



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

Testimony by
Hawaii Government Employees Association
February 7, 2014

H.B. 1501 – RELATING TO HISTORIC PRESERVATION

The Hawaii Government Employees Association strongly supports the purpose and intent of H.B. 1501. This legislation mandates the conversion of exempt positions to civil service within the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources consistent with Act 253, SLH 2000 and Act 300, SLH 2006. This particular program has encountered numerous operational and personnel-related problems over the years. Some of these are directly attributable to the exempt status of its employees, which creates instability and turnover in staffing.

The exempt status of employees can also easily compromise the objective review of proposed developments by SHPD because they are considered “at will” employees by the Department of Human Resources Development. How much independence and objectivity can “at will” employees exercise? Employees who are “at will” are less likely to exercise independent judgment, especially to offer critical opinions, out fear of being fired. This is why positions with regulatory authority should be filled by civil service employees.

There are specific problems and challenges created by exempt positions. While most are included in HGEA bargaining units, and the union collects dues from them, they are not protected under the discipline and reduction-in-force articles for bargaining units 3, 4 and 13. Exempt employees do not receive step movements and are precluded from earning overtime if they are in bargaining unit 13. This creates serious inequities between exempt and civil service employees that have become worse over time as their numbers have grown. In essence, we have a two-tiered system of state employment, one for civil service employees and another for exempt employees despite the State Constitutional mandate for civil service in Article XVI, Section 1 and the statement of purpose in Section 76-1, HRS. This statement of purpose is reiterated in Section 76-16, HRS.

According to information from DHRD as of December 2013, there are 1,525 exempt employees in HGEA bargaining units under the two largest exemptions contained in Section 76-16, HRS (Sections 76-16 (b) 12 and (b) 17). The exemption from civil service for SHPD is under Section 76-16 (b) (17), HRS. These two exemptions adversely affect employees primarily in bargaining units 3 and 13.

There are approximately 100 statutory exemptions from civil services under Section 76-16 (b) (17), HRS. Some of the exemptions are mandatory while others are permissive. This is the primary reason we are suggesting an amendment to Section 76-16 (b) (17), HRS in H.B. 2218 that would limit these exemptions to three years and require any extension

beyond that time frame to be approved by the Legislature. This is a legitimate exercise of legislative oversight that is definitely needed.

The number of voluntary conversions from exempt to civil service by DHRD and the various line departments has been small. Here are the numbers of conversions over the past several years: 24 – 2013, 50 – 2012, 20 – 2011 and 4 – 2010. The process of voluntary conversion is not effective. Many exempt employees have been employed by the State of Hawaii for years and provide valuable service to their respective departments, yet they are not treated fairly by the employer.

Under all 27 exemptions listed in Section 76-16, HRS, there are 2,894 exempt employees within the state Executive Branch. We estimate that between 8-9% of all state employees are exempt from civil service. In contrast, the State of California, limits exempt employees in Executive Branch departments to just one-half of one percent. Despite having more than 195,000 full time state employees, there are less than 1,000 exempt employees in California's executive branch. We appreciate the opportunity to testify in support of H.B. 1501 that will require the conversion of SHPD employees to civil service.

Respectfully submitted,

Randy Perreira
Executive Director

TO: Representative Mark M. Nakashima, Chair
Representative Kyle T. Yamashita, Vice Chair
House Committee on Labor & Public Employment

FROM: Sara L. Collins, Ph.D., Legislative Chair
Society for Hawaiian Archaeology
sara.l.collins.sha@gmail.com

HEARING: February 7, 2014, 9:00 AM, Conference Room 309

SUBJECT: Testimony in Support of HB 1501 (Relating to Historic Preservation)

I am Dr. Sara Collins, Chair of the Legislative Committee of the Society for Hawaiian Archaeology (SHA). We have over 150 members that include professional archaeologists and advocates of historic preservation in general. On behalf of SHA, I am providing testimony in strong support of HB 1501, Relating to Historic Preservation. HB 1501 requires all employees of the State Historic Preservation Division (SHPD), except the State Historic Preservation Officer, to be civil service employees subject to Chapter 76, Hawaii Revised Statutes (HRS) as of July 1, 2014.

We strongly support HB 1501 and the long overdue conversion of exempt professional positions at SHPD for the following reasons:

- Promotion of stability among staff and fostering the retention of “institutional memory” in government agencies – something that can be critical to an agency’s ability to function over the years as normal levels of staff turnover occur, due to retirements and the like.
- Greater fiscal responsibility and improved future planning: Conversion of the current exempt positions – particularly exempt positions that have existed for decades – will result in greater fiscal responsibility and better planning for future departmental and governmental needs. With conversion to civil service, the costs for these positions would be more predictable because salaries ranges assigned to the civil service classes would be consistent with that of other state workers and therefore easier to budget.
- Protection of regulatory workers from inappropriate pressure and treatment: At SHPD, regulatory staff hold the majority of exempt positions, and much of their work includes the regulation of compliance with historic preservation laws in the state. Exempt status makes these individuals very vulnerable to inappropriate pressure during regulatory decision-making, from both inside and outside state government. Since an exempt employee can be fired “at will” it is sometimes difficult for them to express a professional opinion contrary to the wishes of a manager or a powerful member of the public without fear of adverse consequences.
- Establishment of appropriate position descriptions to be filled by qualified personnel: Regulators within the SHPD must meet professional standards set by the National Park Service for historic preservation professionals; specific disciplines include architecture, architectural history, history, and archaeology. The exempt status of these positions has or could be used to make inappropriate and unwarranted changes to position descriptions when filling vacancies. This can result in the selection of individuals who are hired at salaries that may not be commensurate with their qualifications and experience. Converting the exempt positions to civil service status would ensure that solid, professionally adequate position descriptions are developed and adhered to in hiring,

performance, and evaluation, and that qualified individuals are selected to fill them at appropriate compensation levels.

- Elimination of several significant inequities that affect exempt employees. First, if they apply for a civil service position in state government or apply for a promotion, if hired, their years of service as an exempt employee will not be recognized and they will be forced to start with entry level pay. In addition, while most exempt positions are included in HGEA bargaining units, and the union collects dues from them, they are not protected under the discipline and reduction-in-force articles for bargaining units 3, 4 and 13. Exempt employees do not receive step movements and are precluded from earning overtime if they are in bargaining unit 13.

Historically, SHPD has had difficulty hiring and retaining qualified personnel to fill professional-level positions. We believe that granting civil service status to these employees would make these positions more attractive to prospective applicants.

An established process exists for converting exempt positions to civil service. It is high time that these conversions got underway for staff at SHPD. SHA has testified on bills similar to this for over seven years and, over this period, the need for this step has only grown more compelling.

We respectfully ask you that you pass HB 1501 unamended. Thank you for considering our comments. Should you have any questions, please feel free to contact me at the above email address.

Testimony in support of HB 1505 – Civil Service Conversion

Morgan Davis, Testifying as a private citizen

I support this bill. I will try to be brief, but I am offering a personal example of why I left a job I love with the State, for two years, simply because I was (and remain) an exempt employee, an Archaeologist, hired “at will.” I could be fired at any time. I first joined SHPD in 2007.

The standard annual notice regarding the fact that I was an “exempt employee” as a scientist would include a statement somewhere along the lines of ‘your contract is extended one year, but is not guaranteed.’ When the economy went down, those notes started coming every six months, extending my contract by only six months. Then it became three months, extending by three months. Then the extension – ultimately the final straw for me – was subject to budget negotiations. I gave notice that I was going to need to leave my position – it turned out to be six months’ worth actually, in the hopes that I would be able to train my replacement’s Assistant Archaeologist so my Maui office would not suffer – and resigned after years of working through the furloughs, working through the 5% pay cuts.

I could not take the uncertainty anymore. I am my family’s sole support. I have an advanced degree, qualify for my position as Lead Archaeologist under both State and Federal regulations, and I really do love this job. But I have seen first-hand how we cannot keep qualified staff onboard long enough to retain the institutional knowledge necessary to do this job, to the clear detriment of the State Historic Preservation Division.

If you can convince the awesome people we have on staff – qualified, and dedicated enough to public service to work for pay below what we could make elsewhere – why are we not being given the job security of becoming civil service that others in similar positions in DLNR (State Parks is my example here)? Everyone complains about SHPD’s revolving door of employees – trust me, passing the revisions in the attached SB 3099 will make a tremendous difference. Based on my own experience, it takes between 6-12 months to fully understand all the state and federal requirements of these positions; losing one member will set that office’s productivity back significantly, especially as that new person must be trained by someone else during that time period.

My job remained vacant those two years I was gone, with the expected negative results regarding the state backlog. I’m back for now, and I dearly hope to be able to stay. But when I am annually (sometimes even quarterly) reminded that I could lose my job at any time, that breeds fear for my security that both impedes my job performance and impacts my family. Ultimately it became too much.

Please do what is right and treat us with respect. This change would be beneficial on a human level for me personally, but also for employee stability of qualified personnel overall.

Aloha,

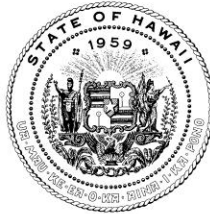
Morgan Davis

SHPD Lead Archaeologist, Maui Island Annex

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

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**Testimony of
WILLIAM J. AILA, Jr.
Chairperson**

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

**Friday, February 07, 2014
9:00 AM
State Capitol, Conference Room 309**

**In consideration of
HOUSE BILL 1501
RELATING TO HISTORIC PRESERVATION**

House Bill 1501 proposes to convert all exempt employees in the State Historic Preservation Division, except the State Historic Preservation Officer, to civil service. **The Department of Land and Natural Resources (Department) appreciates the intent of this legislation and offers the following comments.**

The Department is committed to converting all employees in the State Historic Preservation Division (Division) to civil service. However, this conversion must take into account the following considerations. The Governor's budget presently provides for converting 13 exempt positions in the Division to civil service.

- Many of the exempt positions within the Division are highly specialized and require high levels of technical training and expertise.
- Long experience has shown that these positions are very difficult for the Division to recruit at civil service pay levels, because those pay levels are frequently 50% or more below comparable positions in the federal government or private sector.
- For example, current entry level civil service pay for an archaeologist in Hawaii is below the average entry level pay for similar archaeologist positions in State Historic Preservation Offices nationwide in 2006, without adjusting for the much higher cost of living in Hawaii.
- It is equally difficult to retain these technical employees at these pay levels.
- The Department views it as essential that the conversion occurs in a manner that allows the Department the flexibility to ensure that current exempt employees are not faced with reduction in pay as a result of the conversion.

WILLIAM J. AILA, JR.
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

ESTHER KIA'AINA
FIRST DEPUTY

WILLIAM M. TAM
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
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ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

- The Department also believes that it is essential that Department have the flexibility in offering competitive pay both during recruitment and with employees after hire.