

COPY

EXECUTIVE CHAMBERS

HONOLULU

MAY 24, 1999

STATEMENT OF OBJECTIONS TO SENATE BILL NO. 1499

Honorable Members
Twentieth Legislature
State of Hawaii

Pursuant to Section 16 of Article III of the Constitution of the State of Hawaii, I am returning herewith, without my approval, Senate Bill No. 1499, entitled "A Bill for an Act Relating to the Randolph-Sheppard Revolving Account."

The purposes of Senate Bill No. 1499 are to require the Department of Human Services (DHS) to expend \$30,000 from the state Randolph-Sheppard revolving account (the "special fund") each year if an authorization or allocation is received; to require DHS to deposit this money into a separate account for the State Committee of Blind Vendors (the "Committee"); to authorize the Committee to spend \$30,000 each year from the special fund without necessarily receiving an appropriation or allocation from the legislature; and to authorize the Committee to hire independent legal counsel.

The bill contains several serious problems. First, sections 2 and 3 of the bill amend chapter 347 and section 28-8.3, Hawaii Revised Statutes, in order to authorize the Committee to hire attorneys. Pursuant to Section 14 of Article III of the State Constitution, "Each law shall embrace but one subject, which shall be expressed in its title." Even though the constitutional requirement is to be interpreted liberally, there are still limits. In this case, the title of the bill is "Relating to the Randolph-Sheppard Revolving Account." The Committee's authority to hire attorneys is independent of any use of the Randolph-Sheppard Revolving Account. One might argue that the bill's provisions should be interpreted as requiring that counsel be paid with only special fund moneys in order to remain within the scope of the bill's title. But the title of the bill

does not appear in the statutory provisions that will be codified in the Hawaii Revised Statutes. The necessity for this interpretation in order to avoid an unconstitutional result, therefore, would not be apparent to any reader of the statute. Accordingly, sections 2 and 3 of the bill appear to violate Section 14 of Article III of the State Constitution.

Second, although DHS must receive an appropriation by the Legislature before transferring moneys from the special fund to a separate account of the Committee, section 4 of the bill apparently authorizes the Committee to spend \$30,000 from the special fund each year without any appropriation. By authorizing the Committee to make this expenditure without an appropriation, this bill may violate Section 5 of Article VII of the State Constitution, which prohibits the expenditure of any public moneys except pursuant to appropriations made by law. The federal Randolph-Sheppard Act requires that the Committee be a state entity, and the Committee can trace its creation to state rules. The moneys are obviously state moneys. Accordingly, the proposed amendment allowing the Committee to simply spend \$30,000 each year from the special fund without a biennial appropriation authorizing the Committee to spend the money violates the Hawaii State Constitution.

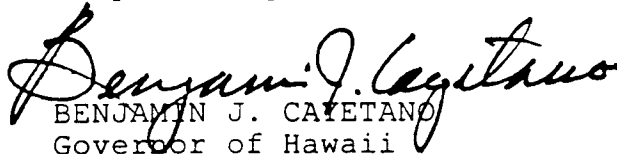
Finally, the bill authorizes the Committee to hire independent counsel whenever the Committee finds the representation from the Department of the Attorney General to be inadequate. As a general matter, the hiring of private counsel can be an expensive and often unnecessary expenditure of public moneys. The Department of the Attorney General is uniquely situated to understand those special defenses and claims that can be asserted by state entities. There are relatively few private attorneys who fully understand issues relating to the Eleventh Amendment, sovereign immunity, the Sunshine Law, the Uniform

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Information Practices Act (Modified), and government procurement practices. The use of deputy attorneys general also reduces state costs, develops in-house expertise, and ensures continuity in legal advice and consistency in legal interpretations among all state agencies. Allowing any state agency to hire separate counsel simply because the agency finds the representation to be "inadequate" merely allows the agency to forum shop for a preferred, but not necessarily correct, legal opinion and takes away the Department of the Attorney General's authority to determine the course of litigation.

For the foregoing reasons, I am returning Senate Bill No. 1499 without my approval.

Respectfully,


BENJAMIN J. CAYETANO
Governor of Hawaii

P R O C L A M A T I O N

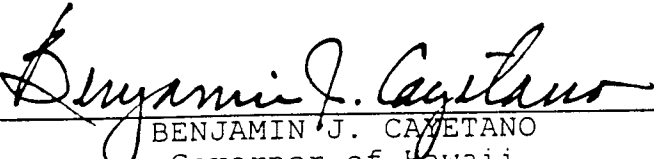
WHEREAS, under Section 16 of Article III of the Constitution of the State of Hawaii, the Governor is required to give notice, by a proclamation, of his plan to return with his objections any bill presented to him less than ten days before adjournment sine die or presented to him after adjournment sine die of the Legislature; and

WHEREAS, Senate Bill No. 1499, entitled "A Bill for an Act Relating to the Randolph-Sheppard Revolving Account," passed by the Legislature, was presented to the Governor within the aforementioned period; and

WHEREAS, Senate Bill No. 1499 is unacceptable to the Governor of the State of Hawaii;

NOW, THEREFORE, I, BENJAMIN J. CAYETANO, Governor of the State of Hawaii, do hereby issue this proclamation, pursuant to the provisions of Section 16 of Article III of the Constitution of the State of Hawaii, giving notice of my plan to return Senate Bill No. 1499 with my objections thereon to the Legislature as provided by said Section 16 of Article III of the Constitution.

DONE at the State Capitol, Honolulu,
State of Hawaii, this 24th
day of May, 1999.


BENJAMIN J. CAYETANO
Governor of Hawaii