

TESTIMONY

SB 1122

LINDA LINGLE
GOVERNOR



DARWIN L.D. CHING
DIRECTOR

COLLEEN Y. LaCLAIR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
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Phone: (808) 586-8842 / Fax: (808) 586-9099
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February 11, 2009

To: The Honorable Dwight Takamine, Chair
and Members of the Senate Committee on Labor

Date: Thursday, February 12, 2009
Time: 2:45 p.m.
Place: Conference Room 224
State Capitol

From: Darwin L.D. Ching, Director
Department of Labor and Industrial Relations

S.B. 1122 - Relating to Public Employment

I. OVERVIEW OF PROPOSED LEGISLATION

S.B. 1122 proposes to place 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.

II. CURRENT LAW

Currently the proposed restrictions do not exist.

III. SENATE BILL

The Department opposes this bill for the following reason:

The proposed restrictions on exempt positions will cripple the Department's flexibility in hiring qualified individuals for definite periods of time.

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 11, 2009

TESTIMONY TO THE
SENATE COMMITTEE ON LABOR

For Hearing on February 12, 2009
2:45 P.M., Conference Room 224

BY

MARIE C. LADERTA, DIRECTOR

Senate Bill No. 1122
Relating to Public Employment

TO CHAIRPERSON DWIGHT TAKAMINE AND MEMBERS OF THE COMMITTEE:

We strongly oppose this measure.

Senate Bill No. 1122 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 Senate Bill No. 1122 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 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.

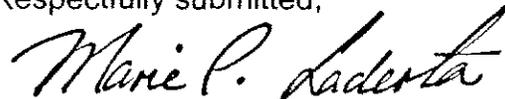
The proposed elimination of the exempt employment system will hinder agencies' ability to implement new programs and accomplish goals when flexibility and expediency may be imperative to quickly support government initiatives.

Although we understand the intent of Act 253 and Act 300, we are unable to support Senate Bill No. 1122 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,



MARIE C. LADERTA
Director



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 12, 2009

S.B. 1122 – RELATING TO PUBLIC EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B. 1122. 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 review 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 Senate, Committee on Labor
Re: S.B. 1122 – Relating to Public Employment
February 12, 2009
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positions contained in S.B. 1122. 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 S.B. 1122.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nora A. Nomura', with a long horizontal flourish extending to the right.

Nora A. Nomura
Deputy Executive Director



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

ON THE FOLLOWING MEASURE:

S.B. NO. 1122, RELATING TO PUBLIC EMPLOYMENT.

BEFORE THE:

SENATE COMMITTEE ON LABOR

DATE: Thursday, February 12, 2009 **TIME:** 2:45 PM

LOCATION: State Capitol, Room 224

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

Chair Takamine and Members of the Committee:

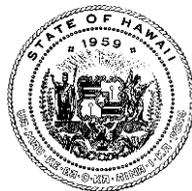
The Department of the Attorney General opposes this bill. We believe that mandating the wholesale conversion of positions from exempt to civil service conflicts with the intent of Act 253, Session Laws of Hawaii 2000, and will lead to undesirable results. Additionally, we are concerned that this bill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

S.B. 1122, RELATING TO PUBLIC EMPLOYMENT

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

February 12, 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

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

10 Specific to this measure, DOH suggests the following:

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

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

1 psychiatrist as exempt from civil service to appropriately compensate them for the services provided and
2 numerous medical practices requirements. Therefore, we strongly recommend the deletion of Page 16,
3 Section 6 (17), line 12 that will repeal statutorily created exemptions every three years unless extended
4 by the legislature. The extent of damage this singular line can do to the mental health system is simply
5 untenable.

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

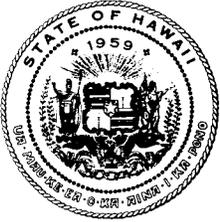
9 Finally, in the absence of the greater dialogue on civil service reforms, the Department of Health
10 assures the Legislature that it is continuously evaluating our operations, services, resources, and staffing
11 for the department to operate at a higher level of efficiency. It is through this process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

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

15 Thank you for the opportunity to testify.

16

17



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 12, 2009

TESTIMONY TO THE SENATE COMMITTEE ON LABOR

Senate Bill 1122 – 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.

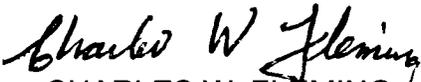
DCAB opposes the amendment in Senate Bill 1122, page 16, lines 11-15, which reads "Positions specifically exempted from this part by any other law shall be repealed every three years unless extended by the legislature; provided that all of the positions defined by paragraph (9) shall be included in the 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.

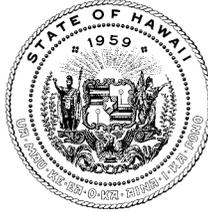
Thank you for the opportunity to testify on this important matter.

Respectfully submitted,


CHARLES W. FLEMING
Chairperson


FRANCINE WAI
Executive Director

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 Senate Committee on
LABOR**

**Thursday, February 12, 2009
2:45 PM
State Capitol, Conference Room 224**

**In consideration of
SENATE BILL 1122
RELATING TO PUBLIC EMPLOYMENT**

Senate Bill 1122 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. This department has acted in accordance with previous legislation and has converted a number of its exempt positions to civil service. The Legislature has also 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

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

Commission on Water Resources Management (Commission); §174C-5(8), HRS, the Commission had been granted statutory authority to appoint employees without regard to 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.

TESTIMONY BY JIM WILLIAMS
ADMINISTRATOR, HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST
FUND, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON LABOR
ON
SENATE BILL 1122

2:45 P.M., February 12, 2009

RELATING TO PUBLIC EMPLOYMENT

Chairperson Takamine and Members of the Committee:

My name is Jim Williams, and I am Administrator of the Hawaii Employer-Union Health Benefits Trust Fund (also known as the EUTF). Thank you for this opportunity to present this testimony requesting one amendment to Senate Bill 1122.

The EUTF provides health and life insurance benefits to approximately 92,000 public employees and retirees (55,000 actives and 37,000 retirees). EUTF is governed by a ten-member Board of Trustees.

This bill provides for the amendments to various sections of HRS to comply with previous measures adopted by this Legislature. The EUTF Board of Trustees, at its meeting of February 10, 2009, voted to request one amendment to this bill. The Board took no position on the overall merits of this bill. The EUTF request's that the provision requiring EUTF exempt positions to sunset every three (3) years unless the Legislature continues the exemption (see paragraph 17 below) be deleted. As a matter of policy, the Legislature, in Act 88 SLH 2001, determined to give the EUTF maximum authority and flexibility to provide for the administration of the EUTF by exempting new positions (those not carried over from the predecessor Public Employees Health Fund) from civil

service. The Legislature understood that the Board might even decide to hire a third party administrator (TPA) to handle EUTF operations. Unlike various individual positions that were exempted due to specific or unusual circumstances that might vary over time, this policy decision of the Legislature was built on a long-term view of the EUTF. It would be contrary to that long-term view to place a sunset on the exemption as provided in this bill.

HB1287

SECTION 6. Section 76-16, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

"(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) – (16) [No objection.]

(17) 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;

Thank you for this opportunity to present this testimony in opposition to SB 1122.

I will be pleased to answer any questions from members of the Committee.

TESTIMONY OF THE OFFICE OF THE PUBLIC DEFENDER
STATE OF HAWAII
TO THE SENATE COMMITTEE ON LABOR
ON
SENATE BILL NO. 1122

February 12, 2009

RELATING TO PUBLIC EMPLOYMENT

We oppose the section of S.B. No. 1122 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.



The Judiciary, State of Hawaii

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

Senate Committee on Labor

The Honorable Dwight Y. Takamine, Chair

The Honorable Brian T. Taniguchi, Vice Chair

Thursday, February 12, 2009, 2:45 p.m.

State Capitol, Conference Room 224

by

Sharen M. Tokura

Human Resources Director

WRITTEN TESTIMONY ONLY

Bill No. and Title: Senate Bill No. 1122, 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:

Senate Bill No. 1122 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 the Judiciary agrees that the integrity of the civil service must be preserved, we **strongly oppose** the proposed amendment to HRS Section 76-16(b)(17), "Positions specifically exempt from this part by any other law shall be repealed every three years unless extended by the legislature;"

While the structure of the paragraph appears to indicate that positions will be repealed, the intent may be to repeal either the enabling statute or the exemption provision of the applicable statute. Whether it is positions, statutes, or exemptions to be repealed, the Judiciary does not support any provision for automatic repeal.

In addition to the ambiguity of what is to be repealed, the phrase "any other law" may take on a different interpretation. It has been longstanding practice to consider "any other law" to mean a law external to this chapter. However, taken in the context of the intent to convert all



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exempt positions to civil service status, there needs to be clarification as to whether this also applies internally to sections of Chapter 76. For example, several statutes external to Chapter 76 mandate the creation of programs which are to be staffed by employees who “shall be exempt from chapter 76 and shall not be considered civil service employees.” These specific statutes set forth the legislature’s mandate to exempt positions. Would the automatic repeal provision of Chapter 76 supersede the mandate of these other statutes? The language of these statutes is not permissive and does not grant any discretion on the part of the Judiciary regarding exemption from civil service.

Looking internally at Chapter 76, Section 76-16(b)(8) provides for the exemption of judges. Does the “any other law” provision apply to subsections of the chapter proposed for amendment by this bill? The automatic repeal of an exemption for judges would throw the justice system into chaos and impact other statutes which provide for the orderly process of selecting judges without regard to the civil service recruitment process, consistent with Article VI-Section 3 of the State Constitution.

Further, subsection (9) provides for the exemption of the Deputy Administrative Director of the Courts. Such exemption is also provided by HRS Section 601-3. If one law is repealed and not the other, will the Judiciary still be in compliance? The positions of Administrative Director of the Courts and Deputy Administrator of the Courts will be required to be converted to civil service under the language of this bill. These two positions clearly should be held by at-will employees who serve at the pleasure of the Chief Justice, and therefore, should remain exempt from civil service. This is further emphasized by Article VI-Section 6 of the State Constitution which stipulates that the Chief Justice, with the approval of the Supreme Court, appoints the administrative director “to serve at the chief justice’s pleasure.”

Should each pertinent statute be amended to repeal the specific exemptions, incumbents of these positions would be terminated, the exempt positions would be abolished, and civil service positions will be established, recruited and filled in accordance with civil service merit principles. During the transition, services provided by the program may be reduced or curtailed. Should someone other than the former exempt employee be selected, the new employee will undergo a learning process, which may further affect the program’s ability to effectively deliver full services. The circumvention of the civil service recruitment and selection process through the automatic conversion of exempt employees to civil service status is inconsistent with the merit principles of civil service.

The public good is ill served by an indiscriminate repeal every three years. 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. Repeal of exemptions for positions specifically mandated as exempt is not appropriate.

The Judiciary respectfully requests to be allowed the retention of positions exempt from civil service pursuant to Section 76-16(b)(17). The Judiciary has responsibly applied the



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exemptions afforded by law; exempt positions subject to Section 76-16(b)(17) currently comprise less than 2% of the Judiciary's total workforce.

For the foregoing reasons, the Judiciary is unable to support this bill and urges the Committee to not pass Senate Bill No. 1122.



LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
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LAWRENCE M. REIFURTH
DIRECTOR

RONALD BOYER
DEPUTY DIRECTOR

TO THE SENATE COMMITTEE ON LABOR

TWENTY-FIFTH LEGISLATURE
Regular Session of 2009

Thursday, February 12, 2009
2:45 p.m.

TESTIMONY ON SENATE BILL NO. 1122 – RELATING TO PUBLIC EMPLOYMENT.

TO THE HONORABLE DWIGHT Y. TAKAMINE, CHAIR, BRIAN T. TANIGUCHI, 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-

**Testimony of DCCA
February 12, 2009
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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 those positions in three years unless the Legislature extends the positions, or if the positions are 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.

On top of the taxes that businesses already pay, they 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

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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 converts 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

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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. As a matter of 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.

To: Senator Dwight Takamine, Chair
Senator Brian T. Taniguchi, Vice Chair

From: Alan Carpenter *AC*
MaryAnne Maigret *MM for MM*
Holly McEldowney *HM*
Civil Service Exempt Employees (Archaeologist II-III)
Department of Land and Natural Resources

Hearing: Thursday, February 12, 2009, 2:45 p.m.
Conference Room 224

Subject: Support for Senate Bill 1122 – Relating to Public Employees

We are submitting joint testimony in strong support of Senate Bill 1122 which would remove the authority specific programs have by statute to hire civil service exempt staff. The intent of this measure is to prompt compliance with Act 253, Session Laws of Hawaii 2000, which aimed to reduce the inappropriately high number of civil service exempt employees and required an annual review of exempt positions to determine which should be converted to civil service. We are all civil service exempt employees working for the Division of State Parks, Department of Land and Natural Resources (DLNR), and have worked for DLNR in civil service exempt positions for 17, 6, and 19 years respectively.

We are testifying with considerable frustration. Under established criteria, our positions should have been converted to civil service several years ago and the statutory exception used to justify keeping our positions exempt, §6E-3(14), clearly does not apply to State Parks. It applies to the State Historic Preservation Division. There is no statutory authority particular to State Parks that permits the hiring of civil service exempt employees. The mandated annual review of exempt employees continues to perpetuate this error despite efforts made to bring this mistake to the attention of those conducting the review. This error is a relict of the pre-1990 period when the historic preservation and state parks programs were part of the same division. The two programs split in 1990. We support Senate Bill 1122 because it would, by amending §6E-3(14), HRS, remove the misapplied justification DLNR has used to keep our positions exempt.

Two of us have been submitting testimony to the Hawaii State Legislature on the civil service exempt problem regularly since 2003. We were encouraged by the progress that was being made through legislation and resolutions. HGEA and the employer have reached what we believe is a fair and equitable agreement on how to convert employees from exempt to civil service positions. In our cases, we were all hired at entry level on the pay scale. This conversion process would recognize our years of service and we would be compensated at a salary step that is comparable to our civil service counterparts with equivalent service. Currently there is no civil service classification for "archaeologist," but we understand that a temporary class can be created until the lengthy classification process is complete. The apparent resistance to pursuing our conversions is difficult to understand when so many of the obstacles and uncertainties we faced in 2003 have been overcome and it is so clearly inequitable to have a handful of employees that do not enjoy the full civil service protections and benefits of everyone else in the workplace.

Thank you for the opportunity to testify on Senate Bill 1122. If have any questions about our particular situations as civil service exempt employees or the disparities we face, you can contact us by cell phone: Alan Carpenter (391-5793); Holly McEldowney (222-2190); and MaryAnne Maigret (938-0116).