

NEIL ABERCROMBIE
GOVERNOR



DWIGHT TAKAMINE
DIRECTOR

JADE T. BUTAY
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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
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February 25, 2014

To: The Honorable Sylvia Luke, Chair,
The Honorable Scott Y. Nishimoto, Vice Chair,
The Honorable Aaron Ling Johanson, Vice Chair, and
Members of the House Committee on Finance

Date: Wednesday, February 26, 2014
Time: 11:15 a.m.
Place: Conference Room 308, State Capitol

From: Mila Kaahanui, Executive Director

Re: H.B. 2218 HD1: Relating to Public Employment

POSITION: Strongly Support.

I. OVERVIEW OF PROPOSED LEGISLATION

The purpose of this measure is to further the State's interest in conducting its employment practices based on merit principles through use of the civil service system by converting specified exempt positions to civil service status and limiting newly created exemptions to three years' duration unless extended by the Legislature. Amendments to this measure include deleting the conversion to civil service status of personnel hired by the Executive Director of the Office of Community Services.

II. CURRENT LAW

Currently, HRS section 371K-3 provides that the staff of OCS will be exempt from civil service.

III. COMMENTS ON HOUSE BILL 2218 HD1

The Office of Community Services (OCS) was created in 1985 by legislation codified at Chapter 371K, HRS, and tasked with the responsibility to plan, develop, provide, and coordinate programs serving Hawaii's immigrants, refugees, and economically disadvantaged individuals.

OCS strongly supports the bill, as amended by the House Committee on Labor and Public Employment, proposing to delete the conversion from exempt to civil service status of personnel hired by the Executive Director of the Office of Community Services.

Thank you for the opportunity to testify in support of this measure.

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



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

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

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

**Before the House Committee on
FINANCE**

**Wednesday, February 26, 2014
11:15 AM
State Capitol, Conference Room 308**

**In consideration of
HOUSE BILL 2218, HOUSE DRAFT 1
RELATING TO PUBLIC EMPLOYMENT**

House Bill 2218, House Draft 1, proposes to, among other things, require that all personnel hired within the State Historic Preservation Division (Division), which is within the Department of Land and Natural Resources, to be hired in accordance Chapter 76, Hawaii Revised Statutes.

The Department appreciates the intent of this measure and suggests an amendment that advances its purposes.

- The Department is committed to converting nearly all positions within the Division to regular civil service.
- Governor Abercrombie's Supplemental budget proposal for Fiscal Year 2015 takes the first steps toward that goal by converting twelve (12) of the currently exempt positions within the Division to regular civil service status.
- The Department will continue to work to convert most of the rest of the Division's position to civil service.
- The Department believes, however, that the executive and senior management positions within the Division should remain exempt, as is the practice throughout the Executive Branch.
- Civil service position classifications and salaries must be established recognizing that the federal government requires technical and professional personnel employed by the Division to possess, at a minimum, both a post-graduate degree and relevant, specialized experience.

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
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

- The pool of qualified applicants is small for these positions is small, especially so within the State of Hawaii.
- The Division will always be competing for personnel in these positions with the private sector and the federal government, both of which pay significantly higher wages than does the State of Hawaii.
- Accordingly, the Department believes that the House Bill 2218, House Draft 1, should be amended to make it clear that no current Division staff will be adversely affected by the conversion. Specifically, during the classification process the Department of Human Resources should be directed to work with the Division to ensure that salaries within the Division are competitive with comparable positions in the private sector or comparable civilian federal positions. Failure to do this will result in continuing the historical recruitment and retention problems for the Division, which has resulted in positions remaining unfilled for long periods and rapid staff rapid turnover, with the consequent loss of effectiveness and efficiency.

The Department recommends that House Bill 2218, House Draft 1, SECTION 2, be amended as follows:

SECTION 2. Section 6E-3, Hawaii Revised Statutes, is amended to read as follows:

"§6E-3 Historic preservation program. There is established within the department a division to administer a comprehensive historic preservation program, which shall include but not be limited to the following:

- (1) Development of an ongoing program of historical, architectural, and archaeological research and development, including surveys, excavations, scientific recording, interpretation, signage, and publications on the State's historical and cultural resources;
- (2) Acquisition of historic or cultural properties, real or personal, in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means; preservation, restoration, administration, or transference of the property; and the charging of reasonable admissions to that property;

- (3) Development of a statewide survey and inventory to identify and document historic properties, aviation artifacts, and burial sites, including all those owned by the State and the counties;
- (4) Preparation of information for the Hawaii register of historic places and listing on the national register of historic places;
- (5) Preparation, review, and revisions of a state historic preservation plan, including budget requirements and land use recommendations;
- (6) Application for and receipt of gifts, grants, technical assistance, and other funding from public and private sources for the purposes of this chapter;
- (7) Provision of technical and financial assistance to the counties and public and private agencies involved in historic preservation activities;
- (8) Coordination of activities of the counties in accordance with the state plan for historic preservation;
- (9) Stimulation of public interest in historic preservation, including the development and implementation of interpretive programs for historic properties listed on or eligible for the Hawaii register of historic places;
- (10) Coordination of the evaluation and management of burial sites as provided in section 6E-43;
- (11) Acquisition of burial sites in fee or in any lesser interest, by gift, purchase, condemnation, devise, bequest, land exchange, or other means, to be held in trust;
- (12) Submittal of an annual report to the governor and legislature detailing the accomplishments of the year, recommendations for changes in the state plan or future programs relating to historic preservation, and an accounting of all income, expenditures, and the fund balance of the Hawaii historic preservation special fund;

- (13) Regulation of archaeological activities throughout the State;
- (14) Employment of sufficient professional and technical staff for the purposes of this chapter which [~~may~~] shall be in accordance with chapter 76; provided that the department of human resources development shall work with the division to ensure that the classification of positions and the salaries associated with them does not place the division at a competitive disadvantage when recruiting and retaining staff meeting the specialized requirements for professional and technical positions within the division;
- (15) The charging of fees to be determined by the department that are proportional to the nature and complexity of the projects or services provided, and adjusted from time to time to ensure that the proceeds, together with all other fines, income, and penalties collected under this chapter, do not surpass the annual operating costs of the comprehensive historic preservation program;
- (16) Adoption of rules in accordance with chapter 91, necessary to carry out the purposes of this chapter; and
- (17) Development and adoption, in consultation with the office of Hawaiian affairs native historic preservation council, of rules governing permits for access by native Hawaiians and Hawaiians to cultural, historic, and pre-contact sites and monuments."



STATE OF HAWAII
DEPARTMENT OF PUBLIC SAFETY

919 Ala Moana Boulevard, 4th Floor
Honolulu, Hawaii 96814

TED SAKAI
DIRECTOR

Martha Torney
Deputy Director
Administration

Max Otani
Deputy Director
Corrections

Shawn Tsuha
Deputy Director
Law Enforcement

No. _____

TESTIMONY ON HOUSE BILL (HB) 2218 HOUSE DRAFT (HD) 1
RELATING TO PUBLIC EMPLOYMENT

by
Ted Sakai, Director
Department of Public Safety

House Committee on Finance
Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair

Wednesday, February 26, 2014, 11:15 AM
State Capitol, Conference Room 308

Chair Luke, Vice Chairs Nishimoto and Johanson, and Members of the Committee:

The Department of Public Safety (PSD) **supports the intent** of HB 2218 SD 1 which will reduce the number of civil service exempt positions and place restrictions on the creation of exempt positions.

However, HB 2218 SD 1 will impose undue restrictions and hamper PSD's ability to operate efficiently and effectively for programs that are not general funded.

Establishing positions exempt from civil service allows PSD to create positions to fulfill the program or funding requirements, such as Correctional Industries Division and the Crime Victim Compensation Commission.

These exempt positions allows PSD to establish positions based on the funding source and meeting program requirements. The Correctional Industries operate as a self-sustaining private business, whereby revenue generated, funds such exempt positions. The Crime Victim Compensation Commission funds their

establish exempt positions through court sentenced fines through the Victim Compensation Fees.

PSD must be able to have the latitude to establish and utilize exempt positions to conduct its affairs, and to successfully accomplish its mission and meet the service needs of those we serve.

Thank you for the opportunity to testify on this matter.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808.528.0922

The Twenty-Seventh Legislature, State of Hawaii House of Representatives Committee on Finance

Testimony by
Hawaii Government Employees Association
February 26, 2014

H.B. 2218, H.D. 1 – RELATING TO PUBLIC EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of H.B.2218, H.D. 1. This legislation mandates the conversion of exempt positions to civil service in several different departments consistent with Act 253, SLH 2000 and Act 300, SLH 2006. The problems and challenges created by exempt positions are that 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.

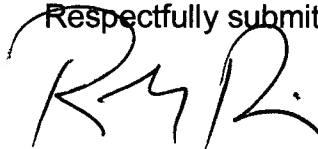
According to information from DHRD as of December 2013, there are 1,525 exempt employees in HGEA bargaining units under the two largest exemptions contained in Section 76-16, HRS (Sections 76-16 (b) 12 and (b) 17). These two exemptions adversely affect employees primarily in bargaining units 3 and 13. 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 supporting an amendment to Section 76-16 (b) (17), HRS that would limit these exemptions to no more than five 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.

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February 26, 2014
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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.2218, H.D. 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'R. Perreira', with a stylized flourish at the end.

Randy Perreira
Executive Director

TO: Representative Sylvia Luke, Chair
Representative Scott Y. Nishimoto, Vice Chair
Representative Aaron Ling Johanson, Vice Chair
House Committee on FIN

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

HEARING: February 25, 2014, 9:00 AM, Conference Room 309

SUBJECT: Testimony in Support of HB 2218, HD1 (Relating to Public Employment)

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 2218, HD1, Relating to Public Employment.

HB 2218, HD1 amends sections of the Hawaii Revised Statutes (HRS) in order to conform with Act 253, Session Laws of Hawaii 2000, which placed restrictions on the creation of civil service exempt positions and required an annual review of exempt positions in order to determine whether they should remain exempt or be converted to civil service positions. Among the positions that are still exempt from civil service are those held by qualified historic preservation professionals at the State Historic Preservation Division (SHPD). The amendment proposed to HRS 6E-3(14) would require this conversion process to occur.

We strongly support HB 2218, HD 1 and the 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 could make these positions more attractive to some 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 2218, HD1, changing only the effective date to "July 1, 2014." Thank you for considering our comments. Should you have any questions, please feel free to contact me at the above email address.

NEIL ABERCROMBIE
GOVERNOR



BARBARA A. KRIEG
DIRECTOR

LEILA A. KAGAWA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
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LATE

February 26, 2014

**TESTIMONY TO THE
HOUSE COMMITTEE ON FINANCE**

For Hearing on Wednesday, February 26, 2014
11:15 a.m., Conference Room 309

BY

BARBARA A. KRIEG
DIRECTOR

House Bill No. 2218 H.D. 1
Relating to Public Employment

TO CHAIRPERSON SYLVIA LUKE AND MEMBERS OF THE COMMITTEE:

The purpose of H.B. 2218 H.D. 1 is to reduce the number of civil service exempt positions and place restrictions on the creation of exempt positions.

The Department of Human Resources Development (DHRD) respectfully opposes this bill for the following reasons.

With respect to section 3 of the bill, DHRD opposes the proposed amendment to Section 76-16(b)(17) of the Hawaii Revised Statutes, that would require any exemption created after July 1, 2014 to expire five years after its enactment unless extended by the legislature.

Under certain circumstances, it is appropriate for specific positions to be exempted from civil service. This determination is dependent on the nature of the

program and the qualifications of positions required to perform the functions of the program. The blanket expiration date of five years imposed on all future exemptions, without first reviewing the circumstances of the exemption, will overburden departments and the legislature. It will also cause uncertainty for employees hired into these temporary positions and make it harder for the State to attract qualified candidates for these positions. It would be more efficient for the legislature to consider each exemption as laws are enacted or amended, based on the specific nature of the program and the specific qualifications of positions required to carry out the functions of the program.

DHRD defers to the respective departments regarding the effect on their programs of the proposed amendments reflected in sections 2 and 4 through 8 of the bill. However, we anticipate that the elimination of current exemptions will cause a number of valued employees to leave State employment, which will result in the State's inability to deliver critical services to the public. We also caution that the current personnel staffing at the departments and DHRD is not sufficient to process a large number of civil service conversions within a limited time period, especially where the conversions would require the creation of new civil service classes.

Based on the foregoing, DHRD respectfully requests that this measure be held.