



**EXECUTIVE CHAMBERS**  
HONOLULU

LINDA LINGLE  
GOVERNOR

Testimony of  
**Barry Fukunaga**  
Chief of Staff to the Governor

Before the  
**HOUSE COMMITTEE ON FINANCE**  
Wednesday, April 8, 2009, 4:00 p.m.  
Room 308, State Capitol

**SB 1271 SD1 PROPOSED HD1 RELATING TO PUBLIC EMPLOYEES**

Chair Oshiro, Vice Chair Lee and Members of the Committee:

The Administration strongly opposes SB 1271 SD1 Proposed HD1.

Part I of this bill requires managerial employees in the executive and legislative branches who are exempt from civil service to use, donate, or forfeit vacation allowance accrued during their employment with the State if they discharge between July 1, 2009 and December 31, 2010. This bill also requires that if managerial employees are discharged, these employees are not entitled to reemployment by the same department from which they were discharged.

Additionally, Part II of this bill addresses vacant positions by requiring the executive and judicial branches to eliminate 40% of vacant positions and hold 30% of vacant positions vacant for fiscal years 2010 and 2011. Part II also allows department heads to refill 30% of vacant positions.

While we believe it is important to identify various options that can be considered in the State's effort to address the budget shortfall, we oppose any measure that is not uniformly and equitably applied toward employees as a whole. As a matter of fairness, we believe any sacrifice made by state employees should apply to all employees, regardless of the branch of government in which they work or their terms of employment.

Currently, Part I limits its application only to managerial employees of the executive departments and the legislative branch who are exempt from Chapter 76, HRS. There is no provision including employees of the judicial branch, thereby making its application selective in nature, which may be deemed discriminatory. We have

always advocated the importance of consistency and the necessity for shared sacrifice in dealing with adjustments to the budget. The burden on managerial employees brought about by this measure fails to meet this standard as it is not shared, is selectively applied and does not have uniform application to all employees. Moreover, Part II of this measure regarding vacant positions only applies to the executive and judicial branches, but not the legislative branch. Given that any adverse impact should be shouldered equally across all branches of government by all employees, we believe this measure is inequitable.

The Administration especially opposes Part I of this measure, which adversely impacts a right that is currently accorded to all employees under Chapter 78, Hawaii Revised Statutes (HRS). The executive branch has over 1,000 unionized and non-unionized managerial employees who are exempt from Chapter 76, including those in the Department of Education, the University of Hawaii and the Hawaii Health Systems Corporation who are professors, engineers, attorneys, surgeons, physicians, etc. This bill essentially removes the right these employees currently have, which allows them to convert accumulated earned leave to cash compensation, with the explicit understanding that redemption would take place at the time of discharge. Taking away accrued vacation leave on a retroactive basis is punitive.

This measure will also result in affected employees having to expend accumulated leave in addition to annual earned leave, or face the loss of the hours in their possession. This situation will likely compel these managerial employees to use the vacation leave, which creates an adverse staffing impact on the state government workforce, while also affecting services at a time when they are especially needed. Moreover, extended absence, in addition to creating manning shortages, will require in most instances coverage through temporary assignments. Such coverage requires compensation of lower ranked employees that will add costs and take from savings that the bill is attempting to realize.

Additionally, the provision that prohibits managerial employees from returning to state employment with the same department is detrimental to government operations. Given that both specialized skill and experience is needed to fill these exempt managerial positions, this provision is counterproductive. As an example, given our current physician shortage, prohibiting physicians and surgeons who were exempt managerial employees of the HHSC from returning to the system would only exacerbate the State's health care issues.

Since it is difficult to estimate the number of employees who may leave state employment between July 1, 2009 and December 31, 2010; and vacation payouts vary depending on the length of service, it is uncertain what amount of savings will be realized. The Administration is concerned that any employee planning a voluntary discharge may wait until after the sunset date of this measure in order to preserve vacation allowances. If that occurs, the State will only have managed to delay payouts for these employees to the second half of fiscal year 2011, which will still negatively impact the state budget.

The Administration is also opposed to Part II, which requires vacant positions to be held vacant, eliminated, or refilled as dictated by this bill. We believe this is unnecessary and would greatly impact the departments' ability to appropriately manage and allocate its resources in the current fiscal environment. At present, departments are already eliminating vacant positions and freezing hiring. It is unreasonable to mandate a certain percentage of vacant positions be eliminated or held, as departments have no control over vacancies that result from voluntary discharge, nor what functions those discharges impact. Especially in smaller departments with more employees closer to retirement age, holding and eliminating 70% of vacant positions may result in the loss of essential services.

Although this bill allows the Governor to transfer vacant positions to cover essential services with the approval of the Legislature, this is impractical. Rather than allowing departments to refill vacant positions as needed, the proposed changes would impact essential services by requiring departments to go through a drawn out process involving both the Governor and the Legislature in order to refill a position.

For these reasons, the Administration feels SB 1271 SD1 Proposed HD1 is inappropriate and respectfully requests that this measure be held.



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

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ON THE FOLLOWING MEASURE:

S.B. NO. 1271, Proposed H.D. 1, RELATING TO PUBLIC EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON FINANCE

DATE: Wednesday, April 8, 2009 TIME: 4:00 PM

LOCATION: State Capitol, Room

TESTIFIER(S): Mark J. Bennett, Attorney General,  
or James Halvorson, Deputy Attorney General  
or Charleen Aina, Deputy Attorney General

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Chair Oshiro and Members of the Committee:

The Department of the Attorney General strongly opposes part I of this bill, and takes no position on the effort in part II to adopt a statewide attrition policy to deal with the State's current fiscal situation.

Without defining key terms, part I of this bill amends section 78-23, Hawaii Revised Statutes, to compel civil service exempt "managerial employees" of the executive and legislative branches of the State, who retire or otherwise leave their state job between July 1, 2009 and December 31, 2010, to forfeit all compensation for accumulated vacation that the employee is unable to use before leaving the job, no matter when they earned it and no matter how many years they have worked for the State.

Part I of this bill is fundamentally unfair and inconsistent, and almost certainly will be challenged as violative of the equal protection, due process, and contract clauses of the federal and state constitutions.

The bill is highly likely to be vulnerable to an equal protection challenge. It unfairly differentiates between and among state employees and other public employees. The "managerial employee"

category carved out for the disadvantages imposed by the bill is not defined. Employees who are exempt from the civil service have functional counterparts and equivalents in the civil service, but this bill does not explain, either by its stated purpose or otherwise, why only non-civil service employees are singled out. The bill also fails to explain why "managerial employees" of the judicial branch are not included. Based on the bill's effective date, its 18-month effective period, and its exclusion of judiciary "managerial employees," the bill appears to burden career "managerial employees," who may have planned to return in the 18-month interval, with limitations intended for "managerial employees" whose terms expire during the 18-month period. The bill is over-inclusive if the real targets are the subset of employees expected to leave government by December 31, 2010 because their terms of election or appointment expire. It is under-inclusive if all managers are the true targets, and their functional counterparts in the civil service and the Judiciary are excluded.

A court could also conclude that part I lacks a rational basis, because the means the Legislature has chosen to accomplish what appears to be its cost-cutting purpose is unlikely to cut costs, because the targeted employees are required to use their accumulated leave before leaving government employment. Senate Committee Rept. No. 762 notes that the Legislature would adopt part I of the bill as a means to sustain the current level of government services with fewer resources during this economic downturn. Yet the bill provides that the targeted employees shall "[u]se, prior to discharge, accumulated vacation allowance and current accrued vacation allowance to and including the date of discharge; [or d]onate, prior to discharge, accumulated vacation allowance through a leave sharing program," and directs that "[a]n amount equivalent to the compensation that would have been paid to the employee upon discharge prior to enactment of this section shall be deposited with the director of finance of the State to the credit of the department that employed the employee immediately prior to discharge." Further, it is unclear what cost-cutting would be

accomplished by compelling "managerial employees," who have important functions to perform, to be away from their positions for up to ninety days during fiscally challenging times. And the bill fails to explain why individuals who have spent their entire working lives as public servants, and now happen to be "managerial employees", must lose employment benefits they earned as civil servants.

Part I is also certain to be attacked as unconstitutional under the due process and contract clauses of the federal and state constitutions because it retroactively repeals contractual and statutory covenants, because it adversely affects existing rights that are essentially vested rights, and because the Legislature lacks the power, in most instances, to enact a statute that jeopardizes vested rights. Although there may be some question as to whether high-ranking appointed officers and elected officials have vested rights in vacation allowances, there is ample support for the proposition that accumulated vacation allowances conferred on public employees by statutes or collective bargaining contracts are additional and alternative forms of compensation for work that has already been performed, and are received in lieu of higher salaries; and that these employment benefits, once earned, cannot be taken away. There is no question that this bill takes these kinds of benefits away from "managerial employees" -- it expressly requires them to "forfeit" these benefits if they leave state employment between July 1, 2009 and December 31, 2010 and have not used their earned and accumulated vacation time before then.

There are other legal concerns about this bill, including whether its prohibition against managerial employees who leave state employment in the 18-month interval returning to state employment is rational for purposes of equal protection, or in the best interest of the State and the public as a matter of policy.

We respectfully ask that this bill be held.



*The Judiciary, State of Hawaii*

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

**House Committee on Finance**

The Honorable Marcus R. Oshiro, Chair

The Honorable Marilyn B. Lee, Vice Chair

Wednesday, April 8, 2009, 4:00 p.m. (Agenda #1)

State Capitol, Conference Room 308

by

Thomas R. Keller

Administrative Director of the Courts

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**WRITTEN TESTIMONY**

**Bill No. and Title:** Senate Bill No. 1271, S.D. 1, Proposed H.D. 1, Relating to Public Employees.

**Purpose:** Requires state managerial executive department and state managerial legislative branch employees who are exempt from chapter 76, HRS (civil service law) to use or donate accumulated and accrued vacation allowance prior to discharge, or to forfeit remaining vacation allowance and any compensation in lieu of retaining vacation allowance upon discharge. Provides for a statewide attrition policy during fiscal year 2009-2010 and fiscal year 2010-2011 in the Executive Branch, Judiciary, University of Hawaii, and Department of Education.

**Judiciary's Position:**

While the Judiciary recognizes and appreciates the Legislature's efforts to resolve the current budget situation, we strongly object to Part II of Senate Bill No. 1271, S.D. 1, proposed H.D. 1. We respectfully submit the following comments and concerns relating to the proposed amendments in Part II, Section 3 (b):

- (1) This bill may be premature without the finalization of House Bill No. 300, H.D. 1, S. D. 1 and its impact on Judiciary operations. Position restrictions could exacerbate any negative adjustments made in the final version of our budget bill. Vacancy



Senate Bill No. 1271, S.D. 1, Proposed H.D. 1, Relating to Public Employees  
House Committee on Finance  
Wednesday, April 8, 2009  
Page 2

attrition actions, as proposed in Senate Bill No. 1271, S.D. 1, proposed H.D. 1, need to be taken into account as the Legislature finalizes the Judiciary's budget bill.

- (2) The bill lacks specificity in determining the percentages identified in the bill. Vacancy numbers are dynamic and it would be extremely difficult for the Judiciary to calculate the proposed percentages.
- (3) It is unclear at what point the Judiciary is to calculate the 30% or 40% of vacant positions. The number of vacancies is not static. For example, can 30% of positions vacated during FY 2009-10 be refilled on July 1, 2010, or can 30% of total vacancies on a given month that the Judiciary chooses be filled immediately?
- (4) If the objective of Senate Bill No. 1271, S. D. 1, proposed H.D.1 is to reduce costs, then this objective can be accomplished by the proposed actions to freeze and eliminate positions. Cost savings will be achieved but will also result in staffing cuts and a corresponding reduction in, or elimination of, program services provided to the public.
- (5) This bill severely restricts the Judiciary's ability to make internal resource allocation decisions, which is critical to fulfilling the Judiciary's mission.

Thank you for the opportunity to present testimony on this measure.

TESTIMONY BY GEORGINA K. KAWAMURA  
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE  
STATE OF HAWAII  
TO THE HOUSE COMMITTEE ON FINANCE  
ON  
SENATE BILL NO. 1271, S.D. 1, PROPOSED H.D. 1

April 8, 2009

RELATING TO PUBLIC EMPLOYEES

Senate Bill No. 1271, S.D. 1, Proposed H.D. 1, temporarily revises leaves of absence provisions for exempt, managerial employees and places certain limits on the filling of vacant Executive and Judiciary Branch positions during Fiscal Years 2009-10 and 2010-11. Our comments focus on Part II of the bill that limits filling of vacant positions, which we oppose.

Specifically, Part II limits filling of vacant positions for all Executive Branch departments, except for the Department of Education and University of Hawaii, as follows:

- Thirty percent of the vacant positions occurring during each fiscal year may be refilled by the head of the department.
- Thirty percent of the vacant positions are to be held vacant for Fiscal Year 2009-10 and placed in a statewide personnel pool; provided that the Governor may propose transfer of vacant positions to fill essential positions in FY 2010-11 through the FY 2010-11 supplemental budget.
- Thirty percent of the vacant positions are to be held vacant for Fiscal Year 2010-11 and placed in a statewide personnel pool; provided that the Governor may propose transfer of vacant positions to fill essential positions in FY 2011-12 through the FB 2011-13 biennium budget.

- Forty percent of the vacant positions in each year are to be eliminated.

The limits for the University of Hawaii are as follows:

- Seventy percent of the vacant positions in each fiscal year may be refilled by the President of the University.
- Thirty percent of the vacant positions are to be held vacant for FY 2009-10; provided that the President may propose transfer of vacant positions to fill essential positions in FY 2010-11 through the FY 2010-11 supplemental budget.
- Thirty percent of the vacant positions are to be held vacant for FY 2010-11; provided that the President may propose transfer of vacant positions to fill essential positions in FY 2011-12 through the FB 2011-13 biennium budget.

The Department of Education is required to eliminate twenty percent of vacant, statewide administrative positions occurring during this period.

We believe that the extraordinary limitations on filling vacancies could have severe, detrimental impacts on departmental operations and delivery of services to the public. It must be recognized that the departments have little control over their vacancies - the decision whether to retire or leave service is an individual employee's choice. Some departments that have a stable and younger workforce may be minimally affected, whereas other departments with relatively high turnover rates or with a high percentage of retirement-age workers may be extremely hard hit by these vacancy filling limitations.

For the most part, department workforces are thin, having been repeatedly constrained with each budget through the prolonged period of austerity that only improved during the previous biennium. Further, these limitations will be imposed on top of reductions of 665 vacant positions proposed by the House in House Bill No. 200, H.D. 1

(the Administration had proposed a reduction of 351 vacant positions). Departments will have very little flexibility in maintaining operations and services if they are limited to filling only thirty percent of vacancies occurring during the next biennium on top of any budget reductions and/or restrictions.

Finally, it may be technically difficult to implement the proposed vacancy filling limitations. Unlike the Early Incentive Retirement Program (Act 212, SLH 1994) after which the vacancy filling limitations in this bill generally follow, departments do not know beforehand how many employees will be separating from service during the course of the fiscal year. Therefore, departments may have to wait until they accumulate enough vacancies to determine which of the positions to fill, which to keep vacant and which to abolish. Hypothetically, some departments may have to keep all of the vacant positions unfilled for the whole year because they may have few vacancies for the year.

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

April 7, 2009

TESTIMONY TO THE  
HOUSE COMMITTEE ON FINANCE  
For Hearing on April 8, 2009  
4:00 p.m., Conference Room 308  
BY  
MARIE C. LADERTA, DIRECTOR

**Senate Bill 1271, S.D. 1, H.D. 1 (Proposed)  
Relating to Public Employees**

TO CHAIR OSHIRO AND MEMBERS OF THE COMMITTEE:

The Department of Human Resources Development opposes this bill.

Part I of this bill requires managerial employees of the State Executive branch and managerial employees of the Legislative branch who are exempt from Chapter 76, HRS (civil service law) to use or donate accumulated and accrued vacation allowance prior to discharge, or to forfeit remaining vacation allowance and any compensation in lieu of retaining vacation allowance upon discharge. It also bars such managerial employees from reemployment by the same department that they were employed in prior to discharge.

Part II of this bill prescribes a statewide attrition process for positions which are vacated during fiscal years 2009-2010 and 2010-2011.

The Department of Human Resources Development is **strongly opposed to Part I** of this measure for the following reasons:

1. This proposal is discriminatory in nature because it targets a specific group of more than 1,000 public service employees and imposes an inequitable treatment upon them, as compared to all other State and county employees.
2. This proposal would be tantamount to taking away an accrued benefit that these managerial employees had come to expect since the time of their hire.
3. From a management perspective, this proposal could negatively impact public service by compelling exempt managerial employees of the Executive and Legislative branches to take vacation time off from their jobs in lieu of forfeiture. For example, those exempt managers who will have 100 days of accrued vacation leave would

likely start taking their vacation leave as soon as possible if they plan to leave state government before December 31, 2010. Notably, the employees that will be affected by this measure are responsible for managing and directing such critical programs as civil defense, criminal justice, corrections, education, public health, energy, consent decree, social services, and deputy public defenders. This could leave their programs without leadership for over four months while exempt managers expend their accrued leave.

4. This measure will also bar exempt managerial employees from reemployment by the same department, which appears unfair and punitive to take away their right for equal opportunity in a public service agency. Further, it could also be detrimental to the State's best interests. For example, if an outstanding Principal who is highly effective in managing the operations of a school leaves the State, then later wishes to return in the same or other administrative capacity, the DOE would not be able to reemploy that individual.
5. The provision that would require departments to deposit with the Director of Finance an amount equivalent to the accumulated vacation allowance forfeited by discharged managerial employees (see page 5, lines 4 – 13) would be punitive to the departments. Since the employees forfeited the vacation allowance, there should be no need for departments to deposit the monies with the Director of Finance. In addition, this provision is unnecessary if the Attrition Policy under Part II is passed, which requires that a percentage of vacated positions be eliminated or held vacant for a specified period of time.

The Department opposes Part II of this bill for the following reasons:

DHRD is the central personnel agency for the Executive Branch. Among our core functions are assisting departments in recruitment and retention of qualified staff to provide essential services to the public, and providing leadership and guidance in managing their workforce.

To some extent, attrition has already been imposed on us through across-the-board budget reductions. Over the years, reductions have been imposed on our Department's base budget and since 1995, our staffing has been reduced from 177 to 112 positions -- that's 65 positions amounting to a 37% reduction. Despite the reduction, we have been able to provide essential services using the flexibility to manage the remaining positions within available resources.

The proposed attrition policy will take away that flexibility and cripple State government operations. The proposed attrition policy will:

- Create a "statewide personnel pool". It is unclear how the vacant positions assigned to this "statewide personnel pool" should be treated, or even who is to administer this "statewide personnel pool." Until such questions are answered, this bill will cause some serious confusion if it became law and had to be implemented as currently worded.
- Become a burden to implement because it will be difficult to determine which vacant positions will fall in the 30% of the total number of vacancies in the fiscal year that can be filled or in the 30% that must remain vacant;
- Significantly restrict the department head's ability to fill vacant positions critical to providing continuing governmental services to the public; and
- Create confusion and more administrative work in managing and implementing a "statewide personnel pool" which also raises questions about where the pool will be funded and managed and the impact to the classification of the positions in the pool. For example, will the positions that go into the pool be required to keep: (1) their civil service or exempt status; (2) their position title; (3) their duties and responsibilities; (4) their included/excluded status; and (5) if included, their bargaining unit designation; or will the Administration be allowed to change these terms, if necessary, when the positions are assigned to other departments?

In view of the current economic situation, managing State government operations within available resources, within a labor union environment, and striving to meet the essential needs of the citizens of the State requires a delicate balance. If we are to ride with the momentum that the federal American Recovery and Reinvestment Act of 2009 (ARRA) funds intends to create in our current dire situation, State government will need to have the flexibility to shape its workforce structure into a leaner and more efficient workforce when attrition occurs while maintaining essential government operations and services. We do not have control over employees' decisions to retire or separate from State government employment and if they chose to separate, the departments currently can make the right decisions on whether to fill or to vary the position classification in order to meet essential public services. The proposed attrition policy will severely curtail the flexibility needed to effectively and efficiently manage our workforce.

Because of the above concerns, we recommend that the bill be held. Thank you for the opportunity to provide our comments.



**TESTIMONY OF MARION M. HIGA, STATE AUDITOR,  
ON SENATE BILL NO. 1271, SENATE DRAFT 1, AND PROPOSED HOUSE DRAFT 1,  
RELATING TO PUBLIC EMPLOYEES**

**House Committee on Finance**

**April 8, 2009**

Chair Oshiro and Members of the Committee:

Thank you for this opportunity to testify in opposition to (a) Senate Draft 1 in its entirety and (b) Part I of the proposed House Draft 1 of this bill. Both (a) and (b) are similar, but not identical, in their provisions: they would require exempt “managers” in the executive and legislative branches to relinquish all accumulated vacation leave credits and not be paid their attendant compensation for those credits upon separation from state or county service, effective July 1, 2009 through December 31, 2010.

While I fully appreciate the State’s fiscal dilemma, I am compelled to speak in opposition to the provisions in (a) and (b) on behalf of the managers in my office who would all be affected, myself included. My opposition is based on the principles of **integrity** and **equity**.

In allowing both civil service and exempt state and county employees to accumulate up to 720 vacation hours, the State of Hawai‘i under current law promoted the concept of saving for a rainy day—in effect, encouraging state and county employees to forgo at least some use of those 14 vacation hours per month for the **promise** of later use when needed or the **promise** of compensation for unused vacation credits upon separation. The current law encouraged employees to come to work. S.B. 1271, S.D. 1 and Part I of the proposed H.D. 1 would reverse all that. With an effective date of July 1, 2009, the bill provides for virtually no opportunity for the affected managers to use much, if any, of the accumulated vacation hours. The reality in

government is that managers in the executive and legislative branches are the ones most likely to have not only the seniority to have accumulated large leave balances, they are also the ones who cannot be spared—or feel too responsible—to use all their accumulated vacation leave even if there were enough notice of “use it or lose it.” This bill and Part I of the proposed draft enable the government to go back on its word. The objectionable provisions would take back something already earned—how honest is that?

The principle of equity is also at stake in this bill and the proposed House Draft:

- Both would apply to only two of the three branches of government. What is the rationale for sparing the Judiciary?
- Both would apply only to exempt employees, not those in the civil service, where the preponderant position count lies. What is the rationale for selecting only a small minority of the state and county work force if the motive for the bill and the draft is to save money?
- When the target pool shrinks even further by limiting the bill’s and the draft’s application to exempt managers, and for a limited period of 18 months, how much money would be saved? And at what cost to employee trust and morale?
- The bill and the draft do not define the term “manager.” If the term includes anyone with the title, then the provisions should apply to each legislator’s office manager—are you aware of that? If the term is supposed to include anyone who manages someone other than oneself, who is to interpret the term? Are there any avenues for appeal?
- Does the bill include the exempt managers in the Department of Education, the University of Hawai‘i, and the Office of Hawaiian Affairs? If it does not, what is the rationale?

It is understandable that, in times of economic downturn, all manner of proposals are advanced in hopes of saving money. I would ask that, in deciding whether to advance this bill or its proposed House Draft, you explore the question of what specific problem this bill is really trying to solve, and whether the solution offered by the bill will (1) in fact achieve correction of the alleged problem and (2) not cost more than the alleged problem, with cost measured in human and organizational terms as well as monetary terms. If the rationale is truly to save money, targeting only exempt managers in two branches of government could not possibly make a significant dent in the State's or the counties' expenditures. Above all, this bill and the draft contradict the calls for a "shared sacrifice."

I believe this bill and the proposed House Draft deserve further analysis and justification and urge both being set aside at this time. Thank you for listening.



Robin K. Matsunaga  
Ombudsman

David T. Tomatani  
First Assistant

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**TESTIMONY OF ROBIN K. MATSUNAGA, OMBUDSMAN,  
ON S.B. NO. 1271, S.D. 1, A BILL FOR AN ACT  
RELATING TO PUBLIC EMPLOYEES**

**HOUSE COMMITTEE ON FINANCE  
APRIL 8, 2009**

Chair Oshiro and Members of the Committee:

Thank you for the opportunity to present comments on S.B. No. 1271, S.D. 1, A Bill for an Act Relating to Public Employees. My comments also apply to Part I of the proposed H.D. 1 of this bill. I do not have comments to offer on Part II of the proposed H.D. 1.

I recognize that the legislature must explore all available options to respond to the economic downturn. This bill and Part I of the proposed H.D. 1 would amend Section 78-23, HRS, to require exempt managerial employees in the executive and legislative branches of state government to use or donate accrued and accumulated vacation leave prior to their termination from employment or to forfeit that leave upon termination. The bill also prohibits these employees from being reemployed by the same department that employed the employees immediately prior to the employees' termination of employment.

While I support the authority and wisdom of the legislature to enact new laws and modify existing laws in order to ensure the fiscal stability of the State, I am concerned that the amendments to Section 78-23 that are proposed in S.B. No 1271, S.D. 1, and Part I of the proposed H.D. 1, focus only on a certain class of state employees, exempt managerial employees in only two of the three branches of State government, and thereby raises questions of equity and fairness in the treatment of these employees.

Section 78-23 currently uniformly applies and conveys benefits to all public employees in state and county government, irrespective of the employee's status or type of appointment. I believe that in order to be fair and equitable, the amendments proposed in S.B. No 1271, S.D. 1, and Part I of the proposed H.D. 1 should apply uniformly to all public employees, regardless of the

Testimony of Robin K. Matsunaga, Ombudsman  
S.B. No. 1271, S.D. 1  
April 8, 2009  
Page 2

branch of government they are in or their civil service status, or whether they are managerial or non-managerial, or included or excluded from collective bargaining.

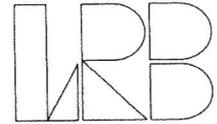
Therefore, I hope that if this committee decides to pass this measure that it will consider amending it to apply to all employees and not only to excluded managerial employees of the state executive and legislative branches.

Thank you for the opportunity to present comments on this bill.

Ken H. Takayama  
Director

Charlotte A. Carter-Yamauchi  
First Assistant

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LEGISLATIVE REFERENCE BUREAU  
State of Hawaii  
State Capitol  
415 S. Beretania Street, Room 446  
Honolulu, Hawaii 96813

## Testimony

### **SB1271, SD1, HD1 (Proposed) RELATING TO PUBLIC EMPLOYEES**

Testimony by the Legislative Reference Bureau  
Ken H. Takayama, Director

Presented to the House Committee on Finance

Wednesday, April 8, 2009, 4:00 p.m.  
Conference Room 308

Chair Oshiro and Members of the Committee:

Thank you very much for this opportunity to testify **in opposition to part I** of S.B. No. 1271, S.D. 1, H.D. 1 (proposed). We take **no position on part II**. This bill prohibits managerial employees of the executive and legislative branches of state government, unlike all other employees, from receiving compensation in lieu of the employees' accumulated vacation allowance.

At present, when any employee leaves government service the employee is compensated for the amount of time that the person's accumulated vacation represents in the person's present salary. All employees are allowed to accumulate a maximum of ninety unused vacation days. Under this bill, only certain managerial employees will either have to use their vacation time or lose it.

We oppose part I of the bill for the following reasons:

1. It is inequitable. The bill applies to a comparatively small number of employees, namely, managerial employees in the executive and legislative branches -- not even to those in the judiciary, UH, DOE, OHA, or with the counties.
2. In the Bureau, this bill would single out six individuals. As a legislative service agency, staff generally, and supervisors in particular, cannot responsibly take vacations during months when the Legislature is in session and for some periods before and after. This will almost ensure that multiple supervisors -- not to mention line employees, will be on leave at the same time, which hinders both efficiency and productivity.

3. The bill breaks a promise made to employees when they began state service -- that they would be compensated for vacation leave that was saved rather than taken (up to 90 days);
4. The bill will be a deterrent to conscientious employees becoming future managers. Added to any other concerns will be a distinct price tag that can be calculated in dollars and cents -- namely, the value of all accumulated vacation that the employee has earned;
5. The bill sends the wrong signal and communicates the wrong values to all state employees. Those who have used all of their vacation time as soon as they earned it may see themselves as having been "wise", while those who worked and saved will find that the joke is on them.
6. If the goal of the bill is to save public dollars, then it should be applied to all state and county employees -- through collective bargaining to those who are covered, and directly to those who are excluded. And at the very least, it should apply to the Judicial branch.
7. If the goal of the bill (as implied in the last paragraph of Section 1) is to prevent people from leaving service, "cashing out" their accumulated leave time and then returning shortly thereafter, then the measure can be tailored to focus upon that problem by requiring recoupment of the amounts paid out from the salary of anyone who returns to state or county service before a specified period of time has elapsed.
8. At the very least, to avoid the danger of depriving people of property without due process of law, the bill should be amended to clearly state that it does not apply to any vacation leave accrued prior to its effective date.
9. In summary, we oppose the passage of part I of S.B. No. 1271, S.D. 1, H.D. 1 (proposed). If the bill has to pass, however, we believe that at the very least, it should be amended to:
  - a. Apply to all state and county officers and employees who receive vacation as part of their compensation package; and
  - b. Not apply to any vacation leave accrued prior to its effective date.

Thank you very much for this opportunity to testify.

**Date:** 04/08/2009

**Committee:** House Finance

**Department:** Education

**Person Testifying:** Patricia Hamamoto, Superintendent of Education

**Title of Bill:** SB 1271, SD1, HD1, Proposed RELATING TO PUBLIC EMPLOYEES.

**Purpose of Bill:** Requires state managerial executive department and state managerial legislative branch employees who are exempt from chapter 76, HRS (civil service law) to use or donate accumulated and accrued vacation allowance prior to discharge, or to forfeit remaining vacation allowance and any compensation in lieu of retaining vacation allowance upon discharge. Provides for a statewide attrition policy.

**Department's Position:** The Department of Education strongly opposes the proposed measure of S.B. 1271, SD1, HD1. In Part I, Section 1, (f), with the realization that our managerial employees' accrued vacation allowance must be either used, donated or forfeited, many who may have planned to separate from service at the end of this 2009 or 2010 calendar year may elect to leave prior to July 1, 2009. This unanticipated mass exodus may impact the recruitment and replacement of qualified personnel like our school administrators. To take away an accrued benefit would "force" our qualified personnel to separate from the department earlier than planned. Furthermore, in Part II, Section 3, (d), it is proposed that twenty percent of the vacated statewide administrative positions will be eliminated in the department in the next biennium. The elimination of the vacated positions could potentially be devastating to our schools. In an independent audit recently conducted on our department, it was found that 39% of our principals are at retirement age. If all of those principals were to retire

over the next biennium and 20% of those vacancies were eliminated, we are looking at potentially 20 schools without principals. It is certainly not possible to have schools operate without administrators. Therefore, the Department strongly opposes this measure.

LINDA LINGLE  
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

**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

**Transmittal Cover Sheet for  
Department of Land and Natural Resources Testimony**

**Date Submitted: April 8, 2009**

**REVISED TESTIMONY**

**PLEASE DISCARD PREVIOUSLY TRANSMITTED COPY AND  
REPLACE WITH THE VERSION BELOW. THANK YOU!**

**Testifier's Name/Position/Title:** Holly Leong, Personnel Division Administrator

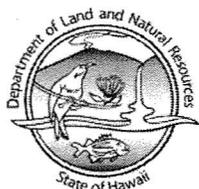
**Committee the comments are directed to:** HOUSE COMMITTEE ON FINANCE (FIN)

**The Date & Time of Hearing:** Wednesday, April 08, 2009  
4:00 PM, Conference, Room 308

**Measure Number:** SB 1271 SD 1 RELATING TO PUBLIC EMPLOYEES

**Number of Copies the Committee is Requesting:** In paper, 2 copies (including original) to  
Room 306 in the State Capitol

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  
FINANCE**

**Wednesday, April 8, 2009  
4:00 PM**

**State Capitol, Conference Room 308**

**In consideration of  
SENATE BILL 1271, SENATE DRAFT 1, Proposed HOUSE DRAFT 1  
RELATING TO PUBLIC EMPLOYEES**

Senate Bill 1271, Senate Draft 1, Proposed House Draft 1 seeks to: 1) Require state executive department and state legislative branch employees who are exempt from Chapter 76, Hawaii Revised Statutes (HRS), to use or donate accumulated and accrued vacation allowance prior to discharge, or to forfeit remaining vacation allowance and any compensation in lieu of retaining vacation allowance upon discharge, and 2) Provide for a statewide attrition policy. The Department of Land and Natural Resources (Department) does not support this measure.

**PART I - Leaves of Absence**

There is concern that this bill unfairly targets a specific grouping of employees and changes the conditions of their employment as originally accorded. This bill fails to address the employees in the Judiciary or the counties, thereby making its application selective, discriminatory, and possibly retaliatory. This measure is not uniformly and equitably applied to all such employees in the various branches of government.

State executive and legislative branch employees exempt from Chapter 76, HRS, while not falling under the context of civil service employees, are employees, whom, to the best of their abilities, perform a service to the public, not unlike their civil service counterparts. Their dedication to the job is without question. Many of these exempt employees work beyond state office hours, and receive no overtime compensation, unlike their civil service counterparts. To take away one's earned vacation at the end of one's tenure of employment would appear discriminatory and unduly harsh given that civil service employees, as similar public servants, are cashed out for any unused vacation upon termination of employment.

In addition, this measure would create extended absences and staffing shortages as such employees would try to expend their accumulated leave. Additional monies would be spent by

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

RUSSELL Y. TSUJI  
FIRST DEPUTY

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CONSERVATION AND COASTAL LANDS  
CONSERVATION AND RESOURCES ENFORCEMENT  
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HISTORIC PRESERVATION  
KAHOOLAWE ISLAND RESERVE COMMISSION  
LAND  
STATE PARKS

departments who would try to cover these absences by temporarily filling the positions to recover the manpower shortage.

Lastly, this bill would affect certain Department health and safety programs by reducing public services performed by such exempt employees in the areas of: dam safety, flood control, drought, water conservation, and rockfall mitigation, as well as the care and preservation of our important archaeological, historical, and cultural resources. The measure seeks to bar such exempt employees from reemployment by the same department that employed the employee immediately prior to discharge, which is detrimental to state government and the public due to the highly specialized skills, such as geology and hydrology, that these employees possess and the limited pool that exists in the statewide labor market.

## **PART II - Attrition**

Hawaii is blessed with the largest tropical rainforest in the United States, the fourth largest coastline in the Nation, approximately 2 million acres of conservation land, 1.3 million acres of state owned lands, 3 million acres of state ocean waters, 410,000 acres of coral reefs and 23,000 acres of inland surface waters.

The current economic and fiscal conditions will severely hamper the Department efforts and initiatives to protect, preserve and enhance the quality of our state's natural and cultural resources which directly affect the quality of life for our residents and form the basis for our tourism economy. The Department's general fund budget was reduced by \$1.38M last legislative session. This reduction was compounded with a 4% general fund budget restriction (\$1.3M) imposed by the Administration. Just recently, the Department was instructed to restrict another 2% (\$654,863) on their general fund spending. The Department notes that its 2010-11 Biennium Budget request proposes an additional \$6.4M reduction in general funds, including the abolishment of 31.5 permanent positions. The Department has explored supplementing the loss of general funds with federal funds and special funds, as alternative funding sources, to continue the Department's efforts and initiatives to protect, preserve and enhance the quality of our state's natural and cultural resources which directly affect the quality of life for our residents and form the basis for our tourism economy. The Department has carefully identified and preserved the programs in our budget that protect public safety: Division of Conservation and Resources Enforcement (DOCARE), dam safety, flood control, rockfall mitigation, and fire protection. The Department has also identified the public recreational spaces as our second priority, as these places are heavily used by residents and visitors alike, and are in great need of improvements and cannot sustain reductions and remain open. If the State is looking to increase tourism as an integral part of the revitalization of our state's economy, we must work to improve and enhance our state's natural resources and park infrastructure. Additionally, to identify certain percentage reductions across the board is unfair to smaller departments, such as this department, whom are mandated to perform certain essential functions and are entrusted with responsibilities necessary to provide for and maintain public health and safety.

While the Department is sensitive to the State's difficult economic situation and as such, amicable to temporary funding source options to help balance the budget, the inability to fill more than 30% of its positions that become vacant beginning July 1, 2009 to June 30, 2011, nonetheless, would stifle the Department even further to carry out its mission and to maintain critical services integral to the protection of the public and the state's natural resources.

This attrition policy is a ridiculous, random, and dangerous way to attempt to restrict government expenditures & abdicates any responsibility of the Legislature to make good policy decisions. The Department, and indeed the State, cannot responsibly manage a financial shortfall through an attrition policy. Positions become vacant due to reason unrelated to their importance, unrelated to the importance of a department. This attrition policy may leave certain departments with vacancy rates of forty percent, resulting in a permanent loss of significant number of positions and services, and other departments with vacancy rates as low as ten percent and no permanent loss of positions. That policy will result in random losses of essential services for no justification other than the cohort ages and length of services within a branch, division, section or department.



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

STATE OF HAWAII  
OFFICE OF THE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
335 MERCHANT STREET, ROOM 310  
P.O. Box 541  
HONOLULU, HAWAII 96809  
Phone Number: (808) 586-2850  
Fax Number: (808) 586-2856  
[www.hawaii.gov/dcca](http://www.hawaii.gov/dcca)

LAWRENCE M. REIFURTH  
DIRECTOR  
  
RONALD BOYER  
DEPUTY DIRECTOR

TO THE HOUSE COMMITTEE ON FINANCE

TWENTY-FIFTH LEGISLATURE  
Regular Session of 2009

Wednesday, April 8, 2009  
4:00 p.m.

**TESTIMONY ON SENATE BILL NO. 1271, S.D. 1, PROPOSED H.D. 1  
RELATING TO PUBLIC EMPLOYEES.**

**WRITTEN TESTIMONY ONLY**

TO THE HONORABLE MARCUS R. OSHIRO, CHAIR, MARILYN B. LEE, VICE CHAIR,  
AND MEMBERS OF THE COMMITTEE:

My name is Lawrence Reifurth, Director of Commerce and Consumer Affairs ("DCCA" or the "Department"). The Department has concerns with the proposed H.D. 1 of S.B. No. 1271, S.D. 1, and recommends that the bill be held.

The Department understands and appreciates the economic and fiscal challenges with which the Administration and Legislature must contend. The Department also appreciates the need to find creative and innovative ways to reduce expenditures and to develop other sources of revenues to help balance the general fund. However, the proposal is unfairly discriminatory to certain employees and adversely affects State agencies' ability to service the public.

Part I of the proposal is unfairly discriminatory as it treats similarly situated State employees differently without a logical reason. Part I specifies that certain exempt

managerial employees will not be entitled to compensation in lieu of their accumulated vacation allowance or their current accrued vacation allowance. The provision also requires those employees to either use or donate their vacation prior to discharge or forfeit the vacation if it is not used or donated. Additionally, Part I would prohibit those exempt employees from being reemployed by the same department after they are discharged.

Although those employees are just as hardworking and loyal as their civil service counterparts, those exempt employees are being singled out. During the period between July 1, 2009 and December 31, 2010, those exempt employees will no longer have the same options as their civil service counterpart, even though the exempt employees may be working beyond office hours and receive no overtime compensation.

Prohibiting exempt employees from being reemployed by the same department after they are discharged will also reduce the options for those departments for employing experienced and proven workers.

Part II of the proposed draft would adversely affect agencies' ability to maintain the level of service that their customers and taxpayers deserve. Although limited to fiscal years 2009-2010 and 2010-2011, limiting the number of positions that departments are allowed to refill in each of those fiscal years to less than one-third of the positions that are vacated will place a considerable amount of strain on the remaining employees. Add to that the requirement that forty percent of the positions that are vacated in each of those fiscal years be eliminated, departments will have to redeploy the remaining employees, which will likely result in reduced services and longer waiting periods for customers.

LINDA LINGLE  
GOVERNOR



CHAD K. TANIGUCHI  
EXECUTIVE DIRECTOR

## STATE OF HAWAII

DEPARTMENT OF HUMAN SERVICES  
HAWAII PUBLIC HOUSING AUTHORITY  
1002 NORTH SCHOOL STREET  
POST OFFICE BOX 17907  
Honolulu, Hawaii 96817

Statement of  
**Chad K. Taniguchi**  
Hawaii Public Housing Authority  
Before the

### HOUSE COMMITTEE ON FINANCE

April 8, 2009 4:00 P.M.  
Room 308, Hawaii State Capitol

In consideration of  
**S. B. 1271, SD1**  
**RELATING TO PUBLIC EMPLOYEES**

The Hawaii Public Housing Authority (HPHA) strongly opposes S.B. 1271, SD1. This measure would severely hinder the ability of HPHA to perform its functions and improve its operations by making it extremely difficult to retain existing staff or attract qualified candidates for key positions in HPHA management.

#### The Measure Reduces Benefits of Current Staff

Many key positions in HPHA are currently exempt. Exempt positions are necessary for HPHA because a number of our functions do not have an equivalent civil service position; they require unique and specialized qualifications and are already difficult to recruit. These positions are specialized, unique and essential for the future of the agency's program requirement.

Exempt employees in HPHA work 50 to 60 hours per week with no overtime, and often cannot take earned vacation leave due to demands of the job. Taking away accumulated vacation would be extremely unfair to these valuable staff.

Because it takes away a benefit already promised to current exempt staff, it is likely to trigger early departure of key staff in order to avoid staying past the effective date of the measure. This would cripple HPHA's ability to meet its obligations.

#### The Measure Makes it Difficult to Recruit

Prohibiting payout of accumulated vacation is a benefits reduction that will cause job candidates to require a higher salary to compensate for the loss of benefits, or to look elsewhere for a position with full benefits. HPHA, with 374 authorized positions, is already disadvantaged in that it is larger than a number of state departments, yet has its salary structure artificially compressed by being an agency attached to the Department of Human

Services, and therefore subject to salary levels which are a percentage of the department head. Offering less employee benefits would make it extremely difficult to hire qualified staff.

The Measure Makes Taking an Exempt Position Risky

Prohibiting re-employment in the same department after some types of voluntary termination would also cause candidates to hesitate to accept one of these positions. This reduction in benefits and opportunities for exempt managerial employees would put us at a serious competitive disadvantage in our recruitment efforts. Often, taking an exempt job is seen as a way to get into a department or line of work as a career. If there is a prohibition against working in that department again after some kind of voluntary departure candidates will not take the exempt position.

HPHA supports the civil service system and does not hire outside of it unless necessary; however, sometimes it is necessary to maintain exempt positions. In these times of limited resources and growing needs for public services we need the ability to attract and retain the highest quality candidates for key positions. This bill would seriously hamper us in our efforts.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

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Written Testimony Presented Before the  
House Committee on Finance  
April 8, 2009 at 4:00pm  
by  
David McClain  
President, University of Hawai'i

SB 1271 SD1 Proposed HD1 – RELATING TO PUBLIC EMPLOYEES

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

SB 1271 SD1 Proposed HD1 requires managerial employees in the executive branch, including the University of Hawai'i, who are exempt from civil service to use, donate or forfeit accrued vacation leave allowances upon separation from State service. This bill also prohibits the reemployment of exempt managerial employees by the same department after they voluntarily or involuntarily separate from service. Finally, this bill proposes a statewide attrition policy which would restrict the filling of 30% of the University's vacancies in fiscal years 2009-2010 and 2010-2011.

The University of Hawai'i **strongly opposes** this measure for the following reasons:

1. This proposal inappropriately and unfairly targets a specific group of employees, excluded executives and managers, for disparate treatment in the administration of accrued vacation leave. Inequitable treatment of a select group of employees, particularly in the area of benefits administration - where we strive for uniform application of provisions across bargaining units and employee groups – does not reflect good management practice.
2. It is inappropriate to retroactively place restrictions on a benefit that employees have rightfully earned. Although not covered by collective bargaining, these exempt executive and managerial employees have a reasonable expectation that management will fulfill its prior obligations regarding the payment of accrued vacation leave.
3. This measure would prohibit the University from reemploying a manager once they separate from service. Such restrictions are shortsighted and punitive. The University of Hawai'i, as an institution of higher education, fundamentally supports the professional growth and development of all our employees. It would be detrimental to our operations to bar individuals who may leave University service to pursue other professional or educational opportunities from later reemployment.
4. The bill proposes a statewide attrition policy that would restrict the refilling of 30% of vacant positions in fiscal years 2009 -2010 and 2010 -2011. Despite the current economic situation, enrollment within the University system is at an all-time high. Since there is no way to determine in which programs the vacancies may occur, the University is unable to determine the potential impact of these restrictions. We believe it is more appropriate that such decisions be left to the university administration and the Board of Regents.

Thank you for the opportunity to provide testimony on this bill.



# UNIVERSITY OF HAWAII SYSTEM

## Legislative Testimony

---

Written Testimony Presented Before the  
House Committee on Finance  
April 8, 2009 at 4:00pm

by  
Brenna Hashimoto  
System Director of Human Resources, University of Hawai'i

### SB 1271 SD1 Proposed HD1 – RELATING TO PUBLIC EMPLOYEES

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

SB 1271 SD1 Proposed HD1 requires managerial employees in the executive branch, including the University of Hawai'i, who are exempt from civil service to use, donate or forfeit accrued vacation leave allowances upon separation from State service. This bill also prohibits the reemployment of exempt managerial employees by the same department after they voluntarily or involuntarily separate from service. Finally, this bill proposes a statewide attrition policy which would restrict the filling of 30% of the University's vacancies in fiscal years 2009-2010 and 2010-2011.

The University of Hawai'i **strongly opposes** this measure for the following reasons:

1. This proposal inappropriately targets a specific group of employees, excluded executives and managers, for disparate treatment in the administration of accrued vacation leave. Such treatment, particularly in the area of benefits administration - where we strive for uniform application of provisions across bargaining units and employee groups – does not reflect good management practice.
2. It is inappropriate to retroactively place restrictions on a benefit that employees have rightfully earned. Although not covered by collective bargaining, these exempt executive and managerial employees have a reasonable expectation that management will fulfill its prior obligations regarding the payment of accrued vacation leave.
3. This measure would prohibit the University from reemploying a manager once they separate from service. The University of Hawai'i, as an institution of higher education, fundamentally supports the professional growth and development of all our employees. It would be detrimental to our operations to bar individuals who may leave University service to pursue other professional or educational opportunities from later reemployment. The University prefers to maintain the flexibility to reemploy these highly experience individuals.
4. The bill proposes a statewide attrition policy that would restrict the refilling of 30% of vacant positions in fiscal years 2009 -2010 and 2010 -2011. Despite the current economic situation, enrollment within the University system is at an all-time high. Since there is no way to determine in which programs the vacancies may occur, the University is unable to determine the potential impact of these restrictions. We believe it is more appropriate that such decisions be left to the university administration and the Board of Regents.

Thank you for the opportunity to provide testimony on this bill.



Representative Marcus R. Oshiro, Chair  
 Representative Marilyn B. Lee, Vice Chair  
 Committee on Finance  
 Hawaii Government Employees Association Managerial and Confidential Employees  
 Chapter (Contact: Elizabeth Ho at 543-0022 or [lho@hgea.org](mailto:lho@hgea.org))  
 Wednesday, April 8, 2009, 4:00 p.m.

### Opposition of S.B. 1271, S.D. 1, (SSCR 762), Relating to Public Employees

The HGEA Managerial and Confidential Employees Chapter (MCEC) opposes the purpose and intent of S.B. 1271, S.D. 1. This bill would require state executive and legislative branch employees exempt from Chapter 76, HRS, to use or donate their accumulated and accrued vacation leave before being voluntarily or involuntarily discharged. If the exempt employee was not able to exercise either option, an accumulated amount equal to the compensation that the employee would have been paid for unused vacation leave would be credited to the department that last employed them prior to discharge.

The HGEA MCEC is aware of the extraordinary financial problems facing the State of Hawaii and the entire country. However, taking away rightfully earned vacation benefits from exempt employees is unfair. Many of these employees should not be exempt and have been employed longer than many civil service employees.

Departments frequently use the exemptions to civil service because the civil service process is too rigid and slow when filling positions. Exempt employment also gives management tremendous leverage over employees because they are not covered under articles such as discipline, reduction-in-force and overtime of the collective bargaining agreement.

However, the problems of the state civil service system, management's desire to hire exempt employees for the above reasons, and the state's financial condition do not justify the loss of vacation pay as stated in this bill. Thank you for this opportunity to present our testimony.

Respectfully submitted on behalf of the  
 members of the HGEA MCEC,

Wade Hiraishi, President  
 HGEA Managerial and Confidential  
 Employees Chapter

**American Federation of State, County and Municipal Employees, AFL-CIO**

TEL (808) 531-0004 FAX (808) 531-0073 888 Milliani Street, Suite 101, Honolulu, Hawaii 96813  
 543-0004

The Honorable Marcus Oshiro, Chair  
The Honorable Marilyn Lee, Vice Chair  
House Committee on Finance

April 8, 2009

Re: Testimony in Opposition to SB1271 SD1, Relating to Public Employees

Dear Chair Oshiro, Vice Chair Lee, and members of the committee,

I have been employed by four legislators in the Hawaii State Legislature (“Legislature”) during the past six years, and have worked as both a permanent and session employee. This background allows me to have a more comprehensive understanding of the negative effects of SB1271 SD1, which requires state managerial executive and legislative branch employees to use, donate or forfeit their remaining vacation allowance when they are voluntarily or involuntarily discharged; and restricts them from gaining reemployment by the same department that employed the employee immediately prior to discharge.

I write in strong opposition of the measure, for the following reasons: 1) permanent employees of the Legislature earn the right to utilize their vacation time in the same manner that is afforded other state employees; and 2) barring permanent employees from reemployment at the Legislature will discourage competent employees from seeking employment at the Capitol and legislators will lose the ability to hire experienced staff.

In terms of vacation, Legislative staff members should be allowed to retain their current options regarding its utilization. As the committee understands, Legislative staff members often work far more hours than are required. They often show up early in the morning, leave late in the evening, attend community meetings on weekends, assist with constituent issues during irregular hours, show up for work when violently ill, and forgo taking any vacation— or respite, for that matter— during session. For this dedication to their legislators and the community, they receive inadequate compensation and little job security. Taking this into account, limiting Legislative staff members’ use of their vacation adds insult to injury, especially when they are involuntarily terminated due to a legislator losing his or her election or choosing not to return to office.

The last paragraph of SB1271 SD1, which restricts Legislative staff members from gaining reemployment at the Capitol, will produce especially negative results. Although the language, as currently written, is unclear, I understand it to mean that permanent employees at the Capitol will be unable to accept a job in another office within the building. This would appear to apply to employees whose bosses move from the Senate to the House (or vice versa), lose their elections, or choose to step down from their positions as elected officials. The current language would penalize Legislative staff members when, through no faults of their own, their bosses do not retain their current seats. This would also negatively affect legislators themselves, who would be unable to hire experienced staff members who find themselves without a job due to the above-mentioned circumstances. Additionally, this requirement would discourage competent, educated

job-seekers from applying to permanent positions, because they would not be allowed to make a career out of working in a Legislative office and serving the public in a non-elected capacity.

I urge members of the committee to consider the difficulty of finding experienced, competent session staff to hire, because if this measure passes with the current language, hiring permanent staff will be equally as difficult. Again, I respectfully request that you oppose SB1271 SD1, for the sake of your personal Legislative offices, the Legislative institution as a whole, and the public. Thank you for allowing me the opportunity to testify.

Respectfully,

Amanda Pearson

J.D. Candidate, 2011

University of Hawaii at Manoa

William S. Richardson School of Law

TO: Chair Marcus Oshiro, Vice Chair Lee and Members of the House  
Committee on Finance  
Hawaii State Capitol, Room 308

FROM: Amy M. Luke

DATE: April 7, 2009

RE: S.B. 1271 S.D. 1, proposed H.D. 1—Relating to Public Employees  
Hearing: Wednesday, April 8th, 2009 at 4:00 p.m.

Dear Chair Oshiro, Vice Chair Lee and Members of the Committee on  
Finance,

Thank you for allowing me to submit written comments. My name is Amy  
Luke and I am submitting testimony as an individual employee who will be  
affected by this measure if it passes.

I appreciate the hard work and efforts the Committee has made in regards  
to addressing the budget shortfall and coming up with proposed solutions.  
I would like to thank each and every one of you for everything that you  
have done and everything that you will continue to do to help those you  
represent.

I want to first start out with saying that I understand why the Committee is  
looking at not paying out for vacation when an individual employee is  
released voluntarily or involuntarily. I'm sure this solution would save the  
State millions of dollars. As a taxpayer and voter I understand why this  
sounds so appealing. However, as a legislative employee this deeply  
concerns me. I am one of those employees that knows firsthand that an  
11 hour day is a short day, you go to work regardless of how sick you are  
and the responsibility for your Representative and your District's wellbeing  
means that any vacation you take needs to be a short vacation or when  
you get back you'll wish you never left. I can honestly say that I think any  
vacation I have accumulated is well deserved and hard earned.

This past July, my old employer Representative Tommy Waters, chose to  
retire and not seek reelection. I was blessed to secure a position with  
Representative Jimmy Tokioka without a break in service. After clerking  
for JUD and office managing at the same time under Representative  
Waters I had basically all of my vacation saved from the past two years. If  
I didn't have a conscience and didn't care about my Representative, the  
Institution or the District I'd be requesting this coming May 8<sup>th</sup> through

August completely off. Since I do have a conscience this isn't an option. While I would be okay with giving up or donating some of my vacation I think not getting paid out for any of my accrued vacation if I choose to leave or am released (for lack of better words) sucks.

This brings me to my next concern which is blocking current employees or future employees who are released voluntarily or involuntarily from returning to employment within the same body for a different employer. Look around and ask yourselves who doesn't have at least one person on their staff that was employed by another legislator at one time. If you're going to go forth with this section I think you need to clarify the language and intent of this provision. As the current proposed draft reads, if a Representative runs for a different office (use the Senate for example) and is elected that Representative will be vacating his position. The Representative's office manager may not be able to go with him to his new office as the old position will be released because the Representative is no longer a Representative and the employee is not entitled to new employment. If the language is amended to allow for this as an exemption an additional exemption should be made to allow the employee to carry their accrued vacation over to their new position with them.

Ultimately if your plan is to succeed in forcing legislative employees to realize that under this proposed law they will never see retirement from the State in this capacity it may mean the loss of exceptional employees. Reelection isn't guaranteed and giving twenty years of service to not be allowed to complete the additional five if someone else chooses to pick you up would make anyone rethink staying in public service.

Although I am extremely appreciative that I have a job, especially in times like these, public service doesn't pay financially but that's not why we stay, right?

Thank you again for allowing me to submit written comments.

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Wednesday, April 08, 2009 8:47 AM  
**To:** FINTestimony  
**Cc:** nanakulibeachboy@hotmail.com  
**Subject:** Testimony for SB1271 on 4/8/2009 4:00:00 PM

Testimony for FIN 4/8/2009 4:00:00 PM SB1271

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Larry Monique  
Organization: Individual  
Address:  
Phone:  
E-mail: nanakulibeachboy@hotmail.com  
Submitted on: 4/8/2009

Comments:  
Representative Marcus Oshiro  
House Finance Committee Chair  
State Capitol  
Honolulu, HI 96813

Re: SB 1271- Relating to public employees

I am opposed to SB 1271. It is unfair law because it picks on the executive branch and legislative managerial staff while members do not sacrifice their own earnings/benefits, etc. It is also unfair because vacations are accrued and earned as part of an employees compensation.

I realize the state is in dire financial times, so I offer the following amendments:

1. Rather than eliminating the vacations payouts, I would suggest deferring the payments for a year or two. These are items that have been earned and can run into legal problems.
2. Define who is in the category of legislative management. Does it include the Senate/House Chief Clerk, majority/minority research office directors, Senate President and House Speakers immediate staff or is it broader to include print shop managers, tech managers, etc.?
3. If the legislature is asking for sacrifices on part of the executive branch and legislative managerial staff, I believe that it would only be appropriate for the members to defer or cut back on a their own benefits, retirements or salaries.
4. If an employees takes the deferred payouts, then he/she should not be prohibited from returning to the same department.

I hope you will consider these changes to the proposal. Thank you

Larry Monique

## **FINTestimony**

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, April 07, 2009 11:49 AM  
**To:** FINTestimony  
**Cc:** cyrus.c.chen@hawaii.gov  
**Subject:** Testimony for SB1271 on 4/8/2009 4:00:00 PM

Testimony for FIN 4/8/2009 4:00:00 PM SB1271

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Cyrus Chen  
Organization: Individual  
Address: 1177 Queen St. #602 Honolulu, HI 96814  
Phone: 587-0409  
E-mail: cyrus.c.chen@hawaii.gov  
Submitted on: 4/7/2009

### Comments:

Exempt employees comprise a significant portion of the workforce at the Department. To require them to donate or forfeit their vacation upon discharge would likely be detrimental to recruitment and retention of qualified staff now and in the near term. It is also unfair to these employees to be forced to donate or forfeit vacation, which they have earned, to the State upon discharge. After an involuntary discharge from employment, compensation earned via accumulated or accrued vacation may be critical to an employee's survival during the unemployment period. This compensation acts similar to severance pay. To force an employee to donate or forfeit their fair share of earned vacation benefits is unethical, unwarranted and equivalent to theft. I do not believe the legislature should be conducting illegal acts such as this and stealing our earned vacation. Enacting this bill would put the welfare of the affected individual at risk of poverty. Therefore, I strongly oppose this bill for the sake of our exempt employees.

## FINTestimony

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Tuesday, April 07, 2009 2:44 PM  
**To:** FINTestimony  
**Cc:** mitsunagc001@hawaii.rr.com  
**Subject:** Testimony for SB1271 on 4/8/2009 4:00:00 PM

Testimony for FIN 4/8/2009 4:00:00 PM SB1271

Conference room: 308  
Testifier position: oppose  
Testifier will be present: No  
Submitted by: Rex Mitsunaga  
Organization: Individual  
Address:  
Phone:  
E-mail: mitsunagc001@hawaii.rr.com  
Submitted on: 4/7/2009

Comments:  
April 7, 2009

To: House Finance Committee

From: Rex Mitsunaga

Subject: Testimony in opposition of SB 1271

To penalize those employees from utilizing their remaining vacation allowance and any compensation in lieu of retaining vacation allowance upon discharge is punitive at the very least. If the reason for this bill is one of abuse then it should be corrected but if this measure is to assist in rectifying the state's ailing budget woes I believe it will not help much. As a program manager for the DOH Sanitation Branch for the last three years I am in the office daily from 6:00 am and I am the last one out after locking up the office. I have rescheduled my vacations around the legislative sessions and during other state and departmental events. For my efforts in uplifting this core program I have been a nominee for the 2008 DOH manager of the year. However, for my dedication to service the legislature now wants to penalize me for the sacrifices made in my personal life (foregoing vacations, personal leaves, etc.). Granted I only can speak for myself and how I conduct myself as a professional. I would ask that you reconsider this measure and at the very least have it deferred.

This testimony is given as a private citizen with concerns that this bill will impact.

Thank you for the opportunity to testify.

Testimony of Frederick Nunes  
SB 2171, SD1, HD1 Relating to Public Employees

I offer testimony in opposition of the SB 1271.

I am a 38 year state employee of which for the last 10 years, I have been a program manager. If passed, this bill would require me to use or forfeit unused vacation if I retire at the end of this year as planned. This is unfair since a significant part of my retirement financial planning was based on having this money to pay off debt. Then, I could enjoy my retirement debt free on a lower income.

Should this bill become law, I predict many senior managers will be retiring before July 1, 2009, the effective date on the new law. Already, many of my colleagues have filed for retirement as June 1, 2009 as a hedge against losing benefits which we have earned after many decades of hard work. Guess I will have to be one of them too.

If this bill is passed, it would be a shame that after sacrificing a whole lifetime to public service, the State chooses to reward my efforts by changing the rules at the last moment and reducing my retirement benefit.

I would also like to add that the majority of my unused vacation was earned before I became a program manager. Before my promotion, I already had saved up the maximum allowed by faithfully working year in and year out while taking minimum vacation. Now, this bill would penalize me for my dedication. It would take away the unused vacation payout simply because I ended my public service as a manager. I had planned my retirement based on retirement rules that have been followed for many years. Please do not change the retirement rules on me now.

Please hold this Bill and do not allow it to become law.

Thank you for the opportunity to submit this testimony.

## Testimony of Public Service Employees as Private Citizens

House of Representatives  
Committee on Finance  
Rep. Marcus R. Oshiro, Chair  
Rep. Marilyn B Lee, Vice Chair

**LATE**

(B7)

SB 1217 SD1 HD1

Chair Oshiro, Vice Chair Lee, and Members of the Committee:

These comments in strong opposition to this proposed measure are offered by several public employees as private citizens who share concern over the impact of this bill.

As members of the community, we feel SB 1271 will have a catastrophic effect on the ability for many of the state entities to accomplish their tasks. It punishes senior leaders who have accepted daunting challenges and have worked tirelessly. Unscheduled and forced use-or-lose leave will result in en masse vacation leave of our most experienced staff just when we need them most. The attrition clause disproportionately punishes organizations that have employee turnover because of the mobility of highly skilled workers, or even internal upward mobility. The remaining few loyal employees will be crushed under the demand of high expectations and a crippled workforce. Imagine a tourism-based state that:

1. Could not detect or respond to disease outbreaks
2. Lost the ability to test for bioterrorism and chemical terrorism threats
3. Could not assure food was free of Salmonella, warn when air contained sulfur dioxide, or certify that water was free of sewage
4. Left the population vulnerable to avian influenza, West Nile virus, and rabies
5. Could not determine when norovirus threatened our vulnerable populations or our valuable tourist industry
6. Lost federal funded, high quality jobs because of these restrictions
7. Lost the very external grants, contracts, and cooperative agreements that the state has become dependant upon to do its day-to-day work

For these reasons and many others, the undersigned strongly oppose this measure, and appreciate the opportunity to bring this opposition to your attention.

*Rebecca Sciulli*  
Rebecca Sciulli

*ACUche*

*Gail Kunimoto*  
Gail Kunimoto

*Donald Pib*

*Remedios Gbse*  
Remedios Gbse

*Geru 301*

*Pamela Honda*  
Pamela Honda

*Ruwa*

*Sheree Lee*  
Sheree Lee

*Kenji D. Mitagawa*

*Cheryl-Lynn Daquip*  
Cheryl-Lynn Daquip

*Norman O'Connor*

*Paul M. Fox*  
Paul M. Fox

*John Dan*

*Pandwy Schoneeman*

*Mark Nagata*  
Mark Nagata

*Robert Ueleni*

Dayna Sato

*Elsie Christobal*  
Elsie Christobal

*Gloria Raymundo*  
Gloria Raymundo

*Precilia Calimlim*  
Precilia Calimlim

Representative Marcus Oshiro, Chair  
Representative Marilyn Lee, Vice Chair  
House Committee on Finance

Wednesday, April 8, 2009  
Conference Room 308  
4:00PM

Written Testimony of Various Legislative Office Managers

**Opposition to SB1271 SD1 (Proposed HD1) Relating to Public Employees**

Chair Oshiro, Vice Chair Lee, and Members of the Committee,

We are writing to oppose SB1271 SD1 (Proposed HD1) which requires managerial employees in the Executive and Legislative Branches who are exempt from civil service to use, donate or forfeit vacation accrued during their employment with the State. This bill also requires that if a managerial employee is discharged, the employee cannot be reemployed by the same department from which they were discharged.

We believe this bill is unfair, punitive and discriminatory as it singles out a specific category of employees and negatively impacts rights currently guaranteed under Chapter 78, HRS. While Legislative Office Managers are exempt from Chapter 76, HRS, we perform valuable and direct services to the public for the elected officials we work for. Many of us work well beyond regular state office hours, and receive no overtime compensation like our civil service counterparts. Taking away legally accrued vacation time from Office Managers at the end of our tenure of employment is clearly a violation of equitable treatment for public employees.

In addition, we oppose the provision of the bill that bars exempt managerial employees from returning to state employment with the same department. This would have a detrimental effect on the Legislature as an institution since many experienced Office Managers would not be able to be rehired in the event their legislator did not return to office. The loss of this institutional knowledge would hurt the efficiency and productivity of the legislature. This provision would also adversely affect those individuals who would like to remain working in public service at the legislature and leave them no options for continued employment. This would be a great disservice to the public since it would remove those individuals committed to public service.

We understand that all options should be looked at during this difficult budgetary process. However, this measure is not fair or equitable to your most loyal employees who are the front line in dealing with your constituents, making your offices run smoothly, and helping to facilitate the legislative process.

We respectfully OPPOSE this measure in its current form.

Sincerely,

Diane Dunphy

Blayne Higo

Amorosa Rabago

Sharon M. Miranda

Esther

Maureen C. Andrade

James J. Seaypay

Ann S. Takahi

Melissa K. Miranda-Johnson

Paula Salcedo

Leon R. Brown

Nancy Nishimura

Arline Hiyonni

Juan

Elise Kurigoshi

Foni Daine

Laurani Ode

Bernadette Jo

Cynthia M. <sup>APANA</sup> ~~Op~~

Kynte Marushige

Lori Tomagyl

Baron Fishel

Janis N. Hujuti

daik / r / bag

*[Handwritten signature]*

Wayn n. yagi

*[Handwritten signature]*

Miah S. yong

sharon / sagayaloro

Jane S. Mikulane

Joi S. Vucyl

*[Handwritten signature]*

*[Handwritten signature]*

Wahyuniyulgray

Agus Kulohe

gan Shi