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DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804**Date:** 03/03/2015**Time:** 09:15 AM**Location:** 016**Committee:** Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 1279, SD1 RELATING TO EMPLOYMENT AGREEMENTS.

Purpose of Bill: Prohibits noncompete agreements and restrictive covenants that restrict beyond one year post-employment competition of employees of a technology business. (SD1)

Department's Position:

The Department of Education would like to provide comment and a recommendation on SB1279, SD1. The original intent of this measure is to prohibit noncompete covenants. As one of the largest technology employers in the state, finding experienced individuals to fill openings in the Department is a challenge for a number of reasons.

On occasion, the Department has had qualified consultants/ applicants express the interest in positions in the department. However, because noncompete agreements prevent them from seeking subsequent employment at organizations that their current employer does business with, the application must be eliminated from consideration. The Department suggests that limiting the use of noncompete agreements would help to increase the pool of technology employees in Hawaii. This would encourage innovation and growth in the technology industry, as a whole.

As supportive as the Department is of the intent of the original language content of SB1279, the current amended form creates a one year limitation which will continue to impede the workforce growth opportunities. Generally speaking, employers, public or private, would prefer not to wait one year to fill positions with the most qualified candidates available. We suggest that the phrase "with a duration beyond one year" be struck from Section 2 (d).

March 3, 2015

Aloha Chair Keith-Agaran, Vice Chair Shimabukuro, and Members of the Committee on Judiciary and Labor

I am writing in strong support of SB 1279 SD1— a bill to invalidate restrictive employment covenants or agreements. Research has shown that restrictions on employee mobility can inhibit innovation in high-velocity industries like information technology (IT) and can lead to an exodus of skilled workers (and their important knowledge) to other regions.

I have been a part of Hawaii's IT sector for 25 years working for Apple, Sun Microsystems, and currently as the Enterprise Account Manager for Microsoft. I testify today in a personal capacity. Over this time, I have seen Hawaii companies struggle to find enough skilled IT workers to help them best leverage their investments in information technology. Although there are certainly many skilled technology workers here, we have never approached the critical mass of IT professionals needed to drive our businesses forward.

When compared to their mainland peers, many Hawaii companies are far behind in their use of information technology, simply because the skills to deploy hardware and software are difficult to find. It is not uncommon to find companies here running on software that is more than 10 years old – an eternity in the IT world. The need and the desire to modernize are certainly there, but because skilled labor is difficult to find, many companies simply make do with outdated technology.

When Hawaii businesses do decide they need to push forward and innovate, they are often forced to look outside the state, which of course means shipping dollars to the mainland and beyond. Two recent projects that I have been involved with illustrate this point well:

- A large local company needed to redesign and rebuild their company web site, not just to improve their ability to market their products, but also to serve as a platform to transact hundreds of millions of dollars' worth of business. Using the internet allowed them to increase their reach, reduce their costs, and accelerate their growth. Their finished project allowed them to reach their goals, but the site was designed and built almost exclusively using out-of-state contractors.
- Another large local company needed to build a new system for managing their customer activity. The new system would allow them not only to keep track of all customer interactions, but reveal new sales opportunities and help the company identify which products were successful and which were not. The system would allow the company to operate more efficiently (quicker, higher quality interactions) and effectively (the right product to the customer most likely to buy). This project was completed entirely by out-of-state contractors.

In both examples, the companies have strong ties to the Hawaii community and would very much have preferred to hire local and keep their spending in Hawaii (expenditures on the customer management project were well over \$1M and those for the web site were triple that). But in each case, the appropriate skills were not available locally and the companies were forced to import the technology skills required to meet their needs.

Of course, the paucity of skilled IT workers in Hawaii is not solely due to impediments to employee mobility. But in the technology industry, removing any restriction on employment would serve as an important step towards catalyzing growth in a sector that can have broad, meaningful impact in our community.

Thank you for your consideration,

A handwritten signature in black ink, appearing to read "Jim", with a large loop at the bottom and a horizontal flourish extending to the right.

Jim Takatsuka
Enterprise Account Manager
Microsoft Corporation