

LINDA LINGLE
GOVERNOR OF HAWAII



MARIE C. LADERTA
DIRECTOR

CINDY S. INOUE
DEPUTY DIRECTOR

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

February 4, 2009

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

For Hearing on February 6, 2009
8:30 A.M., Conference Room 309

BY

MARIE C. LADERTA, DIRECTOR

House Bill No. 1287
Relating to Public Employment

TO CHAIRPERSON KARL RHOADS AND MEMBERS OF THE COMMITTEE:

We strongly oppose this measure.

House Bill No. 1287 amends various sections of the Hawaii Revised Statutes (HRS) to effect the mandatory conversion of positions that are exempt from civil service. It also imposes a three year limitation on the exemption of positions from civil service under 76-16(b)(17), HRS.

The repeal of exempt positions every three years is an unnecessary and disruptive process as temporary exemptions from civil service are reviewed annually for continued need and funding availability.

While House Bill No. 1287 seeks to reduce the number of exempt positions as prescribed by Act 253, Session Laws of Hawaii 2000 and Act 300, Session Laws of Hawaii 2006, it eliminates the flexibility of the State to determine how best to fill and maintain services for the public. It also eliminates the latitude to establish and utilize exempt positions to conduct the affairs of departments, which is absolutely necessary if

000164

we are to be successful in achieving our respective responsibilities and service to the public. This is an essential management tool.

The exempt system offers flexibility in job classification, pay, and recruitment that are necessary for the State to develop or implement projects or programs or to perform work outside of traditional work conventions.

With the emergence of new "green collar" jobs for energy and sustainability initiatives, the Legislature must equip the State with the ability to quickly reach out for those vital federal economic recovery dollars that could be infused in our economy, and the best way to do so is to have the exempt employment system available for quick response.

The proposed elimination of the exempt employment system will hinder agencies' ability to implement new programs and accomplish goals when flexibility and expediency may be imperative to quickly support government initiatives.

Although we understand the intent of Act 253 and Act 300, we are unable to support House Bill No. 1287 because the State needs the flexibility that exempt positions provide to deliver public services--especially to meet the demands of the downturn in our economy.

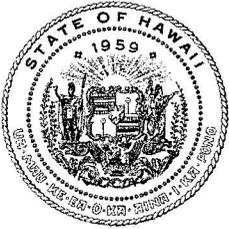
The Department of Human Resources Development and the Hawaii Government Employees Association (HGEA) have been working collaboratively to establish a logical, workable, and fair process to convert exempt positions to civil service positions in various departments when possible. We would like to continue working collaboratively with the HGEA and executive branch departments to meet the requirements of Act 253 and Act 300.

Thank you for the opportunity to testify on this important measure.

Respectfully submitted,

Arady B. Drury
for MARIE C. LADERTA
Director

000165



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

LINDA LINGLE
GOVERNOR
THEODORE E. LIU
DIRECTOR
MARK K. ANDERSON
DEPUTY DIRECTOR

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**Statement of
THEODORE E. LIU
Director
Department of Business, Economic Development, and Tourism
before the
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT (LAB)
Friday, February 6, 2008
8:30 a.m.
State Capitol, House Conference Room 309**

**in consideration of
H.B. NO. 1287
RELATING TO PUBLIC EMPLOYMENT.**

CHAIRPERSON KARL RHOADS AND COMMITTEE MEMBERS:

H.B. NO. 1287 would amend Chapter 76, Hawaii Revised Statutes to conform with Act 253, Session Laws of Hawaii 2000, which placed restrictions on the creation of exempt positions and required annual review of exempt positions to determine whether exempt positions should remain exempt or be converted to civil service positions. More specifically, the bill will amend HRS 76-16 (b) (17), under which positions are exempted from the civil service by any other law. The bill amendment to subsection (17) states, "Positions specifically exempted from this part by any other law shall be repealed every three years unless extended by the legislature..." The underscored section is the proposed change.

DBEDT has various agencies attached for administrative purposes with HRS specific to each such attached agency. We oppose this bill for the following reasons:

000166

1. Many of our attached agencies are funded by the federal government.

As such, specific State laws were implemented to create programs to carry out the responsibilities the federal government expects from the State of Hawaii. The Department of Energy is one of the federal agencies we work with. The Department of Housing and Urban Development is another federal agency we work with. And there are other federal agencies we work with. The federal funds received helps the State provide more services and benefits to our citizens of this State.

2. Many of our attached agencies have exempt positions with very capable employees to carry out the missions, objectives, and goals of their programs, as mandated by the federal agency that funds each of these programs. The exempt positions allow flexibility in hiring employees as soon as possible. Also, the field of candidates for such exempt positions is much broader and this allows us to hire quality individuals, especially at the higher levels.

3. The federal funds received are per federal fiscal year and therefore are temporary in nature. This is also true of the exempt positions in the attached agencies, which are temporary in nature. This allows flexibility in discontinuance of the exempt positions should the federal funds not come through.

In summary, we believe flexibility offered by the exempt positions is best, and, therefore, oppose this bill.

Thank you for the opportunity to testify on this matter.



THE JUDICIARY, STATE OF HAWAII

Testimony to the Twenty-Fifth Legislature, Regular Session of 2009

House Committee on Labor and Public Employment

The Honorable Karl Rhoads, Chair

The Honorable Kyle T. Yamashita, Vice Chair

Friday, February 6, 2009, 8:30 a.m.
State Capitol, Conference Room 309

by

Sharen M. Tokura

Human Resources Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: House Bill No. 1287, Relating to Public Employment

Purpose: Amends various sections of HRS to comply with Act 253, Session Laws of Hawaii 2000, which places restrictions on the creation of civil service exempt positions.

Judiciary's Position:

House Bill No. 1287 proposes to amend various sections of the Hawaii Revised Statutes (HRS) to reinforce the intent and implementation of Act 253, SLH 2000 relative to limitations on the establishment of positions exempt from the civil service.

While Judiciary supports the fundamental intent of this bill to ensure the integrity of the civil service, we submit the following comments with regard to the proposed amendment to Section 76-16(b)(17), HRS, "Positions specifically exempt from this part by any other law shall be repealed every three years unless extended by the legislature;"

First, the proposed language is confusing. It is unclear whether the actual positions, or the enabling law, or the exemption shall be repealed every three years.

Second, although the bill reinforces the principle of Chapter 76 to establish and maintain a civil service system based on merit in each jurisdiction, there may be instances when it is not

000168



House Bill No. 1287, Relating to Public Employment
House Committee on Labor and Public Employment
February 6, 2009
Page 2

practical or appropriate to convert an exempt position to civil service. Currently, the Judiciary has the following exempt positions in programs established by legislative action:

HRS Section 6F-5(7)	Judiciary History Center
1991 Haw. Sess. Laws Act 300	Administrative Driver's License Revocation Office
HRS Section 613-2(B)	Center for Alternative Dispute Resolution

The legislature also included appropriations for permanent positions to staff these programs. By enacting legislation to create these programs and by funding permanent positions, the legislature clearly intended these programs to be permanent in nature. Should the exemptions not continue, the Judiciary will be compelled to release the incumbents and establish and recruit new personnel. During this process, services will be adversely affected. Automatic conversion from exempt status to civil service status would be inconsistent with merit principles.

Furthermore, certain exemptions provide management with flexibility and latitude in hiring and determining the tenure of positions. Examples of these types of exemptions are the positions of the Administrative Director of the Courts and Deputy Administrative Director of the Courts, who serve at the pleasure of the Chief Justice (Section 601-3, HRS). These positions should continue to be exempt from civil service without regard to review every three years.

The Judiciary respectfully requests to be allowed to continue the aforementioned exemptions. Repeal of a program or termination of a position and incumbent every three years is not consistent with government efficiency and may have unintended consequences.

In closing, the Judiciary supports the fundamental principles of a civil service system. However, the public good is not well served by the indiscriminate repeal of the above-described legislation every three years.

Thank you for the opportunity to testify on this measure.

000169

LINDA LINGLE
GOVERNOR OF HAWAII



**STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES**

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

**Testimony of
LAURA H. THIELEN
Chairperson**

**Before the House Committee on
LABOR & PUBLIC EMPLOYMENT**

**Friday, February 6, 2009
8:30 AM
State Capitol, Conference Room 309**

**In consideration of
HOUSE BILL 1287
RELATING TO PUBLIC EMPLOYMENT**

House Bill 1287 proposes to amend sections of the Hawaii Revised Statutes (HRS) to conform with Act 253, Session Laws of Hawaii (SLH) 2000, which placed restrictions on the creation of civil service exempt positions and required the annual review of exempt positions to determine whether exempt positions should remain exempt or be converted to civil service positions. The Department of Land and Natural Resources (Department) opposes this measure as, given the current fiscal difficulties, it would not be prudent to pursue enactment at this time.

The Department understands the intent of Act 253, SLH 2000, which was to increase the number of positions included in the civil service system, where appointments and promotions were made under a system of merit determined by competitive examination, and to decrease the use of exempt appointments, which are positions outside the civil service. At this particular time, however, when the future stability of Hawaii's economy is uncertain, the Department is perplexed by this bill. The Legislature has previously recognized the need for temporary positions and had awarded a number of such exempt positions to various State departments. Continued support of this bill by the Legislature will force departments to choose to add tenured positions to the current State work force or convert exempt positions to tenured civil service positions. This increases the cost of supporting State government and places potential long-term burden on State taxpayers. It also fails to consider the employee in the exempt position, who chose employment in such a position and who may suffer monetary setback as oftentimes the exempt temporary nature of the position, is offset by higher salaries.

Additionally, the majority of employees in the exempt positions are selected and employed because they have unique and specialized qualifications; i.e., with regard to the Department's Commission on Water Resources Management (Commission); §174C-5(8), HRS, the Commission had been granted statutory authority to appoint employees without regard to

000170

LAURA H. THIELEN
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

RUSSELL Y. TSUJI
FIRST DEPUTY

KEN C. KAWAHARA
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

Chapter 76, HRS. The Commission believes that this authority was granted in recognition of the unique and specialized qualifications that are needed to carry out the mandates of the State Water Code (§174-C, HRS). There is no comparable agency in the State tasked with the protection, planning and regulation of water resources. The agency requires geological, hydrological, engineering, legal and regulatory knowledge as it relates to water resources and must offer salaries commensurate with such education and experience and comparable to current employment market conditions. To fill such difficult to recruit positions, flexibility is needed to attract and retain such employees. The use of such positions oftentimes is a win-win situation for employee and employer.

000171

LINDA LINGLE
GOVERNOR



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

CLAYTON A. FRANK
DIRECTOR

DAVID F. FESTERLING
Deputy Director
Administration

TOMMY JOHNSON
Deputy Director
Corrections

JAMES L. PROPOTNICK
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL 1287
RELATING TO PUBLIC EMPLOYMENT

by
Clayton A. Frank, Director
Department of Public Safety

House Committee on Labor & Public Employment
Representative Karl Rhoads, Chair
Representative Kyle T. Yamashita, Vice Chair

Friday, February 6, 2009, 8:30AM]
State Capitol, Conference Room 309

Chair Rhoads and Members of the Committee:

The Department of Public Safety opposes House Bill No. 1287, which places restrictions on the creation of civil service exempt positions and requires an annual review of exempt positions to determine whether they should be converted to civil service positions. This measure will impose undue restrictions and hamper the Department's ability to operate efficiently and effectively.

Establishing positions exempt from civil service allows the Department to create positions to fulfill the program or funding requirements, including the specialized knowledge, skills and abilities and any required licensures or certifications.

The exempt positions provide the Department with flexibility in establishing position description and level of compensation to attract highly qualified individuals or meet the funding requirement of the program, as well as flexibility to recruit and fill such exempt positions on a timely basis. This includes exempt positions established to fill highly specialized, technical and/or professional work, or to fulfill requirements of court ordered actions and/or settlement agreements.

"An Equal Opportunity Employer/Agency"

000172

The exempt positions also allow the Department to establish positions based on the funding source and meeting program requirements, such as a program operating like a self-sustaining private business whereby revenue generated funds such exempt positions. The funding sources may include special funds and/or revolving funds.

The Department must be able to have the latitude to establish and utilize exempt positions to conduct it's affairs and to successfully accomplish it's mission and meet the service needs of those we serve.

Thank you for the opportunity to testify on this matter.



LINDA LINGLE
GOVERNOR
JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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LAWRENCE M. REIFURTH
DIRECTOR
RONALD BOYER
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON LABOR
AND PUBLIC EMPLOYMENT

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Friday, February 6, 2009
8:30 a.m.

TESTIMONY ON HOUSE BILL NO. 1287 – RELATING TO PUBLIC EMPLOYMENT.

TO THE HONORABLE KARL RHOADS, CHAIR, KYLE T. YAMASHITA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth, Director of Commerce and Consumer Affairs (“Department”). The Department opposes sections 3, 15, and 16 of the bill. Those sections purport to replace prior authorization to hire outside of chapter 76, Hawaii Revised Statutes (“HRS”), with a requirement to hire in accordance with chapter 76, HRS. The only positions that would be authorized as exempt would be hearings officers and attorneys.

The Department also opposes section 6 of the bill, which every three years subjects positions specifically exempted from chapter 76, HRS, by any other law, to repeal, unless extended by the Legislature.

The Department is concerned over the effects of sections 3, 15, and 16 of the bill, to the extent that they remove the director’s authority under sections 26-9(o), 412:2-

000174

109, and 440G-12, HRS, to hire engineers, financial analysts, examiners, administrative support personnel, and other necessary staff without regard to chapter 76, HRS. The only positions explicitly authorized as exempt would be hearings officers, attorneys, and the administrator of the Department's Cable Television Division (although section 6 of the bill would repeal that position in three years unless the Legislature extends the position, or if the position is converted to civil service).

By precluding the Department from hiring outside of chapter 76, HRS, the bill represents a significant departure from the Legislature's previous vision for the Department and its compliance resolution fund over the last ten years. We strongly recommend that you give serious consideration to the effects of undoing a long history of what, we submit, has been a successful model for operating the Department.

Exempt employees were central to the understanding reached by the Legislature with the business community as part of the creation of the compliance resolution fund. On top of the taxes that they already pay, businesses would pay fees to support the Department's services, including consumer protection services that arise from the conduct of business, in return for assurances that the Department would be run in a business-like manner.

In order to meet those expectations, the Department needs employees with specialized skills and technical expertise in areas ranging from banking to utilities to insurance. By exempting positions from chapter 76, the Legislature gave the Department a fighting chance at locating, hiring, and paying and retaining people in those jobs.

The flexibility afforded the Department by its ability to exempt positions from chapter 76, HRS, is a central feature in its success. The difficulty that we have in competing for employees with private industry (we recently lost our Captive Insurance Administrator to the private sector), and the difficulty that we have in finding qualified applicants for specialized work, would only be exacerbated if virtually all of our positions were converted to civil service.

With respect to section 6 of the bill, it is unclear what would happen to those employees in positions that are exempt by laws other than chapter 76, HRS. In three years, those positions would be repealed (unless extended by the Legislature or converted to civil service). This would cause major disruptions to the Department's operations and ability to service the public. It would also create a great deal of havoc in the personal lives of those employees.

If, in order to prevent the repeal of those exempt positions, the Department converted those positions to civil service, we would likely see some of the incumbents choosing to leave their positions unless they are guaranteed no reduction in pay rate. The current Supplemental Agreement between the State and the union regarding the compensation of exempt employees appointed to civil service positions is scheduled to expire at the end of the current fiscal year. The current Supplemental Agreement contains provisions that are generous to exempt employees. However, there are no guarantees that those generous provisions will exist after June 30, 2009. Exempt employees who are converted after June 30, 2009, would likely experience a reduction in their benefits if provisions comparable to those in the current Supplemental

Agreement are not maintained. This would likely cause those employees to seek jobs that offer pay that is comparable to what they are currently making as exempt employees.

The Department understands and appreciates the value of chapter 76, HRS. In fact, the Department has been identifying appropriate exempt positions for conversion to civil service in response to Act 300, Session Laws of Hawaii ("SLH") 2006. In fact, the Department has converted 45 exempt positions to civil service in response to Act 300, SLH 2006. Three additional positions are in the process of being converted, which will bring the total number of exempt positions converted to civil service to 48. Even if this bill does not pass, we will continue to work diligently to identify exempt positions that are appropriate for conversion to civil service.

Thank you for the opportunity to submit testimony.



DISABILITY AND COMMUNICATION ACCESS BOARD

919 Ala Moana Boulevard, Room 101 • Honolulu, Hawaii 96814
Ph. (808) 586-8121 (V/TDD) • Fax (808) 586-8129

February 6, 2009

TESTIMONY TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

House Bill 1287 – Relating to Public Employment

The Disability and Communication Access Board (DCAB) is a statewide board with seventeen (17) members appointed by the Governor, thirteen (13) of whom are persons with disabilities or family members. The Board's mission is to advocate and promote full inclusion, independence, equal access, and quality of life for persons with disabilities in society. This testimony represents a position voted upon by the Legislative Committee of the Board.

DCAB opposes the amendment in House Bill 1287, page 16, lines 11-15, which reads "Positions specifically exempted from this part by any other law shall be repealed every three years unless extended by the legislature; provided that all of the positions defined by paragraph (9) shall be included in the position classification plan;". We request that the wording remain unamended.

To repeal automatically positions creates a heightened atmosphere of uncertainty for staff and increases turnover. Currently the Legislature has the authority to set budgets each biennium, including exempt position counts.

This proposal adds another layer of unnecessary paperwork and administration.

Thank you for the opportunity to testify on this important matter.

Respectfully submitted,

CHARLES W. FLEMING
Chairperson

FRANCINE WAI
Executive Director

000178



**TESTIMONY OF THE STATE ATTORNEY GENERAL
TWENTY-FIFTH LEGISLATURE, 2009**

ON THE FOLLOWING MEASURE:

H.B. NO. 1287, RELATING TO PUBLIC EMPLOYMENT.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

DATE: Friday, February 6, 2009 TIME: 8:30 AM

LOCATION: State Capitol, Room 309

TESTIFIER(S): Mark J. Bennett, Attorney General
or Richard H. Thomason, Deputy Attorney General

Chair Rhoads and Members of the Committee:

The Department of the Attorney General opposes this bill. We believe that mandating the wholesale conversion of positions from exempt to civil service conflicts with the intent of Act 253, Session Laws of Hawaii 2000, and will lead to undesirable results. Additionally, we are concerned that this bill contains legal ambiguities.

Despite what the preamble states, this bill does not appear to be truly consistent with Act 253. Pursuant to Act 253, the Department of Human Resources Development (DHRD) was directed to conduct a study of exempt positions. In its 2004 and 2006 reports, DHRD concluded that some exempt positions should remain exempt. This bill undermines the intent of Act 253 to the extent that some of the exempt positions affected by the bill have been reviewed and a determination has been made to keep them exempt from civil service, or have not been reviewed and analyzed by DHRD to determine whether the positions should remain exempt or replaced with civil service positions.

Additionally, we have concerns about the amendment to section 76-16(b) (17), HRS, to provide that positions specifically exempted from chapter 76, HRS, by other laws shall be repealed every three years unless extended by the Legislature. Quite a few other laws establish

exemptions from chapter 76, HRS, and none of them are identified in the amendment to this section. It is not advisable to insert a clause into one statute that may lead to the repeal of numerous other anonymous statutes. This may result in confusion and the unintended repeal of laws.

Moreover, the amendment to section 76-16(b)(17) would impact our attorneys in the Office of Child Support Hearings who are appointed and commissioned by the Attorney General "without regard to chapter 76" to serve as hearings officers pursuant to section 576E-10, HRS. We strongly oppose any attempt to convert these attorneys to civil service, and do not believe this was intended. Indeed, this bill does not contain a provision specifically amending the "without regard to chapter 76" language in section 576E-10(a), HRS, which leads us to believe that the amendment to section 76-16(b)(17), HRS, was not intended to encompass our hearings officers. If this bill is passed, the phrase "hearings officers appointed under section 576E-10" should be added to paragraph (10) at page 13 of the bill.

In addition, we request that sections 4 and 5 of the bill be deleted.



STATE OF HAWAII
DEPARTMENT OF HEALTH
P.O. Box 3378
HONOLULU, HAWAII 96801-3378

In reply, please refer to:
File:

Committee on Labor and Public Employment

H.B. 1287, RELATING TO PUBLIC EMPLOYMENT

**Testimony of Chiyome Leinaala Fukino, M.D.
Director of Health**

February 6, 2009

1 **Department's Position:** The department respectfully opposes this measure, most significantly during
2 this time of economic uncertainties and evolving departmental priorities.

3 **Fiscal Implications:** This measure will significantly negatively impact immediate and ongoing
4 operations, functions, performance, and personnel within the department.

5 **Purpose and Justification:** Along with all executive departments, the Department of Health (DOH)
6 embraces and respects the foundation of Chapter 76-16(b), Hawaii Revised Statutes, statutorily
7 establishing civil services in state government. Indeed, our hard working and dedicated civil servants
8 are at the core of every functioning department.

9 Unfortunately, as the second largest department in this State, DOH has encountered great
10 challenges in recruiting and retaining the broad variety of qualified individuals that are necessary to fill
11 the ever increasing both educationally and technically demanding field of public health through the civil
12 service process. This is not to condemn the civil service model as it has served and continues to serve
13 our State as best as it can in its current form. It is to very strongly contend that major, significant
14 improvements must in fact be made to the civil service model first, before this Legislature moves to
15 dismantle the band-aides that have been previously constructed in the form of exemptions. We
16 respectfully but strongly suggest that key components to the existing civil service model must be

1 changed, the sooner the better. A serious and result-focused dialogue should be put forward by this
2 Legislature to work collectively to make concrete changes that will assist rather than hinder the
3 executive departments' abilities to perform core functions for the benefit of this State, to greatly improve
4 our options and abilities to compete with comparative employment opportunities, and to bring
5 management and unions to an enhanced understanding of need and response. The Department of Health
6 urgently calls upon each of us, Executive, Legislature, Judiciary, and Unions, to come to the table for
7 this meaningful dialogue so that we, State Government, can progress into this era of change and
8 challenges a manner that honors and fulfills our responsibilities to the entire State of Hawaii.

9 Specific to this measure, DOH suggests the following:

10 1) §348F-5, HRS enables the Disability and Communication Access Board (DCAB) to “hire an
11 executive director, who may hire staff to assist in the performance of the board’s duties. The staff shall
12 be hired without regard to chapter 76; provided that the executive director and staff shall be eligible for
13 participation in state employee benefit plans.” The DCAB is a Governor-appointed Board and it is
14 imperative to have staffs who meet the program and policy directives consistent with the direction of the
15 Board. The exempt status of the positions in the DCAB organization enables the Board to employ
16 individuals with unique skills and abilities, especially as it strives to employ individuals with disabilities.

17 2) §334-4, HRS enables the director to appoint an administrator, associate administrators, a
18 director of psychosocial rehabilitation, a chief of the department of nursing and other highly technical
19 and skilled individuals for the Hawaii State Hospital, which is the sole hospital in Hawaii dedicated to
20 serving adults with serious mental illness. Positions for psychiatrists in our Adult Mental Health
21 Division and Child and Adolescent Mental Health Division are exempted from chapter 76, also under
22 this law. The psychiatrists provide psychiatric treatment and rehabilitation to adults and children
23 suffering from serious mental illness and co-occurring disorders. It is imperative to maintain the
24 psychiatrist as exempt from civil service to appropriately compensate them for the services provided and

1 numerous medical practices requirements. Therefore, we strongly recommend the deletion of Page 16,
2 Section 6 (17), line 12 that will repeal statutorily created exemptions every three years unless extended
3 by the legislature. The extent of damage this singular line can do to the mental health system is simply
4 untenable.

5 3) Other positions exempted by specific laws include the Toxicologist, Ecological Risk Assessor,
6 and Environmental Ombudsman, in our Environmental Health Administration. These positions also
7 require the knowledge and skills of these environmental technical experts.

8 Finally, in the absence of the greater dialogue on civil service reforms, the Department of Health
9 assures the Legislature that it is continuously evaluating our operations, services, resources, and staffing
10 for the department to operate at a higher level of efficiency. It is through this process that the
11 department will determine which exempt positions will be transitioned to civil service.

12 For these reasons, we respectfully strongly oppose this specific measure, but enthusiastically
13 welcome further serious dialogue on this matter.

14 Thank you for the opportunity to testify.

15

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HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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Executive Director
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The Twenty-Fifth Legislature, State of Hawaii
Hawaii State House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association
February 6, 2009

H.B. 1287 – RELATING TO PUBLIC EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of H.B. 1287. The issue of converting exempt employees has been pending since the passage of Act 253, SLH 2000. Exempt employees who are within collective bargaining units do not have the same rights and benefits as their civil service counterparts. These employees are not protected by several articles in our collective bargaining agreements, including discipline, overtime and reduction-in-force.

Act 253, SLH 2000, required the Director of Human Resources Development to review exempt positions and determine whether these positions should remain exempt permanently. If DHRD determines that a position should no longer be exempt, they are supposed to consult with the appointing authority and remove the exemption from civil service. It also required DHRD to submit annual reports to the Legislature on the status of the conversion process. The first report, submitted in 2004, revealed that there were 2,150 positions exempted from civil service (Chapter 76, HRS) under Section 76-16(b)(17), HRS, and only 250 positions would be converted to civil service.

Act 300, SLH 2006, required additional reporting requirements about exempt positions to the Legislature. It also set forth a fair process to convert positions from exempt to civil service, and enabled HGEA to negotiate a supplemental agreement with DHRD to facilitate the conversion of exempt positions to civil service through compensation incentives. Despite these improvements, progress in converting exempt positions to civil service has been extremely slow. The most recent report submitted to the 2009 Legislature reported a mere 37 exempt positions under Section 76-16(b)(17), HRS, were converted to civil service during the period between November 1, 2007 and October 31, 2008, leaving a total of 2,165 exempt positions under this particular exemption.

The primary obstacle to converting exempt employees to civil service is the unwillingness of line departments to take such action. Unfortunately, voluntary conversion does not work. These departments must be required to convert the

Hawaii State House of Representatives, Committee on Labor and Public Employment
Re: H.B. 1287 – Relating to Public Employment
February 6, 2009
Page 2

positions contained in H.B 1287. The proliferation of exempt positions over the past several decades is undermining the civil service system and creating a group of second class employees. Thank you for the opportunity to present testimony in support of H.B. 1287.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nora A. Nomura". The signature is fluid and cursive, with the first name "Nora" being the most prominent part.

Nora A. Nomura
Deputy Executive Director

000185

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER
STATE OF HAWAII
TO THE HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT
ON
HOUSE BILL NO. 1287

February 6, 2009

RELATING TO PUBLIC EMPLOYMENT

We oppose the section of H.B. No. 1287 which proposes to amend H.R.S. §802-12 making mandatory the appointment of public defender employees other than assistant State public defenders in accordance with H.R.S., Chapter 76, the state's civil service law.

The Office of the Public Defender's mission is to provide legal representation to indigent persons charged with criminal offenses. The nature of this mission makes the office somewhat unique in State government. The employees of the office must deal, on a daily basis, with a certain segment of the State's population which many other agencies do not, or choose not, to service. The office's clientele suffer from poverty, societal frustration, mental illnesses and other factors which force the employees of the office approach their jobs with a certain compassion, empathy and commitment. Civil service exempt positions allow the office to employ persons who are uniquely suitable to dealing with the public which the office serves.

Most of the office's non-attorney employees have been with the office for more than five years. Many of them have served the office in excess of ten years and have been retained through at least two different office administrations. There is not a high turnover rate for non-attorney employees.

Finally, Section 6 of the bill seeks to amend H.R.S. §76-16 to repeal civil service exempt positions every three years unless extended by the legislature. As indicated above, these positions are critical to the delivery of criminal legal services to the public. Repeal of the positions every three years would cripple the operation. Phones would go unanswered, appointments for services would be very difficult to schedule, documents would not be filed in court and a variety of other essential office functions would cease to exist. This situation would cause the criminal court system to grind to a virtual halt.

In summary, civil service exempt positions give the Public Defender the required flexibility to efficiently carry out the mission of the office.

Thank you for the opportunity to comment.

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