

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

March 30, 2016

TESTIMONY TO THE  
SENATE COMMITTEE ON WAYS AND MEANS

For Hearing on Friday, April 1, 2016  
1:30 p.m., Conference Room 211

BY  
JAMES K. NISHIMOTO  
DIRECTOR

**House Bill No. 2008, H.D. 2, S.D. 2 (Proposed)  
Relating to Public Employment**

TO: CHAIRPERSON TOKUDA, VICE CHAIRPERSON DELA CRUZ AND MEMBERS  
OF THE SENATE COMMITTEE ON WAYS AND MEANS:

H.B. 2008, H.D. 2, S.D. 2 (proposed) requires departments to obtain approval from the Governor for employment of temporary hires for periods of greater than two consecutive terms of eighty-nine days. The bill also abolishes positions filled by eighty-nine days hires for more than twenty-four consecutive months.

The Department of Human Resources Development (DHRD) **supports the intent** of H.B. 2008, H.D. 2, S.D. 2 (proposed) because the bill provides for some flexibility with regard to eighty-nine day appointments. The ability to use eighty-nine day hires is an important "bridge" that enables departments to provide services while recruiting to fill positions on a permanent basis.

It is requested that consideration be given to: (1) amending section (c) to read: "This section shall not apply to periods of temporary employment when a person has been appointed to a vacant position arising as a result of: a workers' compensation claim; medical leave; an on-going investigation; a shortage differential **category**; a working condition differential; ~~or~~ a remote geographical location; **or when the incumbent in the position has return rights**;" and (2) providing for a prospective effective date; for example, June 30, 2017, in order to allow departments time for transition.

Thank you for the opportunity to testify on this measure.

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 2,  
SENATE DRAFT 2 (PROPOSED)  
RELATING TO PUBLIC EMPLOYMENT

By

Nolan P. Espinda, Director

Senate Committee on Ways and Means  
Senator Jill N. Tokuda, Chair  
Senator Donovan M. Dela Cruz, Vice Chair

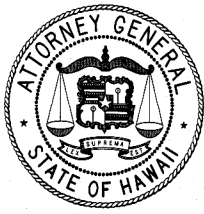
Friday, April 1, 2016; 1:30 p.m.  
State Capitol, Conference Room 211

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of House Bill (HB) 2008, House Draft (HD) 2, Senate Draft (SD) 2 (Proposed), which would require the Governor's approval for employment of temporary hires for periods greater than two consecutive terms of 89 days. The bill would also abolish positions filled by 89-day hires for more than 24 consecutive months by the same employee. The flexibility in HB 2008, HD 2, SD 2 (Proposed) will allow PSD to operate effectively while recruiting to fill positions on a permanent basis.

However, we respectfully request consideration of the issues related to the Investigations Division in the Department of the Attorney General (ATG), expressed in their testimony on HB 2008, HD 2, SD 1 and HB 2008, HD 2, SD 2 (Proposed). We are closely working with ATG and the Department of Human Resources Development to develop a state law enforcement career path that may reduce or eliminate the practice of employing 89-day hires.

Thank you for the opportunity to present this testimony.



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

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 2008, H.D. 2, PROPOSED S.D. 2, RELATING TO PUBLIC EMPLOYMENT.

**BEFORE THE:**

SENATE COMMITTEE ON WAYS AND MEANS

**DATE:** Friday, April 1, 2016 **TIME:** 1:30 p.m.

**LOCATION:** State Capitol, Room 211

**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

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Chair Tokuda and Members of the Committee:

The Department of the Attorney General (the "Department") opposes this Proposed Senate Draft 2 (SD 2). While we have concerns with both the Senate Draft 1 (SD 1) as well as the Proposed SD 2, we have greater concerns with the Proposed SD 2. The Department recognizes and appreciates the concerns expressed by the Legislature with respect to the use of 89-day hires and has been working with the Department of Public Safety (PSD) and the Department of Human Resources Development (DHRD) to address the issue in a collaborative way.

In the interest of being concise, we incorporate by reference the description of these efforts as well as the description of the fine work done by our Investigations division that was provided in our testimony on HB No. 2008, HD 1, SD 1. The remainder of this testimony will be focused on our particular concerns with the Proposed SD 2.

The Proposed SD 2 impacts all positions no matter what the Means of Financing (MOF). It also impacts all positions, regardless of whether the position is temporary or permanent. Many of the federally funded positions that would be impacted by the Proposed SD 2 are temporary and are particularly difficult to fill as employees are not willing to risk civil service protection by taking a temporary position. Even new hires are often hesitant to even interview when they hear the position is temporary. Therefore, we ask that special and federal funded temporary positions be exempted from the Proposed SD 2 or be given an extended number of appointments to match the term of the federal or special funding.

Additionally, the Proposed SD 2 would automatically abolish any position that has been filled by a temporary employee hired for a term of 89 days for more than twenty-four consecutive months. We assume that this would only be applied on a prospective basis. Even if it is, however, we remain concerned about the unintended consequences that such an austere requirement could have. For example, a clerical mistake could lead to someone being kept on for twenty-five months rather than twenty-four or less, and such an error could cause the affected department to lose the position itself. If the Committee chooses to include a requirement such as this, we respectfully recommend that it be amended to simply provide that no temporary hire shall be employed for more than twenty-four consecutive months and that the requirement not include automatically abolishing the position.

If the Committee decides to pass this bill out despite these concerns, we respectfully request that the bill be given a prospective effective date of December 2017 or later. This would give the Department time to stand up the program described in our testimony on HB No. 2008, HD 1, SD 1. It would also assist with time to plan for this transition and attempt to recruit full-time Investigators who may be needed to replace Investigators impacted by this bill.

As currently drafted, the Proposed SD 2 would effectively end the Department's ability to discharge its investigative and other duties on behalf of a large number of state, county, and federal agencies.

Thank you for the opportunity to testify on this matter.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

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Phone: (808) 586-8844 / Fax: (808) 586-9099  
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March 31, 2016

To: The Honorable Jill N. Tokuda, Chair,  
The Honorable Donovan M. Dela Cruz, Vice Chair, and  
Members of the Senate Committee on Ways & Means

Date: Friday, April 1, 2016  
Time: 1:30 p.m.  
Place: Conference Room 211, State Capitol

From: Linda Chu Takayama, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2008 HD2 Proposed SD2 Relating to Public Employment**

**I. OVERVIEW OF PROPOSED LEGISLATION**

HB2008 HD2 Proposed SD2 proposes to prohibit the State from temporarily employing persons for more than two (2) consecutive terms of eighty-nine (89) days, or up to four (4) consecutive terms or twenty-four (24) consecutive months with the approval of the Governor. Further, this measure seeks to automatically eliminate the position that is filled by a temporary hire employee for more than twenty-four consecutive months, except for those positions filled with a temporary hire due to specific reasons. DLIR appreciates the intent of this proposal but respectfully opposes.

**II. CURRENT STATUS**

DLIR had five (5) 89-day hires in permanent civil service positions and four (4) in temporary civil service positions in February 2016.

**III. COMMENTS ON THE HOUSE BILL**

DLIR prefers to have the flexibility to employ 89-day hires to fill vacant positions that are in the recruitment process until the hiring of a permanent employee for the vacancy. DLIR has positions that are difficult to fill or tied to federal funding where the work is critical and using temporary hires enables the department to perform its functions until a permanent staff is hired.

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 Senate Committee on  
WAYS AND MEANS

Friday, April 1, 2016  
1:30 p.m.  
State Capitol, Conference Room 211

In consideration of  
HOUSE BILL 2008, HOUSE DRAFT 2, SENATE DRAFT 1, Proposed SENATE DRAFT 2  
RELATING TO PUBLIC EMPLOYMENT

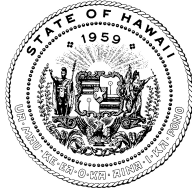
House Bill 2008, House Draft 2, Senate Draft 1, Proposed Senate Draft 2, proposes to prohibit the State from temporarily employing persons for more than two (2) consecutive terms of eighty-nine (89) days, or up to four (4) consecutive terms or twenty-four (24) consecutive months with the approval of the Governor. Further, this measure seeks to automatically eliminate the position that is filled by a temporary hire employee for more than twenty-four consecutive months, except for those positions filled with a temporary hire due to specific reasons. **While appreciating the intent, the Department of Land and Natural Resources (Department) respectfully opposes this measure.**

This prohibition will severely impede 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. It often takes longer to complete the recruitment process to fill vacancies that are unique to the Department and which require highly specialized education and/or experience. Utilizing the 89-day hire practice has proven to be a viable alternative for the Department to keep functions operational and running with minimal disruption until a permanent employee is hired to fill the vacancy.

An example of the Department's use of 89-day hires is the recording and registration of land ownership in the State of Hawaii. The Bureau of Conveyances (Bureau) is the sole state agency authorized to carry out the function of recordation and registration. The Bureau would be severely impacted by the inability to hire and re-hire 89-day employees due to the demands in recording nearly 1,500 documents daily which affect real property conveyances across the state. The Bureau has an average vacancy rate of approximately eight vacancies at any given time. The recruitment process for permanent employees takes an average of six months and sometimes longer to find a viable candidate with specific skillsets. This measure would cripple the Bureau's ability to maintain a high level of service necessary to support the economic viability of the state.

Thank you for the opportunity to testify on this measure.



## OFFICE OF ENTERPRISE TECHNOLOGY SERVICES

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ETS.HAWAII.GOV

INFORMATION AND COMMUNICATION  
SERVICES DIVISION

OFFICE OF INFORMATION MANAGEMENT  
AND TECHNOLOGY

Testimony of  
TODD NACAPUY  
Chief Information Officer, State of Hawai'i

Before the

SENATE COMMITTEE ON WAYS AND MEANS  
Friday, April 1, 2016; 1:30 p.m.  
State Capitol, Conference Room 211

HOUSE BILL NO. 2008, H.D. 2, PROPOSED S.D. 2  
RELATING TO PUBLIC EMPLOYMENT

Chair Tokuda, Vice Chair Dela Cruz, and Committee Members:

My name is Todd Nacapuy, Chief Information Officer (CIO) of the State of Hawai'i, submitting testimony **opposing** House Bill No. 2008, H.D. 2, Proposed S.D. 2, Relating to Public Employment, which prohibits the State from temporarily hiring any person for more than two consecutive terms of 89 days ("89-day hire") unless approval is obtained by the governor, in which case a department may temporarily employ a person for four consecutive terms of 89 days or 24 consecutive months. The bill does not apply when a person has been appointed to a vacant position arising from a workers' compensation claim, medical leave, an ongoing investigation, a shortage differential, a working condition differential, or a remote geographical location. The bill takes effect on July 1, 2016.

While we agree that the proposed language removes many 89-day term restrictions in previous drafts, we continue to have significant concerns that the passage of H.B. No. 2008, H.D. 2, Proposed S.D. 2, will hamper the Office of Enterprise Technology Services' (ETS) ability to continue providing essential services to the many departments we support.

Since information technology positions are among the most difficult to fill, often undergoing lengthy and repeatedly unsuccessful recruitment attempts in a highly competitive profession, ETS uses 89-day hires to minimize operational disruptions, and to start development of new programs without usual delays associated with waiting for qualified staff. As the State's overall unemployment rate continue to drop, it has become increasingly difficult to find qualified IT employees, with many positions remaining vacant for extended period. **ETS requests adding an exception that allows using 89-day hires to fill limited-term IT appointments and vacant IT management civil service positions until recruitments are completed.**





**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  
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Web site: [www.hawaii.gov/dbedt](http://www.hawaii.gov/dbedt)

Telephone: (808) 586-2355  
Fax: (808) 586-2377

Statement of  
**LUIS P. SALAVERIA**  
Director  
Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEE ON WAYS AND MEANS**

Friday, April 1, 2016  
1:30 p.m.  
State Capitol, Conference Room 211  
in consideration of  
**HB 2008, HD2, SD1 and PROPOSED SD2  
RELATING TO PUBLIC EMPLOYMENT.**

Chair Tokuda, Vice Chair Dela Cruz, and Members of the Committee.

HB2008, Proposed SD 2, proposes to prohibit the State from temporarily employing persons for more than two (2) consecutive terms of eighty- nine (89) days, or up to four (4) consecutive terms or twenty-four (24) consecutive months with the approval of the Governor. Further, this measure seeks to automatically eliminate the position that is filled by a temporary hire employee for more than twenty-four consecutive months, except for those positions filled with a temporary hire due to specific reasons.

The Department of Business, Economic Development & Tourism (DBEDT) appreciates the work of the Senate on this bill, but must respectfully **oppose** this measure.

DBEDT currently has only five 89-day hires. This temporary employment option is a valuable tool to ensure service to the public during the process of active recruitment to fill vacant civil service positions. DBEDT has some positions that require very highly skilled applicants, especially in the Economic Development Specialist class. Active recruitment by DHRD can take some time to certify a list of eligible applicants with the needed skills. With the language in the Proposed SD2, DBEDT could risk having an essential position abolished, before a qualified applicant was found.

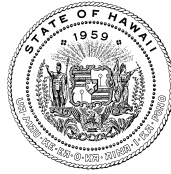
Thank you for the opportunity to offer comments.

While ETS is working with the Department of Human Resources Development to resolve IT staff recruitment challenges, ETS still needs people to deliver its critical services to all State departments. To do so, ETS requires the continuing flexibility to use 89-day hires, as needed for short and longer terms. Our recent experience of extensively relying on consultants to provide necessary skill sets on a short-term basis has proven to be costly and ineffective.

Further, as much of our specialized IT work force is retirement eligible, we face the real possibility of rapidly losing critical institutional and job-specific knowledge in large numbers in the near future. Without the option to judiciously backfill these key, difficult-to-fill positions with experienced 89-day hires while actively searching for qualified permanent staff, many key State computer systems and projects that directly support health, public safety, emergency management, and law enforcement programs would be negatively affected.

Thank you for the opportunity to provide testimony.

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 SENATE COMMITTEE ON WAYS AND MEANS  
ON  
HOUSE BILL NO. 2008, H.D. 2, PROPOSED S.D. 2

April 1, 2016  
1:30 p.m.

RELATING TO PUBLIC EMPLOYMENT

House Bill No. 2008, H.D. 2, Proposed S.D. 2, requires departments to obtain the Governor's approval for employment of temporary hires for periods of greater than 2 consecutive terms of 89-days. This bill will also abolish positions filled by temporary employees for more than 24 consecutive months (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 automatically abolishing positions filled by temporary employees for more than 24 consecutive months 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.



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

**Date:** 04/01/2016  
**Time:** 01:30 PM  
**Location:** 211  
**Committee:** Senate Ways and Means

**Department:** Education

**Person Testifying:** Kathryn S. Matayoshi, Superintendent of Education

**Title of Bill:** HB 2008, HD2, SD2 Proposed RELATING TO PUBLIC EMPLOYMENT.

**Purpose of Bill:** Prohibits the State from hiring persons pursuant to section 7677(8), HRS, for more than an unspecified number of terms of ninety consecutive days or less in a fully general-funded position. Provides for limited exceptions. Effective January 7, 2059. (SD1)

**Department's Position:**

The Department of Education ("Department") respectfully submits the following comments regarding HB 2008, HD 2, SD 2.

As mentioned in previous testimony, the Department is focused on maintaining a high-quality learning environment for our students. 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. Therefore, under some circumstances, employees are needed for multiple 89-day periods. 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.

Although the Department appreciates the clarity provided as to the number of consecutive terms of 89-day hires proposed in HB 2008, HD 2, SD 2, the Department is concerned about the proposal that temporary positions must be abolished if a position is filled with an 89-day hire for more than twenty-four (24) consecutive months. This provision could have unintended but certainly harmful impact on school operations and student supports as school need the flexibility to manage their personnel, as available.

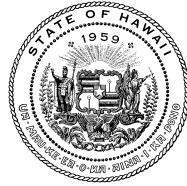
The Department notes and appreciates the exemptions in the proposed subsection (c). However, the Department experiences challenges in filling positions in schools in a variety of geographic areas, not only those that may be termed "remote." Examples are the schools on

Hawaii island and in the the Nanakuli-Waianae Complex Area.

The Department respectfully requests the bill be held. However, should HB 2008, HD 2, SD 2 advance, the Department respectfully requests that additional statutory language be added to exempt 89-day hire appointments for the Department's school-level positions and positions related to the delivery of special education services.

DAVID Y. IGE  
GOVERNOR

SHAN TSUTSUI  
LT. GOVERNOR



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

MARIA E. ZIELINSKI  
DIRECTOR OF TAXATION

JOSEPH K. KIM  
DEPUTY DIRECTOR

To: The Honorable Jill N. Tokuda, Chair  
and Members of the Senate Committee on Ways and Means

Date: April 1, 2016  
Time: 1:30 P.M.  
Place: Conference Room 211, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 2008, H.D. 2, S.D. 1, Proposed S.D. 2, Relating to Public Employment

The Department of Taxation (Department) has serious concerns about H.B. 2008, H.D. 2, S.D.1, Proposed S.D. 2 and provides the following comments for your consideration.

H.B. 2008, H.D. 2, S.D.1, Proposed S.D. 2, prohibits the State from temporarily hiring any person for more than two consecutive terms of 89 days ("89-day hire") unless approval is obtained by the governor, in which case a department may temporarily employ a person for four consecutive terms of 89 days or 24 consecutive months. The bill does not apply when a person has been appointed to a vacant position arising from a workers' compensation claim, medical leave, an ongoing investigation, a shortage differential, a working condition differential, or a remote geographical location. The bill takes effect on July 1, 2016.

First, the Department requests that an exception be made for its seasonal employees, similar to the exception provided in the S.D. 1 version of this bill. The Department currently employs 108 89-day hires to serve in positions needed for the busy tax season. The 108 seasonal hires, which make up a large number of the Department's employees (the Department currently employs 428 permanent employees), are necessary to address the large volume of filings and inquiries from taxpayers during tax season. 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 and often work the evening and weekend shifts. 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 usually employs seasonal hires for two 89-day terms in two staggered time periods: from November to May and from February to August. In most cases, the staggering of the time periods allows the Department to efficiently limit the use of 89-day hires to two terms. In some instances, however, the Department may need to extend a seasonal employee to a third 89-day term due to the high volume of document processing that needs to be

completed. Accordingly, the Department requests that positions established for the tax season are made exempt from this measure.

Second, the Department requests that an exception is made for the Department's use of 89-day hires to fill limited-term appointments and vacant entry level civil service positions that are critical to the Department's daily operations. In many cases, prospective employees are unwilling to apply for positions that are limited-term appointments because of the temporary nature of the position. Many times, there are no qualified applicants applying for these temporary positions; therefore, the Department has had to rely on the use of 89-day hires in order to maintain current operations. The Department notes that in the current FY16-17 operating budget, the Department has requested that these temporary positions be converted to permanent positions in order to make it easier to recruit full-time employees.

Additionally, 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. Accordingly, the Department requests that an exception is created to allow the Department to use 89-day hires to fill limited-term appointments and vacant entry level civil service positions.

Thank you for the opportunity to provide comments.



DAVID Y. IGE  
GOVERNOR  
SHAN S. TSUTSUI  
LT. GOVERNOR

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR  
JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**PRESENTATION OF THE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEE ON WAYS AND MEANS

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2016  
Friday, April 1, 2016  
1:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 2008, H.D. 2, PROPOSED S.D. 2, RELATING TO  
PUBLIC EMPLOYMENT.**

TO THE HONORABLE JILL N. TOKUDA, CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Catherine Awakuni Colón, Director of the Department of Commerce and Consumer Affairs (“DCCA” or “Department”). DCCA appreciates the opportunity to provide comments on House Bill No. 2008, H.D. 2, Proposed S.D. 2, Relating to Public Employment (“Proposed S.D. 2”).

This measure proposes to prohibit all state departments from temporarily employing any person under Chapter 76, Hawaii Revised Statutes, for more than two consecutive 89-day terms, provided that a department may, with the Governor’s approval, temporarily employ a person for four consecutive terms of 89 days or 24 consecutive months. In addition, the Proposed S.D. 2 provides for the abolishment of temporary



positions originating as 89-day hires and lasting longer than 24 months. Exemptions from these restrictions are also created.

The Department continues to work to limit the use of 89-day hires to only those special circumstances where the filling of permanent positions to perform important regulatory and/or consumer protection functions cannot be done in a timely or otherwise adequate fashion or where the use of 89-day hires helps to fill unplanned gaps in service. DCCA believes this selective approach is appropriate, but it is concerned that there may be instances where the nature of the position and the limited pool of qualified candidates result in a lengthy hiring process. Creating an across-the-board time limit on 89-day hires without regard to the circumstances of the particular vacancy may have the unintended consequence of causing an agency to hire persons with qualifications or attributes that are less than optimal for the position. With regard to the provision allowing the Governor to extend the term of an 89-day hire employee beyond two consecutive terms, the Department is also concerned about the burden this would create for the Office of the Governor by adding a new review and approval function that fits more with the purpose of the Department of Human Resources Development (“DHRD”). It is not clear how many extension requests would go to the Governor’s Office and whether all such requests for the State’s executive branch could be reasonably handled by that Office without creating disruptions for state agencies. The Department believes that the current process of requiring DHRD approval for 89-day appointments after the first 89-day appointment has proven to be reasonable and efficient for the Department.

In addition, the Department notes that the Proposed S.D. 2 indicates at page 1 lines 8-9 that the Governor may approve a term of four consecutive terms of 89 days or

a term of 24 consecutive months. It is not apparent from the draft when the four terms of 89 days would apply and when the 24 month limitation would apply. The Department requests that the applicability of the respective time periods be clarified.

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

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

State of Hawaii  
**DEPARTMENT OF AGRICULTURE**  
1428 South King Street  
Honolulu, Hawaii 96814-2512  
Phone: (808) 973-9600 FAX: (808) 973-9613

**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEE ON WAYS AND MEANS**

April 1, 2016  
1:30 P.M.  
CONFERENCE ROOM 211

**HOUSE BILL NO. 2008 H.D.2, S.D.2 (proposed)  
RELATING TO PUBLIC EMPLOYMENT**

Chairperson Tokuda and Members of the Committee:

Thank you for the opportunity to testify on House Bill No. 2008 H.D.2, S.D.2. (proposed). This bill requires Departments to obtain approval from the Governor for periods of greater than two consecutive terms of eighty-nine days. It also abolishes positions filled by temporary employees for more than twenty-four consecutive months. The Department of Agriculture has concerns regarding this bill.

Although this version removed the language restricting the limit to the lifetime of the person, the Department continues to have concerns that this bill will limit our ability to provide continuity of operations and critical services. We can envision a few extraordinary instances, not covered by the stated exceptions in subsection (c), when the Department may need to fill a position with an 89-day hire appointment for more than twenty-four consecutive months. In these unforeseen cases, the Department may need to forego filling positions with 89-day appointments, despite the availability of an 89-day hire candidate, and operate without the service or function to avoid automatic abolishment of the position. These extenuating circumstances include budget restrictions and hiring freezes, unstable funding sources, low unemployment rate, adverse labor market conditions, etc.

We are also concerned that automatic abolishment, without an appeal process to explore extenuating circumstances, is extreme given that successful recruiting strategies are dynamic and dependent upon many influences. If automatically abolished, it could be a 12+ months before the Department could request and receive Legislative authorization to reinstate the abolished position. During this time, the Department would have no means to provide the human resource to fulfill a potentially critical, health, safety, enforcement or regulatory service or function.

Thank you for the opportunity to submit our testimony.





# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Testimony Presented Before the  
Senate Committee on Ways and Means  
April 1, 2016 at 1:30 p.m.

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

### HB 2008 HD2 PROPOSED SD2 – RELATING TO PUBLIC EMPLOYMENT

Chair Tokuda, Vice Chair Dela Cruz, and members of the Committee:

I am respectfully submitting written testimony on behalf of the University of Hawai'i regarding House Bill 2008 House Draft 2, Proposed Senate Draft 2 – Relating to Public Employment – which proposes to amend HRS, Chapter 76, Civil Service Law, by adding a new section that will a) prohibit departments, including the University of Hawai'i, from hiring individuals for more than two (2) terms of eighty-nine (89) days; provided that with approval of the governor, a department may temporarily employ a person for four (4) consecutive terms of 89 days or for twenty-four (24) consecutive months; b) requires the automatic abolishment of any position filled by a temporary employee hired for a term of 89 days and filled by that employee for more than 24 consecutive months, and c) and provides limited exemptions for periods of temporary employment when a person has been appointed to a vacant position arising as a result of a workers' compensation claim; medical leave; an on-going investigation a shortage differential; a working condition differential; or a remote geographical location.

The University of Hawai'i has significant concerns regarding the passage of HB 2008 HD2 Proposed SD2, as we believe it will hinder and jeopardize our ability to provide timely and necessary services and support to the University constituents, especially our students, and the greater community at large. Specifically, the bill requires approval of the governor should the need exceed 2 consecutive terms, which may delay the provision of critical services should unexpected delays occur in filling positions. In addition, the bill provides for the automatic abolishment of any position filled by a temporary employee hired for a term of 89 days and filled by that employee for more than 24 consecutive months, with limited exemptions. The list of exemptions is not exhaustive as it does not include military leave, family leave, and other authorized leaves. In addition, in a state with low unemployment relative to other states, our recruitment timelines have been affected. HB 2008 HD2 Proposed SD2 would impact our ability to provide necessary academic and student support services in campus departments; a safe and healthy learning and working campus environment; and compliance with existing and new federal and state statutes, regulations, and other government guidelines.

While the University acknowledges the legislature's intent to curtail the abuse of short-term temporary appointments, HB 2008 HD2 Proposed SD2 will take away the flexibility and tools critical for management to address the intermittent and immediate short-term services in a timely manner 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.

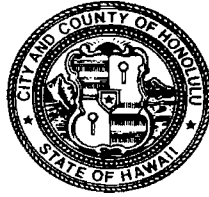
In the alternative, we recommend exceptions to the prohibitions in the bill in situations that present a health and safety concern and/or compliance with federal and state laws, rules, and regulations; or rather than immediately imposing the restrictive language that HB 2008 HD2 Proposed SD2 suggests 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.

DEPARTMENT OF HUMAN RESOURCES  
**CITY AND COUNTY OF HONOLULU**

650 SOUTH KING STREET 10<sup>TH</sup> FLOOR • HONOLULU, HAWAII 96813  
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KIRK CALDWELL  
MAYOR



CAROLEE C. KUBO  
DIRECTOR

NOEL T. ONO  
ASSISTANT DIRECTOR

April 1, 2016

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on Ways and Means  
The Senate  
415 South Beretania Street, Room 211  
Honolulu, Hawaii 96813

Dear Chair Tokuda and Members of the Committee:

Re: Proposed House Bill 2008, H.D. 2, S.D. 2  
Relating to Public Employment

The City and County of Honolulu ("City"), Department of Human Resources offers comments on Proposed House Bill 2008, H.D. 2, S.D. 2. In order to clarify the intent, the City requests that the amendment to Hawaii Revised Statutes, Chapter 76, specify that such amendment is not intended to apply to the City. We request that language specifically exempting the counties be restored.

We request the following amendment (new language underlined):

**§76- Temporary State employment; prohibitions; abolishing of positions.**

(a) No State department shall temporarily employ any person for more than two consecutive terms of eighty-nine days; provided that with the approval of the governor, a department may temporarily employ a person for four consecutive terms of eight-nine days or for twenty-four consecutive months.

.....

(d) This section shall not apply to the respective counties.

In addition, we believe subsection (c) may require clarification. It currently states: "This section shall not apply to periods of temporary employment when a person has been appointed to a vacant position arising as a result of: a workers' compensation claim; medical leave; an on-going investigation; a shortage differential; a

The Honorable Jill N. Tokuda, Chair  
and Members of the Committee on Ways and Means  
April 1, 2016  
Page 2

working condition differential; or a remote geographic location.” Insofar as the City understands the word “vacant,” a position would not be considered “vacant” in the event of a workers’ compensation claim, medical leave, on-going investigation, shortage differential, working condition differential, or remote geographic location.

Thank you for the opportunity to comment on this bill.

Sincerely,

A handwritten signature in black ink that reads "Carolee C. Kubo". The signature is written in a cursive style with a long horizontal flourish extending to the right.

Carolee C. Kubo  
Director of Human Resources



## 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  
The Senate  
Committee on Ways and Means

Testimony by  
Hawaii Government Employees Association

April 1, 2016

H.B. 2008, H.D. 2, Proposed S.D. 2 –  
RELATING TO PUBLIC EMPLOYMENT

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO supports the purpose and intent of H.B. 2008, H.D. 2, proposed S.D. 2, which prohibits the State of Hawaii from hiring persons for more than two consecutive 89-day terms or requires departments to obtain approval from the Governor when employing 89-day hires for four consecutive terms. However, we respectfully prefer the broader concepts and language provided in H.B. 2008, H.D. 2, S.D. 1, which creates reasonable and limited exceptions.

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. 2, S.D. 1 are long overdue.

Thank you for the opportunity to testify in support of H.B. 2008, H.D. 2, proposed S.D. 2, with a preference for the language contained in the S.D. 1.

Respectfully submitted,  
  
Randy Perreira  
Executive Director