

NEIL ABERCROMBIE
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March 17, 2014

TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

For Hearing on Tuesday, March 18, 2014
10:30 a.m., Conference Room 309

BY

BARBARA A. KRIEG
DIRECTOR

Senate Bill No. 3099, SD1
Relating to Public Employment

TO CHAIRPERSON MARK NAKASHIMA AND MEMBERS OF THE COMMITTEE:

Senate Bill 3099, Senate Draft 1, would, among other purposes, place restrictions on the establishment of exempt positions.

The Department of Human Resources Development (DHRD) respectfully opposes section 3 of this bill for the following reasons.

Section 3 of the bill would amend Section 76-16(b)(17) of the Hawaii Revised Statutes to require any exemption created after July 1, 2014 to expire three 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 three 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.

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

NEIL ABERCROMBIE
GOVERNOR OF HAWAII



**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**

**Tuesday, March 18, 2014
10:30 AM
State Capitol, Conference Room 309**

**In consideration of
SENATE BILL 3099, SENATE DRAFT 1
RELATING TO PUBLIC EMPLOYMENT**

Senate Bill 3099, Senate Draft 1, proposes, among other things, to require that all personnel hired within the State Historic Preservation Division (Division), which is within the Department of Land and Natural Resources (Department), 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 services.
- 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.
- Finally, the Department believes that the Senate Bill 3099, Senate 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

WILLIAM J. AILA, JR.
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AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
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HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

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.

The Department suggests that Senate Bill 3099, Senate Draft 1, SECTION 1 be revised by inserting a new paragraph (2) to read as follows:

The purpose of this Act is to:

- (1) Require, rather than permit, hiring to be done in accordance with civil service laws when the state historic preservation division of the department of land and natural resources hires professional and technical staff; and
- (2) Ensure that staff employed by the State historic preservation division are compensated at rates reflecting the specialized education and experience requirements of their job duties as well as the highly competitive nature of recruitment and retention of those positions; and
- (3) Require any civil service exempt positions created after July 1, 2014, to expire after three years of its enactment unless affirmatively extended by the legislature.

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: March 18, 2014, 10:30 AM, Conference Room 309

SUBJECT: Testimony in Support of SB 3099, SD1 (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 SB 3099, SD 1 Relating to Public Employment.

SB 3099, SD1 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. SB 3099, SD1 requires rather than permits, hiring to be done in accordance with civil service laws when the State Historic Preservation Division (SHPD) of the Department of Land and Natural Resources (DLNR) hires professional and technical staff. SB 3099, SD1 also requires that any civil service exempt positions created after July 1, 2014, expire after three years of its enactment unless affirmatively extended by the Legislature.

We strongly support SB 3099, SD1 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 predicable 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.

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- 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.

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 that the effective date be changed to July 1, 2014 and that your committee pass SB 3099, SD1. Thank you for considering our comments. Should you have any questions, please feel free to contact me at the above email address.



HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

RANDY PERREIRA, Executive Director • Tel: 808.543.0011 • Fax: 808

LATE

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

Testimony by
Hawaii Government Employees Association
March 18, 2014

S.B.3099, S.D. 1 – RELATING TO PUBLIC EMPLOYMENT

The Hawaii Government Employees Association strongly supports the purpose and intent of S.B.3099, S.D. 1. This legislation mandates the conversion of exempt positions to civil service in 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 that have been well documented. Some of these are directly attributable to the exempt status of its employees, which creates instability and turnover in staffing.

We also question the reliance of exempt employees in positions that perform regulatory functions. For example, 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.

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 1,013 exempt employees in HGEA bargaining units under the largest exemption contained in Section 76-16, HRS (Section 76-16 (b) 17). This is the exemption from civil service for SHPD. This statutory exemption adversely affects 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 strongly support the amendment to Section 76-16 (b) (17), HRS that would limit these exemptions to three years and require any extension beyond that time frame to be approved by the Legislature. Legislative oversight is needed to stop the proliferation of exempt positions within the executive branch of state government.

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

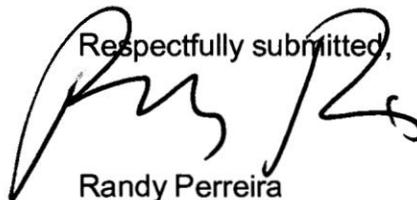
Hawaii for years and provide valuable service to their respective departments, yet they are not treated fairly by the employer.

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 less than 1,000 exempt employees in California's executive branch.

The state's civil service system needs significant reform so that it can preserve the merit principle while at the same time being flexible and responsive enough to meet the demands of line departments. In other words, the civil service system must be adaptable to change, including changes in the state's demographics, the organization of work, and the conceptions of work and career on the part of employees. The lack of flexibility within state's civil service system should not be used to justify exempting positions from civil service. State departments need the mechanisms and incentives of a high quality and motivated workforce that is subject to Chapter 76, HRS.

We appreciate the opportunity to testify in support of S.B. 3099, S.D. 1.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Randy Perreira', is written over the typed name and title.

Randy Perreira
Executive Director