assault 2	707-731	2
Sexual Assault 3	707-732	2
Burglary 1	708-810	7
Burglary 2	708-811	2
Trespassing 1	708-813	2
Trespassing 2	708-814	3
Criminal Property Damage 2	708-821	3
Criminal Property Damage 3	708-822	2
Criminal Property Damage 4	708-823	1
Theft 1	708-830.5	7
Theft 2	708-831	137
Theft 3	708-832	1
Theft 4	708-833	2
Unauthorized Control Propelled Vehicle (UCPV)	708-836	12
Unauthorized Possession of Confidential Personal Information (UPCPI)	708-839.55	8
Robbery 1	708-840	4

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Robbery 2	708-841	1
Forgery 1	708-851	31
Forgery 2	708-852	5
Unauthorized Computer Access	708-895.5	
Money Laundering	708A-3	2
Racketeering Offenses	Chapter 842	2
Firearms Offenses	Chapter 134 HRS	5

This table includes representative crimes against persons and property rights investigated by the division and does not reflect all report classifications.

Program Areas

The Investigations Division is organized into units to effectively balance supervision, workload, and provide focus for investigations and activities related to the program areas. Due to limited staffing and budget reduction, there is an overlap in the types of cases assigned to the units.

Staffing and budget constraints require services to be prioritized – to make the best use of the resources available – and to distribute the work in the program areas among the work units on the basis of available personnel, not necessarily unit function. The Division continually adapts to changes in the requirements for investigations and services needed, within cost constraints.

The increase in caseload and productivity of the Investigations Division was the result of a combination of factors. The Division was reorganized to focus on key objectives, more efficiently organize investigators, and provide more effective supervision and streamlining to better manage personnel and complex operations and investigations. Investigations of white collar crimes and political corruption often reveal multiple crimes arising from the same scheme, accounting in part for the increase in cases. There have been increases in crimes reported and investigations across the board, including cases arising from Memoranda of Understanding with other state agencies such follow up investigations for felonies initiated by the Department of Public Safety, Agriculture, and Workplace Violence in various departments, and increased numbers of investigations in ongoing focus areas including tobacco enforcement and noncompliant sex offenders.

Overall, the division is working more efficiently and effectively as a result of improvements in organization, management, and supervision, streamlined internal work processes, and the division’s continued ability to attract and employ first-rate investigators capable of meeting the challenges of increased need for investigative services.

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Program Area – Criminal Investigations

The core mission of the Investigations Division is to investigate crime. The crimes investigated are within the parameters set by the Attorney General and the Chief Special Agent.

Criminal investigations have a substantial impact on personnel time and resources. The investigation process includes gathering and analyzing evidence, conducting interviews and interrogations, filing Judicial Determinations for Probable Cause, preparing and serving subpoenas, preparing and serving search warrants and arrest warrants, identifying and arresting criminal suspects, preparing cases for review and prosecution by the Criminal Justice Division, and testifying in court.

The Investigations Division investigates a full scope of crime types. The program areas generally define the types of investigations conducted. The full range of crimes under the Hawaii Revised Statutes are within the authority of the division.

The Division concentrates resources in program areas that (1) support the objectives and direction of the Attorney General, (2) meet the requirements of the interests of the State, (3) provide services to the community that do not duplicate the focus of other law enforcement agencies, and (4) are within the expertise and capabilities of the division.

The Division provides investigative support for a full range of felony crimes to the Department of Public Safety Sheriff's Airport Section (SAS) and Corrections, and the Department of Transportation Harbor Police. Investigations arising from these partnerships include felony property crimes (such as thefts and auto thefts), crimes against person (felony assaults), arrests of fugitives from justice from other jurisdictions (extraditions), and escapes (from correctional facilities).

Program Area - White Collar Crime

Since his appointment as Chief of the Investigations Division on August 14, 2013, Chief Special Agent Daniel Hanagami has used his expertise in white collar crime investigations to combat corruption and embezzlement of state funds.

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White collar crime investigation is a specialized discipline of criminal investigation, requiring knowledge and expertise in financial investigations. Financial crime investigations are complex and can require sifting through thousands of transactions, multiple accounts and multiple financial institutions. The culprits in public corruption and fraud schemes devote considerable effort to conceal their crimes. They have the advantage of working on the inside and often being viewed by their employers as trustworthy, giving them latitude to commit thefts and conceal their actions. Uncovering these crimes requires thorough, meticulous examination of financial transaction records and other documents to reveal the modus operandi, uncover convoluted pathways diverting funds, and attempt to recover the fruits of the crime.

Chief Special Agent Hanagami is directing these investigations and developing financial crimes expertise among the Special Agents assigned to the division. To develop these skills in others, he is directing and coaching active investigations, teaching financial crimes investigations, developing forensic capabilities, acquiring audit support, and providing formal training and certification opportunities for the Special Agents.

Chief Special Agent Hanagami is strengthening the law enforcement community overall by leveraging his long-term relationship with the NW3C (National White Collar Crime Center) to bring training classes to Hawaii and make training available to the county police departments and other state agencies in addition to Investigations Division staff.

A number of investigators have experience in white collar crime investigations. The majority of investigators in the division have 20 or more years of investigative experience, including homicide, sex crime, robbery, burglary, theft, organized crime, narcotics, gambling, and other areas of investigation. This background provides a strong foundation for the Special Agents to develop white collar crime investigation skills. The Division is growing in its capabilities.

A White Collar Crime Unit has been established as part of the reorganization. The unit concentrates on public corruption and white collar crime. Special Agents investigate theft, fraud, identity theft, forgery, securities fraud, money laundering, racketeering, organized crime, procurement violations, and related offenses.

Program Area - Tobacco Enforcement

The Tobacco Enforcement Section enforces the Tobacco Master Settlement Agreement, the Tobacco Liability Act, and the Cigarette Tax and Tobacco Tax Law. Enforcement ensures compliance with the legal requirements for payments under Chapter 675 of the Hawaii Revised Statutes.

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The Tobacco Enforcement Unit is charged with the responsibility to enforce Hawaii's laws, conduct inspections of tobacco retailers, and ensure this source of revenue to the state.

Cigarette tax revenues amounted to \$121,629,882 on fiscal year 2014-1015, representing a significant source of revenue for the state and underscoring the importance of continued enforcement to maintain compliance.

Inspections are conducted statewide of wholesalers and distributors, retail establishments, and cigarette vending machines for compliance. There are 1,544 retailers that hold retail tobacco permits. The Tobacco Enforcement Unit also engages in specialized, complex felony investigations, including unlicensed import and sale of foreign cigarettes, United States Customs seizures, and counterfeit tax stamp cases. These investigations counter lucrative smuggling and counterfeiting operations that would defraud the people of Hawaii of cigarette tax revenues.

Tobacco – Gray Market

Gray Market cigarettes are American-made or foreign-made cigarettes – usually major American brands – sold by the manufacturers specifically for sale outside of the United States. Gray Market cigarettes cut into the market share of legitimate manufacturers and underprice domestic products. Gray Market cigarettes include cigarettes imported illegally into the United States in violation of federal law, fail to meet federally mandated labeling requirements, or bear an unauthorized brand or trademark and are considered contraband. Foreign-made Gray Market cigarettes are manufactured overseas in such places as China, Colombia, the Philippines, Southeast Asia, and Switzerland, representing a multitude of brands and cigarette manufacturers. These cigarettes are often smuggled into Hawaii from Asia, the Philippines, Southeast Asia, and the South Pacific, and have been found in small grocery and liquor stores. Some mainland distributors attempt to mask or relabel “tax exempt” cigarettes to avoid prosecution for the sale of Gray Market cigarettes.

Historically, to address the Gray Market and other contraband cigarette problems, the Department of the Attorney General and the Investigations Division have established relationships with the taxing and regulatory authorities of Alaska, Arizona, California, Florida, Michigan, Oregon, Utah, Vermont, Washington, and Canada. Enforcement efforts have been coordinated with the Bureau of Alcohol, Tobacco, Firearms and Explosives, the United States Customs and Border Protection, the United States Postal Service, and the Royal Canadian Mounted Police.

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The Investigations Division works with United States Customs and Border Protection in joint investigations of persons smuggling contraband cigarettes to Hawaii from foreign countries. This cooperative effort has resulted in more than thirty investigations of individuals attempting to bring undeclared or under-declared cigarettes to Hawaii in the past year. Gray Market and other contraband cigarettes have been seized at airports in these joint interdiction efforts.

Tobacco – Counterfeit Tax Stamps

Counterfeit tax stamps cost as little as \$0.03 to \$0.50 per stamp and enable sellers using counterfeits to sell at a considerable price discount to lawfully taxed cigarettes. The Tobacco Enforcement Unit searches for counterfeit Hawaii tax stamps to prevent their circulation.

Tobacco – Half-Stamping

Some vendors attempt to evade the cigarette tax by placing a half-stamp on the bottom of a package of cigarettes, thus stamping two packs for the price of one. Investigations have resulted in arrests for selling half-stamped or partially stamped packs. In order to maintain the revenue stream of cigarette taxes and reduce the availability of underpriced cigarette products, the unit ensures tax stamps conform to the stamping requirements set forth by rules adopted by the Department of Taxation. Title 18 of the Hawaii Administrative Rules, section 18-245-3 provides that stamps or stamping indicia shall be securely affixed to the bottom of each cigarette package in such a manner that the stamps or stamping indicia are clearly visible, legible, and complete.

Tobacco – Internet and Mail Sales

Efforts continue in Hawaii and across the nation to address the problem of Internet sales of cigarettes. Significant federal regulation in the form of the Prevent All Cigarette Trafficking Act of 2009 (PACT ACT) was passed in 2010. The Tobacco Enforcement Unit initiates investigations into Craigslist and other offerings for the sale of tobacco products without a tobacco retail permit within the State of Hawaii. Interdiction of Internet and mail sales arriving in Hawaii is done in conjunction with United States Customs and the United States Postal Service. Parcels of cigarettes and loose tobacco are seized as prohibited mailed items and treated as contraband.

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Program Area - DNA Buccal Swabbing

The Investigations Division Section is the statewide lead for implementing Chapter 844D Hawaii Revised Statutes and ensuring that all convicted felons in the state comply with its provisions which require felons to provide a DNA specimen.

The unit obtains DNA samples via buccal swabbing from felons, and coordinates the efforts of other law enforcement agencies. The unit conducts investigations to locate and DNA obtain samples from felons, sends correspondence to felons to seek voluntary compliance, seeks prosecution of noncompliant felons, and coordinates the distribution of DNA Buccal Swabbing kits to other agencies.

In 2007, when the Buccal Swabbing Unit was established, there were 28,824 known unsupervised felons that were pending recovery of DNA samples. Bringing convicted felons into compliance has been an uphill effort. The felon population changes with new felons added through conviction or migration into the state, and many felons actively evade notification and compliance. In 2014, there were over 20,000 unsupervised felons were pending recovery of DNA samples.

DNA samples from felons and DNA evidence from criminal investigations are submitted to CODIS. The Federal Bureau of Investigation (FBI) manages CODIS (Combined DNA Index System) which is both the FBI's program of support for criminal justice DNA databases and the software used to run these databases. The National DNA Index System or NDIS is part of CODIS. DNA profiles of felons and from criminal investigations are submitted to CODIS by Hawaii law enforcement and participating forensic laboratories.

DNA Buccal swabbing and CODIS are essential to criminal investigations. CODIS and its data enable investigators to solve crimes at a faster rate, strengthen the supportive evidence in many cases, and identify suspects in crimes in which they might never be identified except by CODIS data.

Each person has a unique DNA profile, and felons and other criminals who are required by Hawaii law to provide DNA samples are compelled to provide samples that are analyzed and their DNA profile is entered in CODIS. In a process analogous to fingerprint evidence, biological evidence at crime scenes can be checked against the CODIS database to identify if there is a match. Suspects in crimes can be identified who might otherwise be unknown. CODIS is a nationwide effort to obtain and maintain DNA profiles, and can be used to identify suspects in crimes whose profile data was obtained in any participating jurisdiction.

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Hawaii CODIS – FBI Data - October 2015

31,843	Offender Profiles
0	Arrestees – no data available
861	Forensic Profiles
1	Participating Forensic Laboratories (NDIS)
405	Investigations Aided

As of October 2015, the National DNA Index (NDIS) contained over 12,010,904 offender profiles, 2,157,394 arrestee profiles and 663,191 forensic profiles.

Hawaii CODIS data was provided by FBI CODIS, and represents cumulative totals – inception to date.

- Forensic Profiles - evidence from criminal investigations entered in CODIS, pending comparison and identification.
- Investigations Aided – forensic profiles that have been compared and the results aided in investigations
- The NDIS participating forensic laboratory in Hawaii is the Honolulu Police Department’s Scientific Investigation Section Crime Lab. The Honolulu Police Department is the primary reporting agency for NDIS data.
- The most up-to-date statistical data for CODIS Hawaii can be found at the Federal Bureau of Investigation website <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/ndis-statistics/#Hawaii>
- More information about CODIS can be referenced at the Federal Bureau of Investigation website <http://www.fbi.gov/about-us/lab/biometric-analysis/codis/codis-and-ndis-fact-sheet>
- As of July 2014, the Honolulu Police Department has committed to forward more precise statistical data on suspects identified with DNA analysis.

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Program Area - Sex Offender Registration and Compliance

The Investigations Division is the primary law enforcement agency responsible for sex offender registration enforcement in Hawaii, and the only law enforcement agency engaged in the investigation of violations of Chapter 846E in the State of Hawaii. Chapter 846E addresses the registration of sex offenders and other covered offenders. Statutes define several felony crimes for failure to comply with covered offender registration requirements.

The Investigations Division vigorously carries out its mission to register covered offenders and investigate unregistered and noncompliant offenders, working closely with federal investigators, other state agencies, the Honolulu Police Department and other county law enforcement agencies, Adult Probation and the Paroling Authority. Routine re-registrations of compliant sex offenders have been shifted to clerical civilian staff as a cost-savings.

Sex offender registration is a critically important component of the overall strategy to protect future victims from sexual predation. Noncompliant sex offenders pose a high risk of committing new sex crimes. To reduce the risk to the community, noncompliant offenders are investigated by special agents to bring them into compliance or criminally prosecute them for their refusal into being compliant.

Since the transfer of routine re-registrations of compliant sex offenders to clerical staff, investigators focus on investigations, complex registrations such as engagement with the population of homeless sex offenders, and increased compliance inspections. Investigators conduct residential inspections and frequent validation checks to verify information supplied by sex offenders to ensure compliance with residence and other reporting requirements.

The Investigations Division provides training to the Department of Public Safety and the Honolulu Police Department to enable them to participate in sex offender registration compliance.

The Investigations Division works closely with the United States Marshal's Service and participates in the Adam Walsh Task Force field operations in an effort to discourage sex offenders from committing new crimes.

The purpose of the sex offender registration program is to manage the population of convicted sex offenders to reduce the risk of new sex offenses being committed by a population of offenders that, as a group, pose a significant risk of recidivism with future sex crimes. These crimes tend to be committed against vulnerable members of the community, primarily women and children. The Division is committed to this responsibility and to preventing sex offenses.

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Program Area - High Tech Crimes and ICAC

In 2015, the High Tech Crimes Unit included the Hawaii Internet Crimes Against Children (ICAC) and concentrated efforts on Internet crimes involving sexual predators who use the Internet to prey on children or exploit children in child pornography.

In 2016, the ICAC responsibilities are being relocated to the Criminal Justice Division. The Hawaii ICAC activities relate to 2015. The transfer of the Hawaii ICAC from the High Tech Crimes Unit was originally planned to take place on January 1, 2016. However, as of February 2016, the actual date of the transfer has not yet been determined. Until then, the Hawaii ICAC Task Force continues to be maintained within the High Tech Crimes Unit, and its primary full-time personnel are Special Agents of the Investigations Division.

The High Tech Crimes Unit and Hawaii ICAC provide forensic and investigative technical assistance to law enforcement agencies, and educational information to parents, educators, prosecutors, law enforcement, and others concerned with child victimization. The primary focus of the unit has been enforcement, concentrating on crimes involving child pornography, electronic enticement and minor produced sexual images.

The Hawaii ICAC exists within the framework of a national strategic initiative to protect children from sexual exploitation. The ICAC Program is a national network of 61 coordinated task forces representing more than 3,000 federal, state, local, and tribal law enforcement and prosecutorial agencies. The Hawaii ICAC is one of these task forces and serves the region consisting of Hawaii, Guam, and the Marshall Islands.

In the past, the Hawaii ICAC Task Force included a substantial number of personnel on assignment from other law enforcement agencies. However, due to financial and staffing constraints in other departments, participation by other agencies has declined and the High Tech Crimes Unit provides the core staffing for the Hawaii ICAC Task Force for investigation and support services at both the state and county level.

The High Tech Crimes Unit and the Hawaii ICAC are the primary law enforcement agency in the State of Hawaii handling cases of electronic enticement of children, child sexual exploitation and attempts made via the Internet, and other offenses related to the manufacturing and distribution of child pornography. There are only 4 investigators in the Hawaii ICAC: 2 paid with ICAC (grant) funds and 2 paid with state General Funds. The Homeland Security

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Investigations/ICE and the Air Force Office of Special Investigations are presently the only other agencies who have assigned an agent to work on undercover proactive investigations. There is a high rate of turnover with the military task force members and there is a constant need to train new military investigators. The county-level law enforcement agencies and other state law enforcement agencies do not provide staffing to support the ICAC.

The goals of the Hawaii Internet Crimes Against Children Task Force have been (1) to increase the effectiveness and efficiency of investigations and prosecutions of Internet Crimes Against Children (ICAC) offenses, and (2) to increase public awareness and prevention of ICAC offenses.

The unit has continued its efforts to increase the investigative capabilities of law enforcement officers in the detection, investigation, and apprehension of ICAC offenses. Progress has been made by providing training to law enforcement to increase their investigative capabilities, maintaining and administering a computer forensics laboratory for examination and extraction of digital evidence recovered in computer related investigations, and making this computer forensics laboratory available to trained law enforcement personnel and task force members.

The computer forensics section processes digital evidence and provides technical support. Software and hardware for the laboratory has been updated. Two Information Technology personnel are on assignment to the Investigations Division and are extensively certified in various disciplines of digital forensics in support of ICAC and other criminal investigations.

Training programs are funded to bring training to Hawaii because it is more economical to bring training to Hawaii than send people to the continental United States. Training involving high tech investigations and digital forensics were hosted and open to all law enforcement agencies in Hawaii. Training in 2015 included cell phone forensics and high tech crimes investigations, and was open to county, state and federal law enforcement.

Investigations have been focused on proactive and reactive peer to peer investigations. Peer to peer cases often involve sophisticated technologies and strategies used by suspects to avoid detection and penetration by law enforcement. These cases require a significant commitment of personnel time.

Enticement investigations were conducted involving suspects who intend to meet and engage in sexual activity with minors. Enticement investigations are time-consuming to develop and the offenders are often savvy. Hawaii law requires an actual meeting between the suspect and the victim. Sexual predators are wary of getting caught and are alert to any miscues by undercover agents posing as minors. These are difficult and time-consuming investigations, but are worthwhile when suspects are diverted away from rapes of actual minors.

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The task force has continued to promote public awareness and prevention programs. This included outreach education, awareness, and prevention programs for children, parents, educators, and community groups. An informational website is maintained at www.ag.hawaii.gov/hicac. Public awareness and education have proven to be effective ways to increase the number of computer related cases being investigated in the state.

HAWAII ICAC	2014	2015
Traveler	0	1
Child Enticement	5	7
Obscenity Directed To Minors	61	10
Child Prostitution	1	2
Manufacturing Child Pornography	2	1
Distributing Child Pornography	384	257
Possession of Child Pornography	1,566	1,699
ICAC Arrests	4	10
Cybertips Received	198	256
Subpoenas or Court Orders	194	119
Search Warrants	31	12
Technical Support	149	172
Forensic Examinations	77	74
Training Sessions Provided	9	14
Law Enforcement Trained	32	109
Presentations	40	63
Attendees at Presentations	1,741	11,834
Public Events	7	9
Attendees at Public Events	3,410	2,425
Public Awareness	1,126	3,178

The relocation of the Hawaii ICAC to the Criminal Justice Division in 2016 will not diminish the commitment to enforcement. The Department of the Attorney General remains committed to protecting Hawaii's children from sexual exploitation and identifying criminals engaged in the sexual exploitation of children, and retains its leadership role as the primary agency in Hawaii investigating crimes involving child pornography, electronic enticement and minor produced sexual images.

When the relocation occurs, it is planned that the High Tech Unit of the Investigations Division will refocus on other complex crimes involving digital technology and the recovery of digital evidence. The two Information Technology Specialists who have been certified as

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digital/computer forensic examiners will continue to work with the Investigations Division as well as support the Hawaii ICAC.



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**Program Area – Memoranda of Agreement and
Understanding for Investigative Services**

The Investigations Division provides investigative support for a number of other departments under Memoranda of Agreement (MOA) or Memoranda of Understanding (MOU), including:

Department of Public Safety – Criminal
Department of Transportation – Airports Division – Criminal
Department of Transportation – Airports Division – Administrative
Department of Transportation – Highways Division – Administrative
Department of Transportation – Harbors Division – Criminal
Department of Agriculture – Criminal and Administrative
Hawaii State Hospital – Criminal and Administrative
Office of Youth Services – Administrative
Hawaii Health Systems Corporation – Criminal and Administrative

Investigators assigned to these functions develop communications and working relationships with personnel in these departments. They become familiar with the unique aspects of these agencies, and provide expertise and capabilities that meet their requirements.

The investigator positions that service these MOUs and MOAs are ideally suited for 1-year or 89-day contracts. The MOUs and MOAs are subject to cancellation and exist only as long as the requesting department or agency requires investigative services. There are no funded permanent positions within the Department of the Attorney General to staff the MOU or MOA positions, and the positions are funded by the requesting agencies. If an MOU or MOA was terminated, then the position(s) of the investigator(s) would no longer be funded. The practical solution to limited term contract funding is limited term contract personnel. This solution also provides high quality, low cost investigators to service the agreements.

The Investigations Division is committed to providing the best possible service to fulfill the MOAs and MOUs. Each Special Agent is dedicated to their assignment and seeks to provide the best possible professional, expert service to meet the requirements of the requesting department.

The Investigations Division provides organizational support and infrastructure for the Special Agents, as well as supervision, ongoing training, certifications, and a professional support network to ensure the highest quality of service is provided. The Special Agents are selected based on their experience and ability. All have many years of investigative experience in the State of Hawaii with the Honolulu Police Department or other county-level departments. As

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contract employees paid at the lowest possible pay rate, and with no fringe benefits, no paid sick leave and no paid vacation, they are highly cost-effective.

Department of Public Safety – Felony Crimes MOA

The MOA with the Department of Public Safety provides for two Special Agents to conduct investigations involving felony crimes within the Department of Public Safety jurisdiction, work in coordination and in conjunction with other law enforcement personnel, and enforce applicable laws, ordinances, rules and regulations. Felony cases generated throughout Oahu by Deputy Sheriffs are investigated. An investigator is available at all times, 24 hours a day, to provide support and respond to crime scenes and conduct follow up investigations in felony arrest cases.

Case reports handled in service of the Department of Public Safety MOA are listed below:

DEPARTMENT OF PUBLIC SAFETY – MOA	2014	2015
Murder 2 (Attempted)		2
Assault 1		3
Assault 2	18	28
Criminal Property Damage	2	3
Escape 2	24	37
Extortion	1	1
Extradition	2	
Kidnapping		1
Forgery 2	1	1
Fraudulent Use Credit Card		1
Intimidating Correctional Worker	1	1
OVUII-Habitual	2	
Promoting a Dangerous Drug 3	1	
Promoting Prison Contraband 2	1	2
Robbery 1	1	3
Robbery 2	1	2
Sexual Assault 1	1	
Sexual Assault 2	2	1
Terroristic Threatening 1	9	7
Theft 1		11
Theft 3	1	1
UCPV – Unauthorized Control Propelled	4	4

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Vehicle		
UEMV – Unauthorized Entry Motor Vehicle	3	3
UPCPI - Unauthorized Possession of Confidential Personal Information		2
Other reports not listed above	47	35
Totals	122	149

Department of Transportation – Airports Division – Criminal MOU

The MOU between the Department of the Attorney General and the Department of Transportation – Airports Division provides for three Special Agents. These Special Agents are responsible for investigating all felony crimes that occur at the DOT Airport properties on the Island of Oahu. The investigators support the Sheriff’s Airport Section (SAS), the Department of Public Safety element stationed at the Honolulu International Airport. These investigators conduct investigations in conjunction with the SAS comparable to the investigative support provided island-wide by the agreement with the Department of Public Safety. An investigator is available at all times, 24 hours a day, to provide support and respond to crime scenes and conduct follow up investigations in felony arrest cases.

Department of Transportation – Airports Division – Administrative MOU

Two Special Agents are responsible for conducting administrative investigations involving employee misconduct, workplace violence, and other noncriminal infractions involving DOT Airports throughout the State of Hawaii. These can be complex investigations involving multiple persons, extensive interviews, and an understanding of the policies, procedures and guidelines of the Department of Transportation and the Airports Division. The scope of their investigative responsibilities is the statewide. The Special Agents provide weekly status updates for their investigations to appropriate DOT personnel authorities.

Department of Transportation – Highways Division – Administrative MOU

The MOU provides funding for two Special Agent positions in the Investigations Division. The Special Agents are responsible for conducting administrative investigations within the scope of the MOU that occur in the DOT Highways Division jurisdiction in the State of Hawaii. These can be complex investigations involving multiple persons, extensive interviews, and an

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understanding of the policies, procedures and guidelines of the Department of Transportation and the Highways Division. The scope of their investigative responsibilities is the statewide and involves investigations on Oahu and other islands.

Department of Transportation – Harbors Division – Criminal and Administrative MOU

The MOU provides funding for one Special Agent who is responsible for investigating felony crimes and conducting administrative investigations within the scope of the MOU that occur in DOT Harbors Division jurisdiction on the island of Oahu. A second Special Agent is assigned as needed to conduct administrative investigations into allegations of Workplace Violence and other administrative matters.

DEPARTMENT OF TRANSPORTATION	2014	2015
Department of Transportation – Airports Division – Criminal Cases	250	209
Department of Transportation – Airports Division – Administrative Cases	39	29
Department of Transportation – Highways Division – Administrative Cases	39	40
Department of Transportation – Harbors Division – Criminal, Administrative Cases	52	53

Department of Agriculture – Criminal and Administrative

This agreement provides funding for one Special Agent who is responsible for investigating both criminal and administrative matters on behalf of the Department of Agriculture. Criminal investigations include matters involving import or possession of prohibited plants and animals, the execution of search warrants and arrests, mislabeling of agricultural products, and other offenses. Administrative investigations include allegations of Workplace Violence and other

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administrative matters. The agreement was initiated in April 2015, and there were 59 cases in 2015 following the inception of the agreement.

Hawaii State Hospital – Criminal and Administrative

This agreement provides funding for one Special Agent to conduct criminal and administrative investigations on behalf of the Hawaii State Hospital. In 2015, there were 79 cases. The Hawaii State Hospital is a unique environment for investigations, and investigators must be certified to work in this facility. This includes specialized training in Conflict Prevention Management Resolution (CPMR), developing the necessary skill set to interact with hospital residents, understanding supervision status, understanding of fire and life safety protocols, infection control, access restrictions, patient rights, and confidentiality considerations.

Office of Youth Services – Administrative

This agreement provides funding for one Special Agent to conduct background investigations for prospective employees of the Office of Youth Services. These are particularly sensitive positions because of their role with at-risk youth. In 2015, a total of 39 background investigations were conducted.

Hawaii Health Systems Corporation – Criminal and Administrative

This agreement provides funding for one Special Agent who is responsible for investigating both criminal and administrative matters on behalf of the Hawaii Health Systems Corporation. The agreement was initiated in July 2015, and there have been six investigations initiated, five administrative and one criminal.

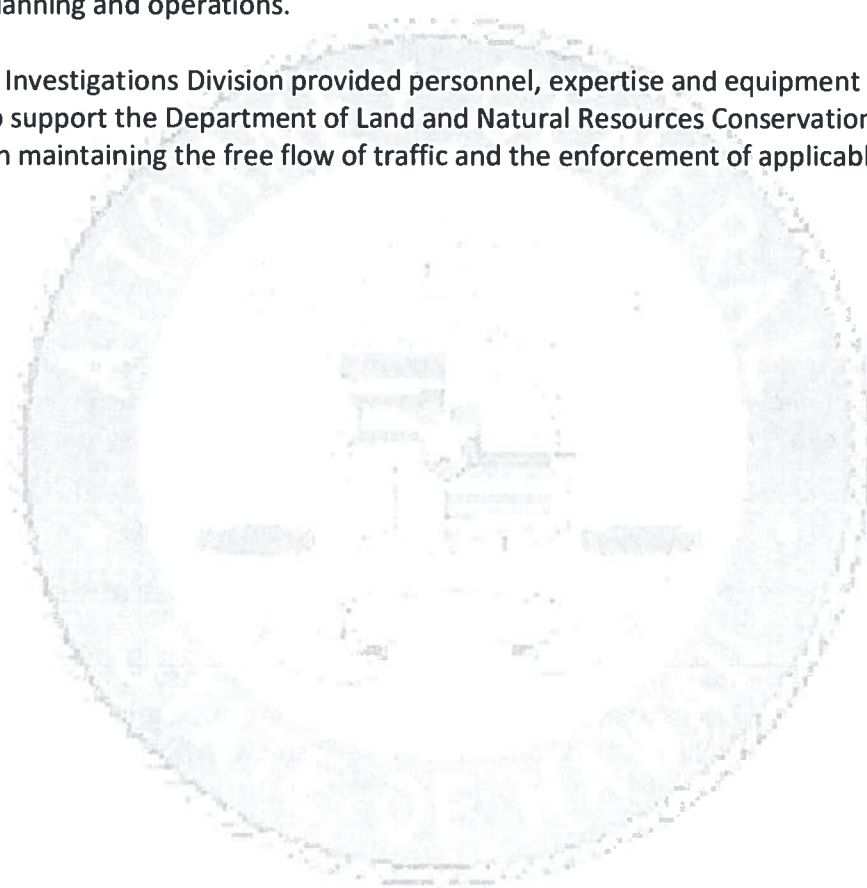
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Special Operations

The Investigations Division is tasked with special operations, major events, and support for the Emergency Support Function – Law Enforcement when mobilized during times of emergency.

The Investigations Division is a member of SLEC (State Law Enforcement Coalition) along with other state-level law enforcement agencies, and works closely with partners to share resources, expertise, planning and operations.

In 2015, the Investigations Division provided personnel, expertise and equipment when mobilized to support the Department of Land and Natural Resources Conservation Officers charged with maintaining the free flow of traffic and the enforcement of applicable laws on Mauna Kea.



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Staffing

Staffed Positions – Summary of Position Classifications

No.	SR	Classification
1	EM-07	Chief Special Agent
2	SR-26	Deputy Chief Special Agents – Investigator VI
1	SR-16	Secretary III
2	SR-10	Office Assistant IV
6	SR-26	Supervisory Special Agents
37	SR-24	Special Agents – Investigator V
2	SR-22	Special Agents – Investigator IV
51		Total Positions All Classifications

EM – Excluded Management

SR – Salary Range

Organization

The Investigations Division has a command staff supported by clerical personnel. All investigators in the division conduct investigations. This includes the Chief Special Agent, Deputy Chief Special Agents, and supervisors. Everyone in the division is dedicated to investigations. The clerical staff provides support services for the investigations. This is a working Investigations Division.

The division is organized into units that carry out the program areas and mission of the division.

The Investigations Division is in an ongoing process of reorganization in response to changing assignments, service needs and efficient utilization of personnel and resources. A proposed reorganization is in the process of review by the Attorney General. The proposal reflects actual operations and practice.

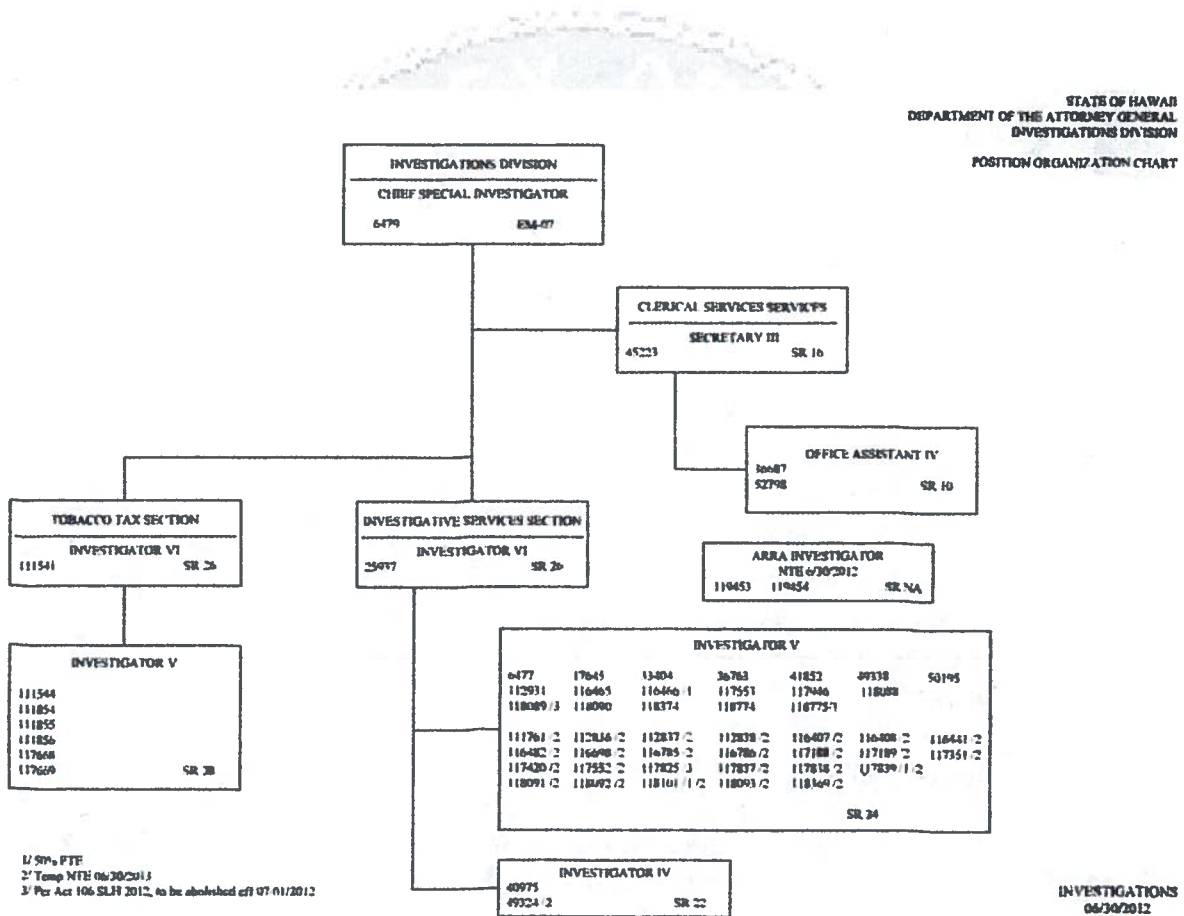
The organization established in 2012 does not provide the flexibility and span of control to support the demands placed on the division.

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In 2014-2015, a transitional operational organization was developed to improve internal communications and functional capabilities.

In late 2015, a new organization plan was developed that reflects a balance between fiscal constraints and increasing demands in the complexity of investigations.

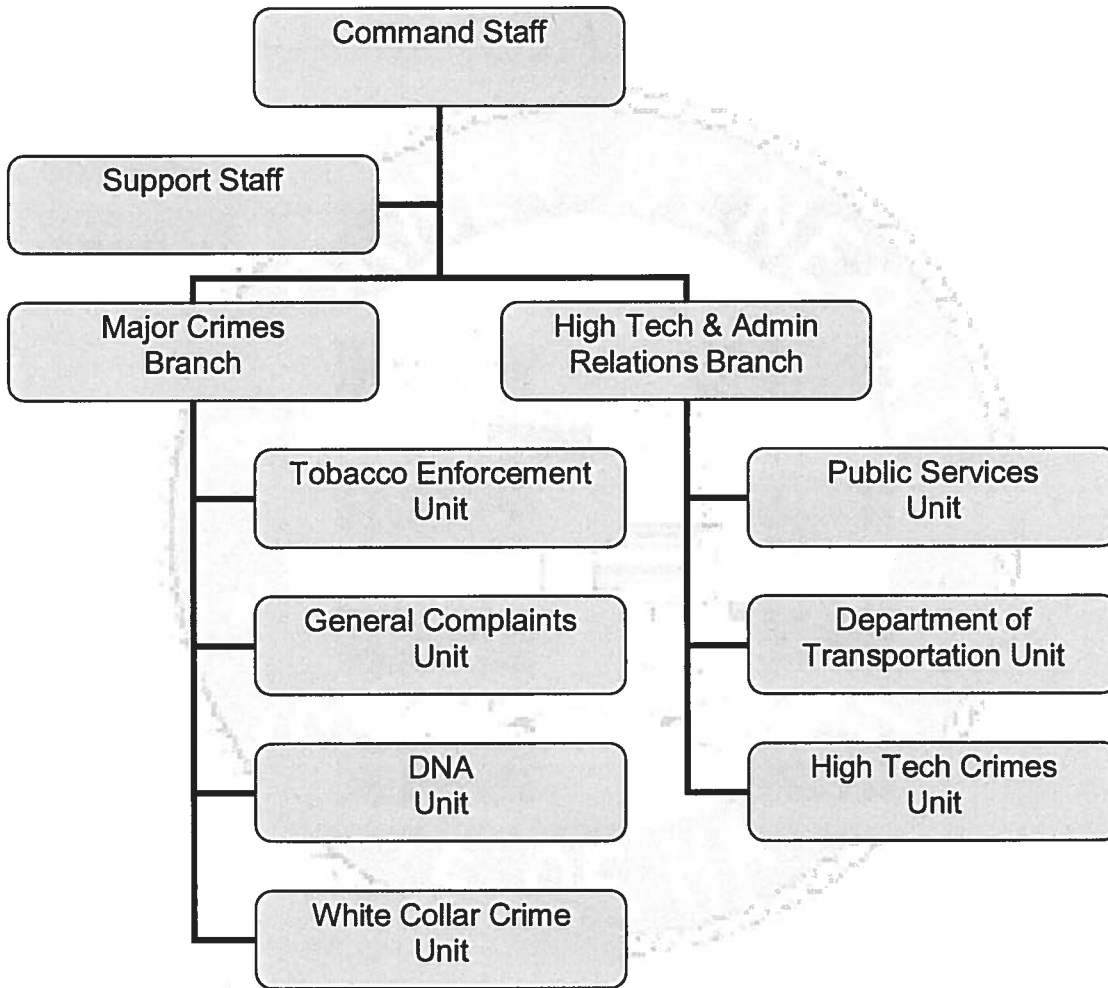
2012-2013 Organization



This organizational structure is no longer adequate to support the investigative functions of the division.

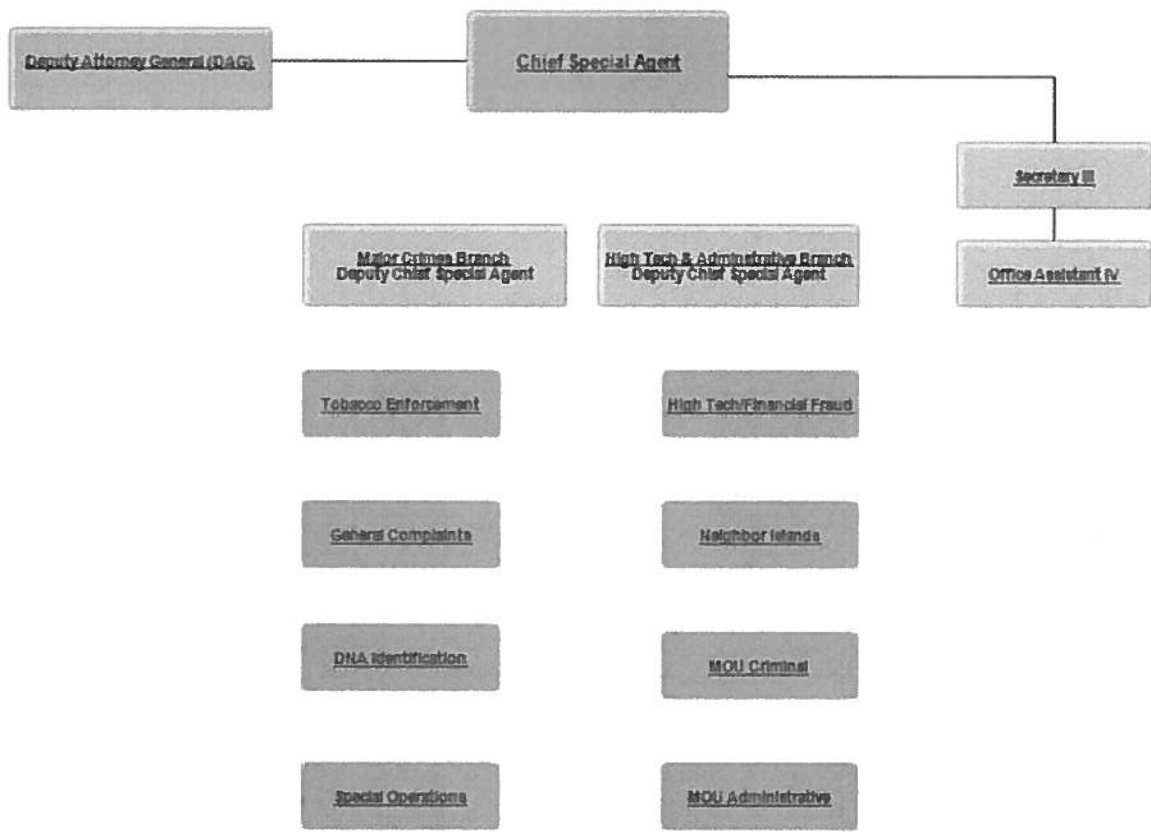
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2015 Transitional Operational Organization



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2016 New Organization Plan



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Cost Savings – 89-Day Contract Positions

The Investigations Division utilizes personnel on 89-day contracts to optimize its workforce with skilled and experienced investigators at relatively low salary rates. Each contract position represents a substantial savings in personnel costs because the contract positions are priced at the lowest salary range with no step movements regardless of longevity, and fringe benefits that are not paid. Filling civil service positions would require salary rates above minimum to attract qualified, capable personnel.

The personnel hired on an 89-day contract basis are highly skilled, well-trained, experienced law enforcement professionals, typically with a minimum of 25 years of experience in a county police department in Hawaii. These contract hires are proven investigators with a wealth of experience and understanding of the Hawaii Revised Statutes, our Judiciary, police departments and their operations, our Criminal Justice System, and our community.

There is a shortage of skilled, experienced investigators to serve as Special Agents in the Investigations Division, as well as in other investigator positions in state government. The county police departments have training solutions and career development for investigators, and there is no equivalent at the state level. The pay rate for county level investigators is significantly higher than for equivalent state level investigator positions, making it difficult to attract experienced investigators to state positions. The use of 89-day contracts attracts skilled, experienced investigators that do not require investigative training.

Contract Special Agents serve at the lowest possible pay scale, with no salary steps that would accrue to civil service employees. The contracts provided no sick leave or vacation leave. For example, if a contract employee becomes ill, the contract employee must take leave without pay and there is no loss of productivity or cost to the employer. As a result, the State derives the benefit of having the most experienced and capable investigators at a significant savings compared with non-contract personnel.

Annualized Cost Savings Based On Fringe Benefits

There are presently 44 personnel on 89-day contracts. This number varies due to continuous recruitment efforts to fill permanent, civil service positions. This results in an annualized savings of at least \$968,963.01 at present compensation rates.

The 89-day contract positions are (6) Supervisory Special Agents – Investigator VI SR26C, (36) Special Agents – Investigator V SR24C, and (2) Special Agents – Investigator IV SR22C.

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The cost comparisons between 89-day contract and permanent positions in the tables blow are based on the following:

Fringe rate for 89-day contract employees is based on
 Workers Compensation (1.16%)
 Unemployment Compensation (.25%)
 Medicare (1.45%).

Fringe rate for permanent employees is based on the Department of Budget and Fiscal Services Finance Memorandum (MEMO NO. 14-13) which provides the revised inte4rim fringe benefit rate for FY 15

Pension Accumulation (16.5%)
 Pension Administration (0%)
 Retiree Health Insurance (10.12%)
 Employee's Health Fund (6.81%)
 Workers Compensation (1.16%)
 Unemployment Compensation (.25%)
 Social Security (6.2%)
 Medicare (0%)

Annualized costs and savings do not take into account step increases received by Civil Service Employees. There are no step increases provided for contract employees.

Table 1 – Supervisory Special Agents (SR26)

SUPERVISORY SPECIAL AGENT SR26C	89-DAY CONTRACT	PERMANENT EMPLOYEE
Fringe Rate	2.86%	42.49%
Monthly Salary @ Step C	\$4,978.00	\$4,978.00
Monthly Fringe Cost	\$142.37	\$2,115.15
Number of Months	12	12
Annualized Fringe Cost Per Employee	\$1,708.45	\$25,381.83
Number of Positions	6	6
Annualized Fringe Cost	\$10,250.70	\$152,290.96
ANNUALIZED COST SAVINGS	\$142,040.26	

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Table 2 – Special Agents (SR24)

SPECIAL AGENT SR24C	89-DAY CONTRACT	PERMANENT EMPLOYEE
Fringe Rate	2.86%	42.49%
Monthly Salary @ Step C	\$4,603.00	\$4,603.00
Monthly Fringe Cost	\$131.65	\$1,955.81
Number of Months	12	12
Annualized Fringe Cost Per Employee	\$1,579.75	\$23,469.78
Number of Positions	36	36
Annualized Fringe Cost	\$56,870.99	\$844,911.95
ANNUALIZED COST SAVINGS	\$788,040.96	

Table 3 – Special Agents (SR22)

SPECIAL AGENT SR22C	89-DAY CONTRACT	PERMANENT EMPLOYEE
Fringe Rate	2.86%	42.49%
Monthly Salary @ Step C	\$4,088.00	\$4,088.00
Monthly Fringe Cost	\$116.92	\$1,736.99
Number of Months	12	12
Annualized Fringe Cost Per Employee	\$1,403.00	\$20,843.89
Number of Positions	2	2
Annualized Fringe Cost	\$2,806.00	\$41,687.79
ANNUALIZED COST SAVINGS	\$38,881.79	

Table 4 – Total Savings 89-Day Contract Positions

	89-DAY CONTRACT	PERMANENT EMPLOYEE
Supervisory Special Agents (SR26)	\$142,040.26	
Special Agents (SR24)	\$788,040.96	
Special Agents (SR22)	\$38,881.79	
ANNUALIZED COST SAVINGS	\$968,963.01	

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The actual annual cost savings are greater. Permanent employees accrue salary increases based on longevity and salary steps. Contract employees receive no salary increases for longevity. Since fringe benefits are based on percentages of income. Permanent employees who receive salary increases based on salary steps also accrue higher dollar amounts of fringe costs. The illustrative tables presume the lowest pay rate for permanent employees. There is no loss of productivity or leave cost associated with contract workers. Permanent employees are compensated for sick leave and vacation leave. Contract employees are only paid for work days, and receive no compensation for days not worked due to sick leave and must take leave without pay in lieu of vacation.

Strategic Initiatives

Strategic Direction – The Investigations Division established its Vision Statement, Mission Statement and Core Values.

Strategic Plan – A Strategic Plan was developed for the Investigations Division and significant progress has been made in its implementation.

Investigations – The division has been successful in managing caseload, engaging in enforcement, and fulfilling its investigative responsibilities. Investigations have included a number of high profile cases and complex financial crimes, including investigations of charter schools, political corruption, and ethics violations.

Hawaii ICAC Position – The Legislature authorized funding for another position for the Hawaii Internet Crimes Against Children (ICAC) Task Force.

Sex Offender Investigator Positions – Two positions for sex offender investigators were authorized, increasing the staffing available to address noncompliant and unregistered sex offenders.

Cost Savings – 89-Day Contract Positions – The division utilizes personnel on 89-day contracts to optimize its workforce with skilled and experienced investigators at relatively low salary rates. Each contract position represents a substantial savings in personnel costs. Contract positions are priced at a low salary with no step movements regardless of longevity, and fringe benefits that are not provided. Filling civil service positions with qualified candidates has proven to be problematic, and the 89-Day contract personnel have provided a high-quality, cost-effective solution. The State of Hawaii, as a provider of law enforcement services, cannot compete with county law enforcement agencies when it comes to offering its civil service law enforcement personnel with salaries, career advancements, training, equipment, and benefits.

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The counties have the funding to offer greater opportunities in these areas. This is why people interested in law enforcement careers will either go to the county law enforcement agencies or federal law enforcement agencies.

LnX (Law Enforcement Information eXchange) – The division was accepted for participation in LnX and Investigations Division personnel were certified as instructors, auditors, and to create accounts. LnX is a national law enforcement information system. This training was provided as part of the implementation of the Investigations Division becoming a member agency of this system and provides access to information concerning cases, arrests and other law enforcement contacts across the United States. LnX provides access to records management system information of police and sheriff's departments across the United States and serves as a portal for access to the N-DEX – the National Data Exchange managed by the Federal Bureau of Investigation. This information access is very important for investigators tracking suspects who flee to or have come from the mainland to Hawaii or who move between islands, such as noncompliant sex offenders or fraud suspects who flee the jurisdiction.

Radio Communications Equipment Grant – The division was awarded grant funding from the Department of Homeland Security for radio communications equipment. Funding in the amount of \$96,530 was secured for the purchase of P25 compliant radio equipment for investigators, providing for radio communications and public safety response capabilities for investigators in field operations.

Appraisers – Two Special Agents were trained as appraisers. This provided an essential capability for the investigation and prosecution of property crimes.

Case Accountability and Reporting – A comprehensive monthly case accountability report was implemented that provides case management capabilities, accountability and detailed performance metrics.

Financial Crimes Training – An in-house training program in financial crimes investigation was developed and implemented. This has been augmented with training from the National White Collar Crime Center (NW3C). The emphasis on training has resulted in increased effectiveness in the investigation of financial crimes.

Cash Flow Analysis – Two licenses for I2 Analyst Notebook were deployed and have been used to conduct complex link analysis and cash flow analysis.

Policies and Procedure Committee – A Policies and Procedure Committee was formulated and is engaged in an ongoing process of review and updating written directives and procedures for the division.

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Law Enforcement Identification Cards – A process and mechanism were established for issuing retired law enforcement identification cards to retired Investigations Division Special Agents.

Reorganization – The Division is in the process of reorganization, evolving to adapt to changing crime trends and responsibilities. Reorganization is needed to effectively balance supervision, workload, and provide focus for investigations and activities related to the program areas.

White Collar Crime Unit – A White Collar Crime Unit has been established to concentrate on public corruption and complex financial crimes.

SLEC – The division is a member and active participant with the SLEC (State Law Enforcement Coalition) to advance coordination among state law enforcement agencies and effectively respond to emergencies and other areas of mutual support.

Adam Walsh Task Force – The division is actively participating in this task force in partnership with the United States Marshals Service to investigate and arrest noncompliant sex offenders. Two members of the division have been cross-deputized as United States Marshals.

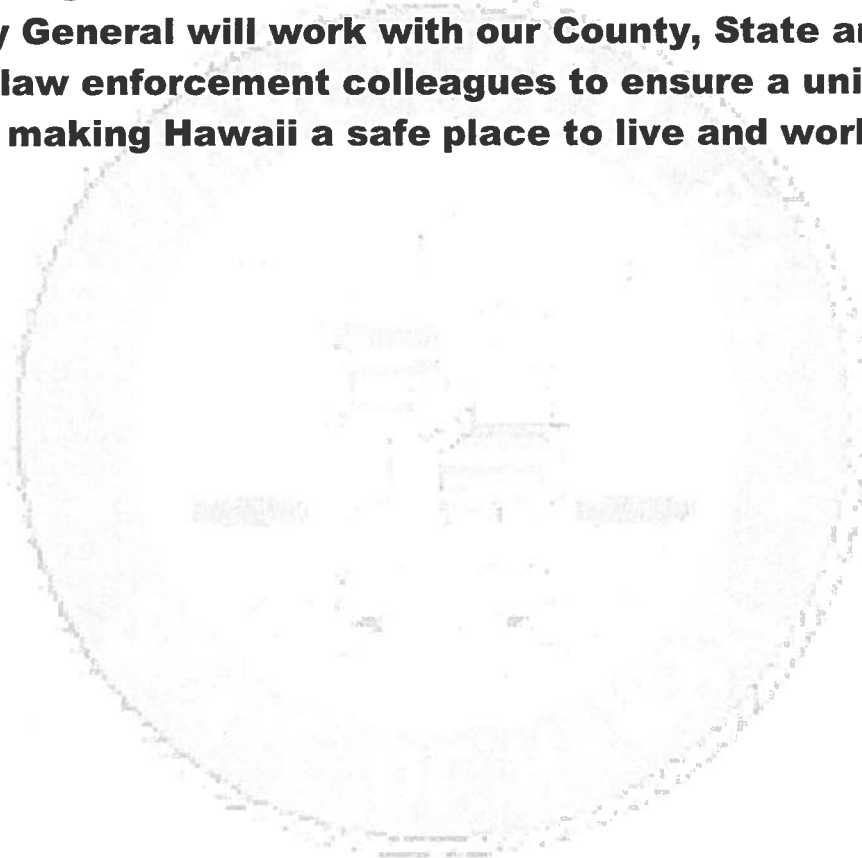
Statewide Forensics Strategic Plan – The division is participating with forensic laboratory directors and staff from county and state agencies to develop and implement the Statewide Forensics Strategic Plan for Hawaii.

Hawaii Integrated Justice Information System (HIJIS) – The division actively participates in this ongoing project coordinated by the Hawaii Criminal Justice Data Center.

Case Management System – The Investigations Division is seeking to establish a case management technology system. Due to the high cost of these systems, the division is working with in-house information technology talent and existing software provided by the state for office productivity to develop an in-house solution.

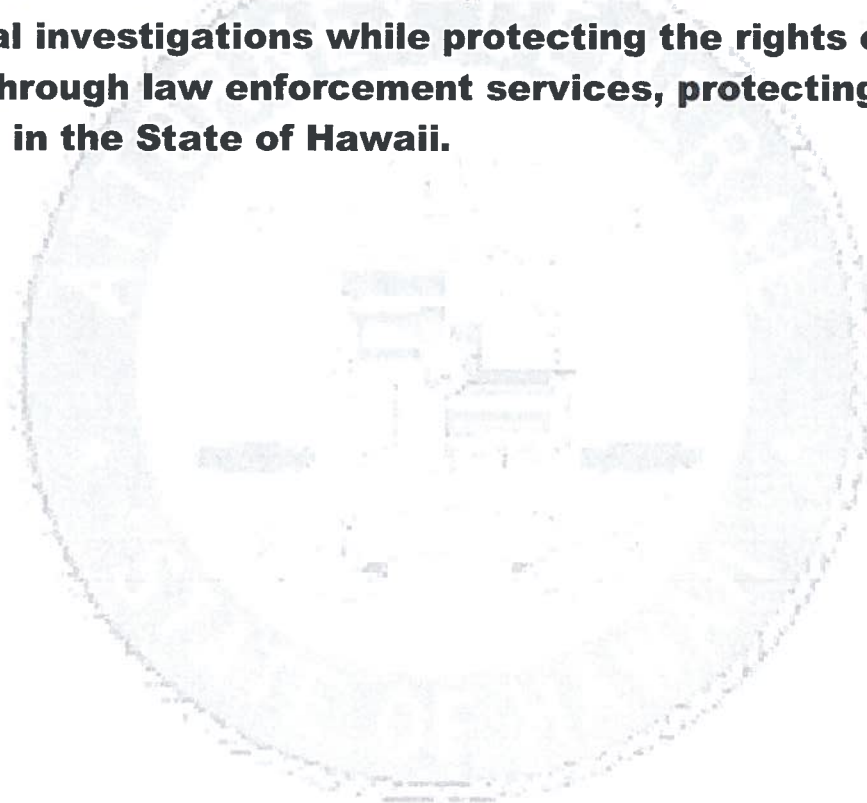
Vision Statement

The Investigations Division of the Department of the Attorney General will work with our County, State and Federal law enforcement colleagues to ensure a united effort in making Hawaii a safe place to live and work.



Mission

The Investigations Division of the Department of the Attorney General is committed to protecting all citizens of the State of Hawaii. We are dedicated to conduct fair and impartial investigations while protecting the rights of the public through law enforcement services, protecting all citizens in the State of Hawaii.



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Core Values

In order to protect all citizens in the State of Hawaii, the Investigations Division has declared its core values:

Integrity - We have integrity as an agency, and as individuals sworn to the honorable calling of law enforcement. We abide by the Constitution of the United States of America, and the State of Hawaii. We respect and cherish the uniqueness of Hawaii and its people, and treat everyone fairly and with aloha.

Ethics – Our personnel are guided by honesty and integrity in our professional and private lives.

Attitude – As professionals, we strive to provide our best efforts to serve our community.

Respect – We respect the people we serve and empathize with the victims. We treat all those accused of violations with dignity and respect.

Teamwork – We recognize that government resources are limited, and that the law enforcement efforts are most effective when communities, as well as state, county, and federal agencies work together towards the common goal of protecting our people and communities.

Partnerships – We pride ourselves in working with all our community members to reduce crimes and administrative violations.

Technology – We embrace technology and will identify and evaluate technologies that will improve our efficiency and enhance our investigative capabilities.

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Acknowledgements

This report was prepared with the assistance and information contributed by the staff of the Investigations Division of the Department of the Attorney General of the State of Hawaii. The personnel of the division are acknowledged for the excellence of their work which is reflected in the content of this report. Each member merits recognition for their service to the people of Hawaii, and for their professionalism and devotion to the core values of the division.



DAVID Y. IGE
Governor

SHAN S. TSUTSUI
Lt. Governor



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SCOTT E. ENRIGHT
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER
Deputy to the Chairperson



TESTIMONY OF SCOTT E. ENRIGHT
CHAIRPERSON, BOARD OF AGRICULTURE

BEFORE THE HOUSE COMMITTEE ON FINANCE

February 24, 2016
3:00 P.M.
CONFERENCE ROOM 308

HOUSE BILL NO. 2008 HD1
RELATING TO PUBLIC EMPLOYMENT

Chairperson Luke and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2008 HD1. This bill limits temporary hire of any person for more than two terms of eighty-nine consecutive days or less for a position that is funded in whole or in part by general funds during that person's lifetime. The Department of Agriculture respectfully opposes this bill.

The Department has concerns that this bill will restrict our ability to provide continuity of operations and critical services while we actively work to fill our vacant positions. The Department recognizes and appreciates that 89-day Non-Civil Service appointments serve as an immediate staffing solution to fulfill relatively short-term operational needs. We use this 89-day Non-Civil Service Appointment option for this purpose. As such, this bill proposes to impose restrictions that will severely limit the Department's flexibility to use temporary hires for interim, knowledge transfer, internship and temporary services that may be required for more than 89 consecutive days.

Additionally, since time and resources are dedicated to training 89-day hires, limiting an individual to only one 89-day appointment in his or her lifetime will create inefficiencies as the Department will need to constantly retrain new 89-day hires if the duration of a single 89-day appointment is insufficient to identify a qualified, permanent incumbent.

Thank you for the opportunity to submit our testimony.





HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

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

LATE

Testimony by
Hawaii Government Employees Association

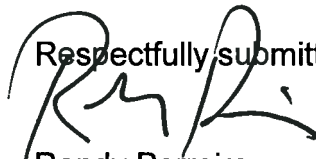
February 24, 2016

H.B. 2008, H.D. 1 – RELATING TO
PUBLIC EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2008, which prohibits the State of Hawaii from hiring persons for more than two 89-day terms for a fully or partially general-funded position during that person's lifetime. The bill provides limited exceptions to the proposed restriction that are reasonable.

Several state departments have used 89-day term hires to fill positions inappropriately by extending the terms multiple times. These employees are denied collective bargaining rights and any benefits. This practice is a direct circumvention of the civil service system and it must stop. Therefore, we believe the restrictions contained in H.B. 2008, H.D. 1 are long overdue.

Thank you for the opportunity to testify in support of H.B. 2008, H.D. 1.

Respectfully submitted,

Randy Perreira
Executive Director