

S.B. NO. 288D

JAN 27 2016

A BILL FOR AN ACT

RELATING TO SERVICES PERFORMED BY CIVIL SERVICE EMPLOYEES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The purpose of this Act is to seek
2 authorization of permanent civil service position counts and
3 appropriate out of the general and non-general funds of the
4 State of Hawaii for these positions to support state agency
5 operations.

6 SECTION 2. In 1997, the Hawaii supreme court ruled in
7 Konno v. Hawaii County that Hawaii county violated civil service
8 laws and merit principles when it hired private contractors to
9 perform landfill operations work. The court ruled that state
10 civil service laws allowed only civil service employees to
11 perform work historically and customarily done by civil service
12 employees.

13 In response to Konno, Act 90 was enacted in 2001. Act 90,
14 part II, allowed the State of Hawaii to contract for services
15 historically and customarily performed by civil service
16 employees if equivalent or better services could be provided at
17 lower cost. However, Act 90, part II, was repealed on June 30,
18 2007.

1 After Act 90 was repealed, the United Public Workers filed
2 class grievances as well as lawsuits in circuit court arguing
3 that the State of Hawaii and the counties should cease the
4 practice of contracting for services historically and
5 customarily performed by civil service employees. Over time,
6 the counties reached settlements with the United Public Workers,
7 leaving only the claims against the State of Hawaii.

8 Through court-ordered mediation, an agreement was reached
9 between the United Public Workers and the State of Hawaii
10 executive branch relating to services historically and
11 customarily performed by civil service employees as it relates
12 to the United Public Workers. This agreement reflected the
13 State's commitment to comply with the Hawaii supreme court's
14 ruling in Konno, while concurrently recognizing the State's duty
15 to provide services to the public.

16 Without a sufficient number of civil service positions and
17 employees to perform services historically and customarily
18 performed by United Public Workers-type employees, state
19 agencies have had to resort to contracting for these services.
20 In order to address this situation and enable state agencies to
21 comply with the Konno ruling, it is estimated that the State
22 will need an additional 502 permanent positions and
23 approximately \$30,886,984 (for positions and associated

1 equipment) in general and non-general funds in order to provide
2 necessary services to the public through civil service employees
3 rather than through contractors.

4 The process of identifying position and equipment funding
5 needs is on-going and thus subject to change. The above-
6 referenced figures are best estimates as of January 11, 2016.

7 SECTION 3. In an effort to establish more efficient,
8 effective and productive ways of fulfilling departmental
9 operational needs with regard to work historically and
10 customarily performed by blue collar civil service personnel,
11 the following focused initiatives are proposed:

12 (1) **Department of public safety:** 1 plumber II position
13 and 1 electrician II position at a cost of
14 approximately \$112,260 for a multi-skilled worker team
15 to provide services at the correctional facilities on
16 Oahu (Halawa correctional facility, Oahu community
17 correctional center, Waiawa correctional facility, and
18 women's community correctional center).

19 (2) **Department of public safety:** 1 plumber II position
20 and 1 electrician II position at a cost of
21 approximately \$112,260 for a multi-skilled worker team
22 to provide services at the correctional facilities on

S.B. NO. 2880

Hawaii island (Hawaii community correctional center and Kulani correctional facility).

(3) **Department of land and natural resources (division of state parks):** 2 tree trimmer positions, 2 tree trimmer-truck driver positions, 1 plumber position, 2 general laborer positions, and 1 building maintenance worker II position at a cost of approximately \$343,092 for a multi-skilled worker team to provide services at the various parks on Kauai. Equipment will also be needed at a cost of approximately \$625,000.

(4) **Department of land and natural resources (division of boating and ocean recreation):** 4 general laborer positions and 1 building maintenance worker II position at a cost of approximately \$198,924 for a multi-skilled worker team to provide services at the various harbors on Oahu. Equipment will also be needed at a cost of approximately \$120,000.

(5) **Department of defense:** 1 building maintenance worker I position, 2 equipment operator positions (1 BC09, 1 BC06), 4 general laborer II positions, and 1 general laborer supervisor I position at a cost of approximately \$313,480 for a multi-skilled worker team to provide services at the Hawaii state veteran's

S.B. NO. 2880

1 cemetery. Equipment will also be needed at a cost of
2 approximately \$365,000.

3 SECTION 4. In an effort to provide the department
4 of accounting and general services, as the central agency, with
5 resources to provide services to other state executive branch
6 agencies, the following positions are requested (which comprise
7 only a portion of the total positions needed by the department
8 of accounting and general services):

9 (1) **Department of accounting and general services:** 1

10 building and grounds custodian II position or janitor
11 II position at a cost of approximately \$37,000 to
12 provide services at various facilities on Maui.
13 Equipment, tools, and supplies will also be needed at
14 a cost of approximately \$6,000.

15 (2) **Department of accounting and general services:** 2

16 refuse collectors and 2 heavy truck drivers at a cost
17 of approximately \$169,866 to provide refuse collection
18 services at various locations on Oahu. 2 refuse
19 trucks and other equipment will also be needed at a
20 cost of approximately \$760,000.

21 SECTION 5. There is appropriated out of the general
22 revenues of the State of Hawaii the sum of \$224,520 or so much

1 thereof as may be necessary for fiscal year 2016-2017 to the
2 department of public safety for:

3 (1) 1 plumber II position and 1 electrician II position
4 for a multi-skilled worker team to provide services at
5 the correctional facilities on Oahu; and

6 (2) 1 plumber II position and 1 electrician II position
7 for a multi-skilled worker team to provide services at
8 the correctional facilities on Hawaii island.

9 The sum appropriated shall be expended by the department of
10 public safety for the purposes of this Act.

11 SECTION 6. There is appropriated out of the general
12 revenues of the State of Hawaii the sum of \$1,287,016 or so much
13 thereof as may be necessary for the fiscal year 2016-2017 to the
14 department of land and natural resources for:

15 (1) 2 tree trimmer positions, 2 tree trimmer-truck driver
16 positions, 1 plumber position, 2 general laborer
17 positions, and 1 building maintenance worker II
18 position (plus equipment) for a multi-skilled worker
19 team to provide services at the various parks on Kauai
20 (division of state parks); and

21 (2) 4 general laborer positions and 1 building maintenance
22 worker II position (plus equipment) for a multi-
23 skilled worker team to provide services at the various

S.B. NO. 2880

1 harbors on Oahu (division of boating and ocean
2 recreation).

3 The sum appropriated shall be expended by the department of
4 land and natural resources for the purposes of this Act.

5 SECTION 7. There is appropriated out of the general
6 revenues of the State of Hawaii the sum of \$678,480 or so much
7 thereof as may be necessary for fiscal year 2016-2017 to the
8 department of defense for 1 building maintenance worker I
9 position, 2 equipment operator positions, 4 general laborer II
10 positions, and 1 general laborer supervisor I position (plus
11 equipment) for a multi-skilled worker team to provide services
12 at the Hawaii state veteran's cemetery.

13 The sum appropriated shall be expended by the department of
14 defense for the purposes of this Act.

15 SECTION 8. There is appropriated out of the general
16 revenues of the State of Hawaii the sum of \$972,866 or so much
17 thereof as may be necessary for fiscal year 2016-2017 to the
18 department of accounting and general services for:

19 (1) 1 building and grounds custodian II position or
20 janitor II position (plus equipment and supplies) to
21 provide services at various facilities on Maui; and

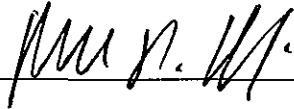
S.B. NO. 2880

(2) 2 refuse collector positions and 2 heavy truck driver positions (plus refuse trucks and other equipment) to provide services at various locations on Oahu.

The sum appropriated shall be expended by the department of accounting and general services for the purposes of this Act.

SECTION 9. This Act shall take effect upon its approval.

INTRODUCED BY:



BY REQUEST

S.B. NO. 2880

Report Title:

Civil Service; Establish Positions

Description:

Authorizes establishment of civil service positions and appropriates associated general and non-general funds to enable Executive Branch departments to provide services to the public with civil service employees rather than through contracting.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

JUSTIFICATION SHEET

DEPARTMENT: HUMAN RESOURCES DEVELOPMENT

TITLE: A BILL FOR AN ACT RELATING TO SERVICES PERFORMED BY CIVIL SERVICE EMPLOYEES.

PURPOSE: To comply with the Konno decision and a letter of understanding with the United Public Workers. The goal is to obtain authorization and funding to establish United Public Workers-type positions needed to perform services that are currently being contracted out by the Executive Branch departments.

MEANS: Legislative authorization to establish positions and appropriation of associated general and non-general funds. No statutory changes required.

JUSTIFICATION: In 1997, the Hawaii Supreme Court ruled in the case Konno v. Hawaii County that the county violated civil service laws and merit principles when it hired private contractors to perform landfill operations work. The Court held that civil service laws required that only civil service employees perform work historically and customarily performed by civil service employees.

Subsequent to the Konno case, the Legislature enacted Act 90 (SLH 2001). Act 90, part II, allowed the State to contract for services historically and customarily performed by civil service employees if equivalent or better services could be provided at lower cost. Act 90, part II, however, was repealed on June 30, 2007.

Shortly after Act 90, part II, was repealed, the United Public Workers sought to have the State and all other jurisdictions terminate all of their contracts. The United Public

Workers later filed class grievances in 2007 and prohibited practice complaints in 2009 against the State and other jurisdictions, thereby initiating years of litigation.

In June 2015, the State Executive Branch and the United Public Workers entered into a letter of understanding through court-ordered mediation which placed a moratorium on all pending litigation. In compliance with the letter of understanding, the Department of Human Resources Development has implemented a process of reviewing departmental contracts for work historically and customarily performed by United Public Workers-type employees to confirm that there is a valid basis for exemption from civil service. The letter of understanding also contemplates that departments will identify positions and/or other resources needed in order to enable contracted work to be done by civil service employees, and to seek such positions and/or other resources from the legislature. This bill is an effort to comply with this requirement.

In addition to providing information regarding the positions and/or resources needed by the State Executive Branch departments, the bill also identifies several focused initiatives that are aimed at promoting more efficient, effective and productive ways of providing services to the public, and also highlights several specific departmental requests.

The general fund appropriation included in this measure has been made in accordance with the statutorily defined appropriation ceiling for the Executive Branch pursuant to section 37-92, Hawaii Revised Statutes. Including appropriations made up to and including the regular session of 2015, the Executive Branch appropriation ceiling for fiscal year 2016-2017 has already been exceeded by \$14,892,787 or 0.2 percent. Funding requested in this measure to

establish United Public Workers-type positions needed to perform services that are currently being contracted out by the Executive Branch departments will result in the appropriation ceiling for the Executive Branch to now be exceeded in fiscal year 2016-2017 by an additional \$19,771,220 or 0.3 percent. This current declaration takes into account additional general fund appropriations authorized for fiscal year 2016-2017 in this measure only, and does not include other general fund appropriations for fiscal year 2016-2017 that may be authorized for the Executive Branch in other legislation submitted to the Legislature during the regular session of 2016.

Impact on the public: In terms of the provision of services, no impact is expected because work that is currently being done by contractors would be transitioned to civil service employees. Companies that currently have contracts with the State to provide United Public Workers-type services, however, may lose their contracts.

Impact on the department and other agencies: Having civil service employees rather than contractors perform work that has historically and customarily been performed by civil service employees would allow the State Executive Branch departments to comply with the law, as set forth in the Konno case.

GENERAL FUND:

The bill seeks general and non-general fund appropriations for 502 positions and associated equipment, totaling approximately \$30,886,984 at this time. The focused initiatives and specific departmental requests seek general fund appropriation for 30 positions and associated equipment, totaling approximately \$3,162,882 at this time.

OTHER FUNDS:

To be determined.

PPBS PROGRAM
DESIGNATION:

None.

OTHER AFFECTED
AGENCIES:

None.

EFFECTIVE DATE:

Upon approval.