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STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
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February 24, 2016

**TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE**

For Hearing on Thursday, February 25, 2016
11:00 a.m., Conference Room 308

BY

JAMES K. NISHIMOTO
DIRECTOR

**House Bill No. 2477, H.D.1
Relating to State Employees**

WRITTEN TESTIMONY ONLY

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

HB 2477, HD1 requires that the number of civil service exempt employees not exceed five percent in the Executive Branch, excluding the Department of the Attorney General. The bill also requires departments to reduce the number of exempt employees if the total exceeds five percent.

The Department of Human Resources Development (DHRD) **HAS CONCERNS** regarding this bill.

It is the legislature that establishes exemptions from the civil service, as provided in §76-16, HRS, and other programmatic related statutes. Departments apply these exemptions to create positions to implement legislatively mandated programs and

initiatives. Currently, there are approximately 6,622 positions exempt from the civil service in the Executive Branch, in comparison to a total position count of 21,988.

Section 76-16, HRS, reflects the majority of legislatively-authorized exemptions from civil service:

§76-16 Civil service and exemptions. (a) The state constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

(1) Commissioned and enlisted personnel of the Hawaii National Guard as such, and positions in the Hawaii National Guard that are required by state or federal laws or regulations or orders of the National Guard to be filled from those commissioned or enlisted personnel;

(2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;

(3) Positions that must be filled without delay to comply with a court order or decree if the director determines that

recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;

(4) Positions filled by the legislature or by either house or any committee thereof;

(5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;

(6) Positions filled by popular vote;

(7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;

(8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;

(9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first

assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);

(10) First deputy and deputy attorneys general, the administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;

(11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;

(B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;

(C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and

(D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;

(12) Employees engaged in special, research, or demonstration projects approved by the governor;

(13) (A) Positions filled by inmates, patients of state institutions, persons with severe physical or mental disabilities participating in the work experience training programs;

(B) Positions filled with students in accordance with guidelines for established state employment programs; and

(C) Positions that provide work experience training or temporary public service employment that are filled by persons entering the workforce or persons transitioning into other careers under programs such as the federal Workforce Investment Act of 1998, as amended, or the Senior

Community Service Employment Program of the Employment and Training Administration of the United States Department of Labor, or under other similar state programs;

(14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

(15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;

(16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, article V, of the Hawaii state constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;

(17) Positions specifically exempted from this part by any other law; provided that:

(A) Any exemption created after July 1, 2014, shall expire three years after its enactment unless affirmatively extended by an act of the legislature; and

(B) All of the positions defined by paragraph (9) shall be included in the position classification plan;

(18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;

(19) Household employees at the official residence of the president of the University of Hawaii;

(20) Employees in the department of education engaged in the supervision of students during meal periods in the distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;

(21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's workforce in any housing project maintained or operated by the authority shall be hired under the tenant hire program;

(22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;

(23) Positions filled by persons with severe disabilities who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;

(24) The sheriff;

(25) A gender and other fairness coordinator hired by the judiciary; and

(26) Positions in the Hawaii National Guard youth and adult education programs.

The director shall determine the applicability of this section to specific programs.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955.

The listing of positions potentially affected by HB 2477, HD1 is quite extensive, given the length of §76-16(b). This statutory section reflects long-standing exemptions established by the legislature, based upon expressed operating needs and in

consideration of the types of positions relative to the appropriateness of including them in the civil service. As a consequence, implementation of HB 2477, HD1 could have far-reaching, unintended consequences. It should be noted that in addition to the exemptions listed in §76-16(b), there are other legislatively-authorized exemptions reflected in individual programmatic sections.

Among the potential consequences should HB 2477, HD1 be enacted is that departments may be placed in the untenable position of having to eliminate long-standing exempt positions authorized by past legislatures. This could jeopardize the departments' operating practices as well as their ability to provide critical services to the public. The termination of exempt positions could also result in the loss of highly-skilled, expert personnel who may not be willing to accept conversion of their positions to civil service status. The disruption to departmental operations will be far-reaching as department directors will be forced to make impossible decisions as to which exempt positions to eliminate/convert, despite the fact that these positions are authorized to be exempt under existing law (e.g., §76-16(b)).

The legislature has long recognized the need to provide exemptions from the civil service to ensure the ability of departments to provide services which often require special expertise or in unique situations that preclude the traditional civil service recruitment process and application of the merit principle, e.g., members of the National Guard, department heads and deputies, positions filled by persons with severe disabilities, etc. HB 2477, HD1 could negatively curtail use of authorized exemptions, to the detriment of departmental operations and to the detriment of the public.

In accordance with Act 253, SLH 2000, the State's policy is that all positions be covered by the civil service unless specifically exempted and further provides that DHRD shall determine whether or not a position should continue to be exempt from the

civil service or be converted. Further, Act 300, SLH 2004 directed DHRD and the Hawai'i Government Employees Association "to work collaboratively to establish a logical, workable and fair process for converting positions in various departments, which are currently exempted from Chapter 76, Hawai'i Revised Statutes, to civil service positions." Accordingly, DHRD developed a conversion process and annually submits a report to the legislature regarding the conversion of exempt positions. In its report to the 2016 Legislature, DHRD reported that a total of 121 exempt positions were replaced with civil service positions during the applicable reporting period.

Thank you for the opportunity to testify on this measure.



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

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Statement of
LUIS P. SALAVERIA
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON FINANCE

February 25, 2016
11:00 a.m.
State Capitol, Conference Room 308

in consideration of
HB 2477, HD1
RELATING TO STATE EMPLOYEES.

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

The Department of Business, Economic Development and Tourism (DBEDT) offers **comments** on House Bill No. 2477, HD1. This bill provides that the number of Executive Branch employees exempt from the civil service laws of Chapter 76, Hawaii Revised Statutes (HRS) shall not exceed five percent of the total number of executive branch employees, and that if this percentage is exceeded, each director shall take action to remove the civil service exemptions of a requisite number of employees.

DBEDT has **concerns** regarding the impact of this bill on the department's operations in those areas where the Legislature has previously determined there is a well justified need for exempt positions. These areas include affordable housing, tourism marketing, investments in innovation and technology businesses, ocean science research, and space research.

Thank you for the opportunity to provide comments.

DAVID Y. IGE
GOVERNOR



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DIRECTOR

RODERICK K. BECKER
DEPUTY DIRECTOR

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

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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. 2477, H.D. 1

February 25, 2016
11:00 a.m.

RELATING TO STATE EMPLOYEES

House Bill No. 2477, H.D. 1, requires that: the number of civil service exempt employees not exceed 5% in the Executive Branch, excluding the Department of the Attorney General; the Department of Human Resources Development (DHRD) report on the number of exempt Executive employees annually; and departments reduce their number of exempt employees by an unspecified percentage if their total exceed 5% in three consecutive annual reports submitted by DHRD.

The Department of Budget and Finance (B&F) opposes this bill.

First, mandating the director of a department to reduce the number of exempt positions by an unspecified percentage to meet the arbitrary limit of 5% exempt employees for the Executive Branch is operationally unrealistic. It would also create an administrative dilemma as to which positions would retain their exempt status and which would be forced to convert to civil service status, despite the positions being authorized for exemption by Section 76-16(b) or other agency-specific statutory exemptions.

Second, the forced conversion of positions from exempt to civil service could result in the loss of employees – those not willing to accept conversion to civil

service – with valuable skills and expertise. This could jeopardize the affected department’s ability to provide critical services to the public.

Third, B&F has a total of 372.5 employees (309.5 permanent and 63.0 temporary), of which 176.5 are exempt (127.5 permanent and 49.0 temporary).

Below is a breakdown of positions by Program ID:

Program ID	Grand Total		Exempt		Percentage	
	Perm	Temp	Perm	Temp	Perm	Temp
BUF 101	42.00	12.00	2.00	2.00	4.76%	16.67%
BUF 115	23.00	0.00	0.00	0.00	0.00%	0.00%
BUF 141	105.00	1.00	5.00	0.00	4.76%	0.00%
BUF 143	56.00	0.00	48.00	0.00	85.71%	0.00%
BUF 151	83.50	50.00	72.50	47.00	86.83%	94.00%
Total	309.50	63.00	127.50	49.00	41.20%	77.78%

As the table depicts, BUF 143 (Hawaii Employer-Union Health Benefits Trust Fund) and BUF 151 (Office of the Public Defender) would be significantly impacted by the provisions of this measure.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION
AFSCME Local 152, AFL-CIO

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

LATE

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

Testimony by
Hawaii Government Employees Association

February 25, 2016

H.B. 2477, H.D. 1 – RELATING TO
STATE EMPLOYEES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2477, H.D. 1, which is to limit the number of positions exempt from civil service within the executive branch to 5%. However, we request amending the bill so that the 5% cap only pertains to the total number of positions under the jurisdiction of the Department of Human Resources Development (DHRD), and excludes employees in the Department of Education, University of Hawaii and the Hawaii Health Systems Corporation. Those other jurisdictions do not have large numbers of exempt employees and therefore should not be included in the calculation of the percentage of exempt employees.

The use of exempt employees, which are considered “at will” by DHRD, is completely contrary to the principles of a merit-based civil service system free from coercive political influences as established through Article XVI, Section 1 of the Hawaii State Constitution and Chapter 76, HRS. Exempt employees do not have the same rights and benefits of civil service employees and that is inherently unfair. The HGEA/AFSCME has consistently opposed the creation of more exempt positions in state government for more than a decade, while advocating for sensible civil service reform.

According to the most recent report submitted to the Legislature by the DHRD, there are 2,796 exempt positions in state departments reporting to DHRD. We estimate that between 18% and 19% of all positions in the personnel system administered by DHRD are exempt. That is almost one out of every five positions, and that ratio is even higher in bargaining unit 13, probably closer to 30%. The proliferation of exempt positions threatens the very existence of a merit-based civil service system.

In contrast, California, which has more than 200,000 state employees in 21 bargaining units, limits by statute the number of exempt employees to one-half of one percent. There are only 1,000 exempt employees in California State government. Instead of establishing more exempt positions, the civil service system must become more flexible and competitive. The answer to the challenges faced by state departments is not the creation of more exempt employees, but substantive reform of the state’s civil service system.

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A statutory limit on the number of exempt employees in state government is essential to preserve a merit-based civil service system. Thank you for the opportunity to testify in strong support of H.B. 2477, H.D. 1 with the suggested amendment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy Ferreira", with a stylized flourish at the end.

 Randy Ferreira
Executive Director

LATE

Support for the passing of HB 2477

I am in support of passing HB 2477

Currently, about a quarter of the state positions are exempt, this is too much.

It will be hard for the state to control their budget since each exempt position has a different pay scale.

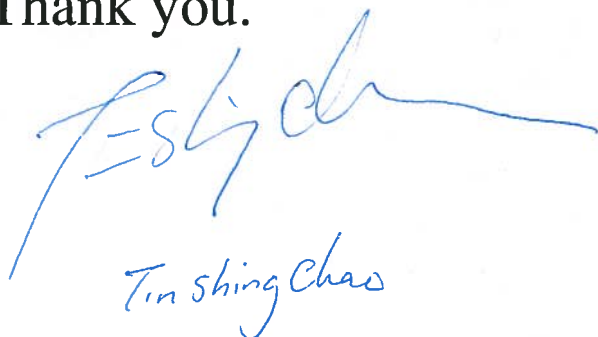
I agree that each department should have some exempt positions, but not a quarter of the positions.

Some exempt positions have really high pay, it is just another way to use state resources to pay someone instead of using the resources in some other ways to benefit the entire department.

Please move the date to be effective earlier, NOT 75 years from now – 2091.

My representative of the House and Senate,
please vote to CAP the percentage of state exempt positions.

Thank you.



Tin Shing Chao

LATE

2/25/16

Bradley Shields

1615 Wilder Ave #606

Honolulu, HI 96822

Testimony in support of HB 2477

Aloha Chair Luke and members of our House Finance Committee,

I am a proud rank a file member of HGEA working for the State of Hawaii (HIOSH)

One hopes that HB2105 will be passed because exempt positions now stand at 18 %, an uncomfortably high figure. What this means is that almost a quarter of the State positions are exempt. A cap would certainly help to address this unproductive situation.

We certainly do not want to have Hawaii creeping toward the reputation that Wisconsin has with union busting Governor Scott Walker at the helm. Our state has earned the reputation of being labor friendly, ever since Governor Burn's days. Please imua and re-cement the bonds that the State has with its own Union.

Recent apparently unsuccessful attempts to reclassify my coworkers and I from non-exempt to exempt status was truly puzzling. I love working for the state as a civil servant for many reasons because, although the pay is paltry, the talent levels of my coworkers are world class and we all appreciate a stable job with humane benefits.

We came close to losing our best, most senior repositories of institutional knowledge who would have gone elsewhere if those bills that wanted to reclassify our non-exempt ranks to exempt status, had passed.

Finally, please make sure that our state does not embarrass itself by jumping on the evil "Right to Work movement," bandwagon.

Respectfully,

Bradley Shields

1615 Wilder Ave #606