

TESTIMONY BY WESLEY K. MACHIDA
DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE
STATE OF HAWAII
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR
ON
SENATE BILL NO. 1361

February 17, 2015

RELATING TO BUDGETING

Senate Bill No. 1361 amends Chapter 37, HRS, to establish position ceilings at the program level and requires the inclusion of position ceiling information in the various budget documents. The bill prohibits, with certain exceptions, the expenditure of funds for the filling of positions if the position ceiling would be exceeded. The bill also amends Section 76-16, HRS, to allow the creation of non-civil service positions only by act or statute.

The Department of Budget and Finance supports the general intent of Senate Bill No. 1361 but has the following concerns. First, it needs to be recognized that the computerized budget systems currently utilized by the Executive Branch to produce the various budget documents and budget bills are not contemporary, technologically advanced systems. The core budgeting programs are COBOL-based systems that are over 40 years old. As such, these systems will require extensive modifications which would likely be labor intensive and require funding in order to accommodate the requirements of this bill.

For example, to display temporary positions at the program level in the various documents would require major formatting modifications and we are not quite sure, at this time, of the resource requirements and time needed to complete this task. We

are especially concerned that scarce technical and program staff resources would have to be devoted to this effort should this bill pass at the same time that these resources are needed to support the development of various administrative support systems that is currently underway.

In addition, we strongly believe that some flexibility is necessary when establishing position ceiling controls. Excessively strict position ceiling controls can be problematic when circumstances not foreseen during budget preparation arise, and can severely hamper the Executive's ability to operationally respond to these situations effectively and efficiently.

The Legislature should consider the opinion of respective departments on how the proposed prohibition on creating temporary and exempt positions in excess of the position ceilings authorized could adversely impact their operations and what, if any, program curtailments could result.

Because it is unlikely that we would be able to meet the requirements of the bill within the allotted time frame, we suggest the establishment of a pilot project, or extending the effective date of the bill for several years, or some other option that would allow us to work through the various issues and problems without adversely impacting immediate staffing needs. Annual updates could be provided to keep the Legislature apprised of our efforts.



STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 02/17/2015

Time: 08:45 AM

Location: 016

Committee: Senate Judiciary and Labor

Department: Education

Person Testifying: Kathryn S. Matayoshi, Superintendent of Education

Title of Bill: SB 1361 RELATING TO BUDGETING.

Purpose of Bill: Requires "position ceilings" to be included in the executive budget and related documents. Requires a "position ceiling" to separately identify the maximum number of permanent and temporary positions authorized in the executive budget. Prohibits the expenditure of funds on positions exceeding the applicable ceiling, with certain exceptions. States intent that the provisions also apply to the judiciary budget by operation of existing law. Takes effect on 07/01/16.

Department's Position:

The Department of Education appreciates the intent of SB1361 to improve transparency by adding to budget documents position ceilings for temporary positions, and prohibiting agencies from exceeding the position ceilings for both permanent and temporary positions except in certain instances.

The Department offers comments for the committee's consideration. Should this measure be implemented, it would not be possible to establish positions to ensure federal funds received can be used in a timely manner for the purposes for which the funds were awarded. It would also be problematic to adjust staffing throughout the entire school system to accommodate enrollment fluctuations, varying student needs including individualized education plans, and school level decisions on the use of funds for employee or non-payroll expenditures. Given the limited time in which either State or federal funds are available for expenditure, the prohibition to exceed position ceilings would compromise the Department's ability to efficiently and effectively use funds appropriated to support and operate our public schools.

Thank you for the opportunity to testify on this measure.

DAVID Y. IGE
GOVERNOR



JAMES K. NISHIMOTO
DIRECTOR

RANDY BALDEMOR
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT
235 S. BERETANIA STREET
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February 14, 2015

TESTIMONY TO THE
SENATE COMMITTEE ON JUDICIARY AND LABOR
For Hearing on Tuesday, February 17, 2015
8:45 a.m., Conference Room 016

By

JAMES K. NISHIMOTO
DIRECTOR, DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT

Senate Bill No. 1361
Relating to Budgeting

CHAIRPERSON KEITH-AGARAN, VICE CHAIR SHIMABUKURO AND MEMBERS OF
THE SENATE COMMITTEE ON JUDICIARY AND LABOR:

S.B. No. 1361 would, among other things, amend Chapter 37, HRS to require "position ceilings" to be included in the executive budget and related documents. The bill would also prohibit the expenditure of funds on positions exceeding the applicable ceiling, with certain exceptions. The effective date of these amendments would be July 1, 2016.

The Department of Human Resources Development (DHRD) supports the intent of S.B. No. 1361, but offers the following concerns:

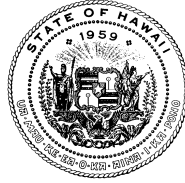
While the proposed legislation relating to § 76-16(b), HRS does not change the categories of positions exempted from civil service, the amendment specifically provides that, "This subsection shall not be construed as granting express statutory authorization for the creation of any position referenced above." This amendment appears to mean that even if there is an exemption authorized under § 76-16(b), e.g., an exemption on the basis of a special, research or demonstration project, it would not include authorization to establish a position or positions needed to implement the project. If this is a correct interpretation, it may be necessary for programs to now seek and secure

authorized position counts, in which case implementation of the proposed statutory amendment would likely take more time than the proposed effective date would provide.

The proposed amendment to § 76-16(b) may also have unintended funding impact. For example, a program's ability to apply for and accept/implement a federal grant award may be significantly impeded, because the program would first have to obtain statutory authorization for needed positions, which may not be possible before the time-sensitive federal funds lapse. This potential delay caused by the proposed amendment could jeopardize a department's ability to seek funding sources for temporary or pilot programs exempt from civil service, hamper departmental operations, and make it very difficult to implement federally-funded programs and services. The problem would be particularly acute when the legislature is not in session, since the department or program would have to wait until the next session to obtain the required statutory authorization to create needed positions.

Finally, there is also concern regarding the potential impact of S.B. No. 1361's proposed language prohibiting programs from exceeding their position ceilings. This could impact existing employees whose positions are not within their department's specified position ceiling. It would appear that according to S.B. No. 1361, the employment of such employees would have to be terminated, pending establishment of appropriated positions, after which the terminated employees could apply/compete for the newly-appropriated positions. As an option, it may be preferable to consider incorporating appropriate statutory language that would allow for transition of impacted positions/employees; for instance, allowing continuation of employment pending establishment of appropriated positions, and then grandfathering current incumbents into the new positions, waiving recruitment requirements.

Thank you for the opportunity to testify regarding this measure.



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**Testimony COMMENTING on SB1361
RELATING TO BUDGETING**

SENATOR GILBERT KEITH-AGARAN, CHAIR
SENATE COMMITTEE ON JUDICIARY AND LABOR

Hearing Date: February 17, 2015

Room Number: 016

1 **Fiscal Implications:** Uncertain but likely negative impact on ability to drawdown federal funds.

2 **Department Testimony:** The Department of Health (DOH) has **strong reservations** about
3 potential but significant impact to current government operations, operationalization and staffing
4 of federal funded discretionary grants and initiatives, and compliance to consent decrees and
5 legal mandates which may disrupt essential public services.

6 DOH acknowledges the intent of SB1361 to align statutory authority and executive budget
7 policy relating to the establishment of new positions, but this measure does not address the
8 practical and procedural needs of state agencies in managing their workforce in an efficient and
9 effective manner.

10 Impact to the Drawdown of Federal Funds

11 DOH administered approximately \$40,000,000 in federal funds in FY15. However, this measure
12 puts some of those funds in jeopardy by requiring explicit and specific statutory authority to
13 create new positions. Federal agencies expect grantees to expedite hiring and expenditure of
14 funds for new grant awards. If grantees are unable to demonstrate meaningful progress, such as
15 the hiring of 100% federally funded program staff, moneys may be rescinded and redistributed to
16 other states. Programs are simply unable to wait for or rely upon a legislative process to
17 implement federally funded programs in a timely manner often within a short period following
18 the receipt of the formal federal award notice.

19

1 Impact to Government Operations

2 The most significant impact of SB1361 is the elimination of the statutory basis that many state
3 departments use to establish and fill all positions established within special projects approved by
4 the Governor pursuant to section 76-16(b)(12), HRS. The absence of this authority, normally
5 transmitted through the Governor's Budget Execution Policy, would require agencies to seek
6 legislative approval for these positions and formally integrate them into their organizational
7 structure within a limited timeframe. This will severely disrupt government operations and cause
8 distress to the affected state workers who may no longer have a legal basis for their positions.
9 Formal reorganizations are generally required to make the necessary changes to an organization
10 in order to incorporate new functions and responsibilities as well as adding temporary staff into
11 their permanent structure. This may take several years to complete as paperwork is reviewed
12 and approved by several state agencies and also requires consultation with labor unions and
13 affected staff. After the formal reorganization is completed and acknowledged by the
14 Department of Budget and Finance, additional time and effort are required to review and if
15 necessary reclassify all positions potentially impacted by the completed reorganization.

16 Impact to Compliance to Consent Decrees and Legal Mandates

17 Compliance to consent decrees and legal mandates is also significantly hindered if legislative
18 authorization is required to establish all positions. The flexibility of creating exempt positions
19 within a special project pursuant to section 76-16(b)(12), HRS, is essential since courts expect
20 immediate action and sustained progress.

21 DOH special projects have been used to take the action expected by the courts and avoid the
22 threat of recurring and new litigation such as with the Department of Justice settlement
23 agreement related to Hawaii State Hospital, the adult mental health system community plan, and
24 the Felix consent decree related to children's mental health. Recently, DOH requested and
25 received approval from the Governor to extend through June 30, 2015 the Behavioral Health
26 Initiative special project to support program and service delivery continuity, without which the
27 State of Hawaii may find itself at much greater risk of noncompliance and federal intervention.

1 Department of Health Policies and Procedures

2 The Department of Health is able to demonstrate good stewardship of public policy as it relates
3 to the historical position ceilings established by the Legislature and has been proactive in
4 assuring transparency in public administration. In 2011, the department was delegated
5 reorganization authority, having completed 24 reorganizations, with several more pending. The
6 purpose of requesting delegated authority was to align operations with the state budget and
7 demonstrate accountability and fidelity to position ceilings.

8 Further, as a matter of internal policy, DOH requires a vacant civil service position to "back"
9 newly created special project positions, either federally funded or state funded. These "backing
10 positions" minimize the risk of DOH exceeding the total FTE count authorized by the
11 Legislature, and with few exceptions, the department maintains a 1:1 ratio.

12 At the conclusion of a special project, the department may proceed with recruitment for the
13 backing civil service position in accordance with legislative policy and the Budget Execution
14 Policy. This discipline to FTE count is especially critical to post-consent decree service level
15 maintenance, where the special project serves as the framework for a possible transition to civil
16 service.

17 Conclusion and Recommendations

18 The unintended consequences created by SB1361 will have a severe negative effect across most
19 of state government. The executive branch simply is unable to absorb the magnitude of change,
20 jeopardizing continuity of public services and creating significant uncertainties for state
21 employees. The issues SB1361 is attempting to address are very complex and have many years
22 of precedent and practice behind them. The department respectfully recommends the Legislature
23 to convene a task force to study civil service reform in lieu of SB1361's provisions.

24 However, if this measure advances DOH urges amendments that:

- 25 1. Exempt 100% federally funded positions,

- 1 2. Exempt positions required to comply with consent decrees, regardless of means of
- 2 finance,
- 3 3. Grandfather all existing positions hitherto citing section 76-16(b)(12), HRS, as the legal
- 4 basis for the establishment of exempt positions if and when the Act takes effect,
- 5 4. Establish new mechanisms or clarify the circumstances under which agencies may
- 6 establish and fill non-budgeted positions,
- 7 5. Review the principles, practices, and authority for departmental reorganizations as they
- 8 relate to the state budget, and
- 9 6. Examine alternate procedures and authorities for the Legislature to provide expedited
- 10 approval for new positions meeting certain criteria.

11 The department contends that current policies and procedures for the justification and approval
12 of special projects by the Governor (including establishment of new positions), as well as
13 internal practices to reconcile position counts with the Legislature through the budgeting process
14 ("backing" positions) demonstrate responsible public administration and should be considered as
15 a model.

16 Thank you for the opportunity to testify.