

DAVID Y. IGE  
GOVERNOR



JAMES K. NISHIMOTO  
DIRECTOR

CINDY S. INOUE  
DEPUTY DIRECTOR

**STATE OF HAWAII**  
**DEPARTMENT OF HUMAN RESOURCES DEVELOPMENT**  
235 S. BERETANIA STREET  
HONOLULU, HAWAII 96813-2437

March 16, 2016

**TESTIMONY TO THE  
SENATE COMMITTEE ON JUDICIARY AND LABOR AND  
SENATE COMMITTEE ON GOVERNMENT OPERATIONS**

For Hearing on Thursday, March 17, 2016  
1:30 p.m., Conference Room 414

BY

JAMES K. NISHIMOTO  
DIRECTOR

**House Bill No. 2477, H.D.2  
Relating to State Employees**

TO CHAIRPERSONS KEITH-AGARAN AND KIM, VICE CHAIRPERSONS  
SHIMABUKURO AND IHARA AND MEMBERS OF THE COMMITTEES:

HB 2477, HD2 requires that the number of civil service exempt employees not exceed an unspecified percent in the Executive Branch, excluding the Department of the Attorney General. The bill also requires departments to reduce the number of exempt employees if the total exceeds an unspecified percent.

The Department of Human Resources Development (DHRD) **HAS CONCERNS** regarding this bill.

It is the legislature that establishes exemptions from the civil service, as provided in §76-16, HRS, and other programmatic related statutes. Departments apply these exemptions to create positions to implement legislatively mandated programs and initiatives. Currently, there are approximately 2,086 exempt employees in the Executive Branch, in comparison to a total employee count of 15,179.

Section 76-16, HRS, reflects the majority of legislatively-authorized exemptions from civil service:

**§76-16 Civil service and exemptions.** (a) The state constitution mandates that the employment of persons in the civil service, as defined by law, be governed by the merit principle. The legislature declares that the public policy of the State is that all positions in the civil service systems of the respective jurisdictions shall be filled through civil service recruitment procedures based on merit and that the civil service system of the respective jurisdictions shall comprise all positions, whether permanent or temporary, in the jurisdiction now existing or hereafter established and embrace all personal services performed for the jurisdiction, except employees or positions exempted under this section, or sections 46-33 and 76-77.

(b) The civil service to which this chapter applies shall comprise all positions in the State now existing or hereafter established and embrace all personal services performed for the State, except the following:

(1) Commissioned and enlisted personnel of the Hawaii National Guard as such, and positions in the Hawaii National Guard that are required by state or federal laws or regulations or orders of the National Guard to be filled from those commissioned or enlisted personnel;

(2) Positions filled by persons employed by contract where the director of human resources development has certified that the service is special or unique or is essential to the public interest and that, because of circumstances surrounding its fulfillment, personnel to perform the service cannot be obtained through normal civil service recruitment procedures. Any such contract may be for any period not exceeding one year;

(3) Positions that must be filled without delay to comply with a court order or decree if the director determines that recruitment through normal recruitment civil service procedures would result in delay or noncompliance, such as the Felix-Cayetano consent decree;

(4) Positions filled by the legislature or by either house or any committee thereof;

(5) Employees in the office of the governor and office of the lieutenant governor, and household employees at Washington Place;

(6) Positions filled by popular vote;

(7) Department heads, officers, and members of any board, commission, or other state agency whose appointments are made by the governor or are required by law to be confirmed by the senate;

(8) Judges, referees, receivers, masters, jurors, notaries public, land court examiners, court commissioners, and attorneys appointed by a state court for a special temporary service;

(9) One bailiff for the chief justice of the supreme court who shall have the powers and duties of a court officer and bailiff under section 606-14; one secretary or clerk for each justice of the supreme court, each judge of the intermediate appellate court, and each judge of the circuit court; one secretary for the judicial council; one deputy administrative director of the courts; three law clerks for the chief justice of the supreme court, two law clerks for each associate justice of the supreme court and each judge of the intermediate appellate court, one law clerk for each judge of the circuit court, two additional law clerks for the civil administrative judge of the circuit court of the first circuit, two additional law clerks for the criminal administrative judge of the circuit court of the first circuit, one additional law clerk for the senior judge of the family court of the first circuit, two additional law clerks for the civil motions judge of the circuit court of the first circuit, two additional law clerks for the criminal motions judge of the circuit court of the first circuit, and two law clerks for the administrative judge of the district court of the first circuit; and one private secretary for the administrative director of the courts, the deputy administrative director of the courts, each department head, each deputy or first assistant, and each additional deputy, or assistant deputy, or assistant defined in paragraph (16);

(10) First deputy and deputy attorneys general, the

administrative services manager of the department of the attorney general, one secretary for the administrative services manager, an administrator and any support staff for the criminal and juvenile justice resources coordination functions, and law clerks;

(11) (A) Teachers, principals, vice-principals, complex area superintendents, deputy and assistant superintendents, other certificated personnel, not more than twenty noncertificated administrative, professional, and technical personnel not engaged in instructional work;

(B) Effective July 1, 2003, teaching assistants, educational assistants, bilingual/bicultural school-home assistants, school psychologists, psychological examiners, speech pathologists, athletic health care trainers, alternative school work study assistants, alternative school educational/supportive services specialists, alternative school project coordinators, and communications aides in the department of education;

(C) The special assistant to the state librarian and one secretary for the special assistant to the state librarian; and

(D) Members of the faculty of the University of Hawaii, including research workers, extension agents, personnel engaged in instructional work, and administrative, professional, and technical personnel of the university;

(12) Employees engaged in special, research, or demonstration projects approved by the governor;

(13) (A) Positions filled by inmates, patients of state institutions, persons with severe physical or mental disabilities participating in the work experience training programs;

(B) Positions filled with students in accordance with guidelines for established state employment programs; and

(C) Positions that provide work experience training or temporary public service employment that are filled by persons entering the workforce or persons transitioning into other careers under programs such as the federal Workforce Investment Act of 1998, as amended, or the Senior Community Service Employment Program of the Employment and Training Administration of the United States Department of Labor, or under other similar state programs;

(14) A custodian or guide at Iolani Palace, the Royal Mausoleum, and Hulihee Palace;

(15) Positions filled by persons employed on a fee, contract, or piecework basis, who may lawfully perform their duties concurrently with their private business or profession or other private employment and whose duties require only a portion of their time, if it is impracticable to ascertain or anticipate the portion of time to be devoted to the service of the State;

(16) Positions of first deputies or first assistants of each department head appointed under or in the manner provided in section 6, article V, of the Hawaii state constitution; three additional deputies or assistants either in charge of the highways, harbors, and airports divisions or other functions within the department of transportation as may be assigned by the director of transportation, with the approval of the governor; four additional deputies in the department of health, each in charge of one of the following: behavioral health, environmental health, hospitals, and health resources administration, including other functions within the department as may be assigned by the director of health, with the approval of the governor; an administrative assistant to the state librarian; and an administrative assistant to the superintendent of education;

(17) Positions specifically exempted from this part by any other law; provided that:

(A) Any exemption created after July 1, 2014, shall expire three years after its enactment unless affirmatively extended by an act of the legislature; and

(B) All of the positions defined by paragraph (9) shall be included in the position classification plan;

(18) Positions in the state foster grandparent program and positions for temporary employment of senior citizens in occupations in which there is a severe personnel shortage or in special projects;

(19) Household employees at the official residence of the president of the University of Hawaii;

(20) Employees in the department of education engaged in the supervision of students during meal periods in the

distribution, collection, and counting of meal tickets, and in the cleaning of classrooms after school hours on a less than half-time basis;

(21) Employees hired under the tenant hire program of the Hawaii public housing authority; provided that not more than twenty-six per cent of the authority's workforce in any housing project maintained or operated by the authority shall be hired under the tenant hire program;

(22) Positions of the federally funded expanded food and nutrition program of the University of Hawaii that require the hiring of nutrition program assistants who live in the areas they serve;

(23) Positions filled by persons with severe disabilities who are certified by the state vocational rehabilitation office that they are able to perform safely the duties of the positions;

(24) The sheriff;

(25) A gender and other fairness coordinator hired by the judiciary; and

(26) Positions in the Hawaii National Guard youth and adult education programs.

The director shall determine the applicability of this section to specific programs.

Nothing in this section shall be deemed to affect the civil service status of any incumbent as it existed on July 1, 1955.

The listing of positions potentially affected by HB 2477, HD2 is quite extensive, given the length of §76-16(b). This statutory section reflects long-standing exemptions established by the legislature, based upon expressed operating needs and in consideration of the types of positions relative to the appropriateness of including them in the civil service. As a consequence, implementation of HB 2477, HD2 could have far-reaching, unintended consequences. It should be noted that in addition to the

exemptions listed in §76-16(b), there are other legislatively-authorized exemptions reflected in individual programmatic sections.

Among the potential consequences should HB 2477, HD2 be enacted is that departments may be placed in the untenable position of having to eliminate long-standing exempt positions authorized by past legislatures. This could jeopardize the departments' operating practices as well as their ability to provide critical services to the public. The termination of exempt positions could also result in the loss of highly-skilled, expert personnel who may not be willing to accept conversion of their positions to civil service status. The disruption to departmental operations will be far-reaching as department directors will be forced to make impossible decisions as to which exempt positions to eliminate/convert, despite the fact that these positions are authorized to be exempt under existing law (e.g., §76-16(b)).

The legislature has long recognized the need to provide exemptions from the civil service to ensure the ability of departments to provide services which often require special expertise or in unique situations that preclude the traditional civil service recruitment process and application of the merit principle, e.g., members of the National Guard, department heads and deputies, positions filled by persons with severe disabilities, etc. HB 2477, HD2 could negatively curtail use of authorized exemptions, to the detriment of departmental operations and to the detriment of the public.

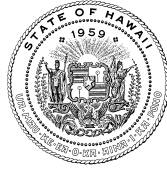
In accordance with Act 253, SLH 2000, the State's policy is that all positions be covered by the civil service unless specifically exempted and further provides that DHRD shall determine whether or not a position should continue to be exempt from the civil service or be converted. Further, Act 300, SLH 2004 directed DHRD and the Hawai'i Government Employees Association "to work collaboratively to establish a logical, workable and fair process for converting positions in various departments, which

are currently exempted from Chapter 76, Hawai'i Revised Statutes, to civil service positions.” Accordingly, DHRD developed a conversion process and annually submits a report to the legislature regarding the conversion of exempts positions. In its report to the 2016 Legislature, DHRD reported that a total of 121 exempt positions were replaced with civil service positions during the applicable reporting period.

Thank you for the opportunity to testify on this measure.



DAVID Y. IGE  
GOVERNOR



WESLEY K. MACHIDA  
DIRECTOR

RODERICK K. BECKER  
DEPUTY DIRECTOR

EMPLOYEES' RETIREMENT SYSTEM  
HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND  
OFFICE OF THE PUBLIC DEFENDER

**STATE OF HAWAII**  
**DEPARTMENT OF BUDGET AND FINANCE**  
P.O. BOX 150  
HONOLULU, HAWAII 96810-0150

ADMINISTRATIVE AND RESEARCH OFFICE  
BUDGET, PROGRAM PLANNING AND  
MANAGEMENT DIVISION  
FINANCIAL ADMINISTRATION DIVISION  
OFFICE OF FEDERAL AWARDS MANAGEMENT (OFAM)

**TESTIMONY BY WESLEY K. MACHIDA**  
**DIRECTOR, DEPARTMENT OF BUDGET AND FINANCE**  
**TO THE SENATE COMMITTEES ON JUDICIARY AND LABOR**  
**AND GOVERNMENT OPERATIONS**  
**ON**  
**HOUSE BILL NO. 2477, H.D. 2**

March 17, 2016  
1:30 p.m.

**RELATING TO STATE EMPLOYEES**

House Bill No. 2477, H.D. 2, requires that: the number of civil service exempt employees not exceed a certain percentage in the Executive Branch, excluding the Department of the Attorney General; the Department of Human Resources Development (DHRD) report on the number of exempt Executive employees annually; and departments reduce their number of exempt employees by an unspecified percentage if their total exceeds an unspecified percentage in three consecutive annual reports submitted by DHRD.

The Department of Budget and Finance (B&F) opposes this bill.

First, mandating the director of a department to reduce the number of exempt positions by an unspecified percentage to meet an arbitrary limit of exempt employees for the Executive Branch is operationally unrealistic. It would also create an administrative dilemma as to which positions would retain their exempt status and which would be forced to convert to civil service status, despite the positions being authorized for exemption by Section 76-16(b) or other agency-specific statutory exemptions.

Second, the forced conversion of positions from exempt to civil service could result in the loss of employees – those not willing to accept conversion to civil service – with valuable skills and expertise. This could jeopardize the affected department's ability to provide critical services to the public.

Third, B&F has a total of 372.5 employees (309.5 permanent and 63.0 temporary), of which 176.5 are exempt (127.5 permanent and 49.0 temporary). Below is a breakdown of positions by Program ID:

	Total Employees		Exempt Employees			
			Number		Percentage	
Program ID	Perm	Temp	Perm	Temp	Perm	Temp
BUF 101	42.00	12.00	2.00	2.00	4.76%	16.67%
BUF 115	23.00	0.00	0.00	0.00	0.00%	0.00%
BUF 141	105.00	1.00	5.00	0.00	4.76%	0.00%
BUF 143	56.00	0.00	48.00	0.00	85.71%	0.00%
BUF 151	83.50	50.00	72.50	47.00	86.83%	94.00%
Total	309.50	63.00	127.50	49.00	41.20%	77.78%

As the table depicts, BUF 143 (Hawaii Employer-Union Health Benefits Trust Fund) and BUF 151 (Office of the Public Defender) would be significantly impacted by the provisions of this measure.

DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LIEUTENANT GOVERNOR



LINDA CHU TAKAYAMA  
DIRECTOR

LEONARD HOSHIJO  
DEPUTY DIRECTOR

**STATE OF HAWAII  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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March 16, 2016

To: The Honorable Donna Mercado Kim, Chair  
The Honorable Les Ihara, Jr., Vice Chair  
Members of the Senate Committee on Government Operations

The Honorable Gilbert S.C. Keith-Agaran, Chair,  
The Honorable Maile S.L. Shimabukuro, Vice Chair, and  
Members of the Senate Committee on Judiciary and Labor

Date: Thursday, March 17, 2016  
Time: 1:30 p.m.  
Place: Conference Room 414, State Capitol

From: Linda Chu Takayama, Director  
Department of Labor and Industrial Relations (DLIR)

**Re: H.B. No. 2477 HD2 Relating to State Employees**

Chair Mercado Kim, Chair Keith-Agaran, Vice Chair Ihara, Vice Chair Shimabukuro, and  
Members of the Committees:

My name is Linda Chu Takayama and I am the Director of the Department of Labor and  
Industrial Relations. DLIR supports the intent of this measure and offers comments for  
the Committees' consideration.

DLIR is comprised of seven divisions and eight attached agencies and offers the  
following information for the Committees' consideration:

Division

Workforce Development Division  
Occupational Safety & Health Division  
Wage Standards Division  
Unemployment Insurance Division  
Disability Compensation Division  
Research & Statistics Office  
General Administration

Agency

Workforce Development Council  
Hawaii Civil Rights Commission  
Hawaii Labor Relations Board  
Labor & Industrial Relations Appeals Board  
Employment Security Appeals Referees Office  
Office of Community Services  
State Fire Council  
Hoisting Machine Operators Advisory

DLIR has fifty-three (53) exempt positions as of March 14, 2016.

- 10 of 498 (2%) of the department's total positions are exempt and in divisions including the Director, Deputy and two Private Secretaries.
- 10 of 53 (19%) of the exempt positions are in divisions
- 36 of 53 (68%) of the exempt positions are in attached agencies
- 18 of 53 (34%) of the exempt positions are in federally funded programs or are partially federally funded and partially state grant funded programs. The changing levels of grant and formula funding require flexibility to adjust staffing accordingly.
- 16 of 53 (30%) of the exempt positions in the attached agencies are Executive Directors, Deputies, Board members and Board attorneys subject to appointment for specific terms.
- 7 of 46 (13%) are Work Experience participants pursuant to section 76 (13)(C) Hawaii Revised Statutes (HRS).

The department notes that the exempt positions in the Hawaii Civil Rights Commission, Hawaii Labor Relations Board, Labor and Industrial Relations Appeals Board and the Office of Community Service are statutory.



DAVID Y. IGE  
GOVERNOR

LUIS P. SALAVERIA  
DIRECTOR

MARY ALICE EVANS  
DEPUTY DIRECTOR

## DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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Written Statement of  
**LUIS P. SALAVERIA**  
Director

Department of Business, Economic Development, and Tourism  
before the  
**SENATE COMMITTEES ON JUDICIARY AND LABOR  
AND  
GOVERNMENT OPERATIONS**

Thursday, March 17, 2016  
1:30 p.m.  
State Capitol, Conference Room 414

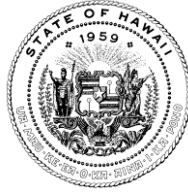
in consideration of  
**HB 2477, HD2**  
**RELATING TO STATE EMPLOYEES.**

Chairs Keith-Agaran and Kim, Vice Chairs Shimabukuro and Ihara, and Members of the Committees.

The Department of Business, Economic Development and Tourism (DBEDT) offers comments on House Bill No. 2477, HD2. This bill provides that the number of Executive Branch employees exempt from the civil service laws of Chapter 76, Hawaii Revised Statutes (HRS) shall not exceed an unspecified percentage of the total number of executive branch employees, and that if this percentage is exceeded, each director shall take action to remove the civil service exemptions of a requisite number of employees.

DBEDT has concerns regarding the impact of this bill on the department's operations in those areas where the Legislature has previously determined there is a well justified need for exempt positions. These areas include affordable housing, tourism marketing, investments in innovation and technology businesses, ocean science research, and space research.

Thank you for the opportunity to provide comments.



DAVID Y. IGE  
GOVERNOR

SHAN S. TSUTSUI  
LT. GOVERNOR

**STATE OF HAWAII**  
**OFFICE OF THE DIRECTOR**  
**DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**  
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CATHERINE P. AWAKUNI COLÓN  
DIRECTOR

JO ANN M. UCHIDA TAKEUCHI  
DEPUTY DIRECTOR

**PRESENTATION OF THE  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS**

TO THE SENATE COMMITTEE ON GOVERNMENT OPERATIONS  
AND  
TO THE SENATE COMMITTEE ON JUDICIARY AND LABOR

TWENTY-EIGHTH LEGISLATURE  
Regular Session of 2016  
Thursday, March 17, 2016  
1:30 p.m.

**TESTIMONY ON HOUSE BILL NO. 2477, H.D. 2, RELATING TO STATE  
EMPLOYEES.**

TO THE HONORABLE DONNA MERCADO KIM, CHAIR,  
TO THE HONORABLE GILBERT S.C. KEITH-AGARAN, CHAIR,  
AND MEMBERS OF THE COMMITTEES:

My name is Catherine Awakuni Colón, Director of the Department of Commerce and Consumer Affairs ("DCCA"). DCCA appreciates the opportunity to offer comments on House Bill No. 2477, H.D. 2, Relating to State Employees.

This bill provides that the number of executive branch employees exempt from Chapter 76, Hawaii Revised Statutes, shall not exceed an unspecified percentage of the total number of executive branch employees. Also, this measure requires that certain executive branch departments, including DCCA, remove the civil service exemptions of an unspecified percentage of the departments' respective employees.

DCCA is charged with protecting the interests of consumers, depositors and

investors throughout the State, and in support of that role, the Legislature has previously determined that a number of DCCA positions should be exempt from civil service. Consumer protection and commercial regulation, as much as any area of government, requires that staff be able to perform on par with or more effectively than private sector employees operating the businesses that DCCA regulates (e.g., communications, energy, banking and financial institutions, insurance, and many other industries). These positions include Staff Attorneys, Research Analysts, Hearings Officers and other highly specialized positions. By exempting certain positions from Chapter 76, the Legislature gave DCCA the ability to locate, recruit, and compensate individuals with the necessary skill sets to perform specialized tasks. Without the flexibility of hiring outside of Chapter 76, DCCA would not be able to meaningfully compete with the private sector.

DCCA does not support the transition from the current method of authorizing exempt positions to one that establishes a simple maximum percentage cap. Further, DCCA is a relatively small department with a large percentage of specialized employees, and, as such, would be unfairly and disproportionately impacted by a methodology that relied on a flat percentage.

DCCA understands and appreciates the value of Chapter 76 for those positions that do not require specialized knowledge and expertise. As a matter of policy and practice, DCCA has been consistent in its efforts to convert appropriate positions and will continue to do so as positions become vacant or as additional conversions are necessary and appropriate.

Thank you for the opportunity to testify on House Bill No. 2477, H.D.2. I am happy to answer any questions that the members of the Committees may have.

DAVID Y. IGE  
GOVERNOR  
STATE OF HAWAII

SHAN S. TSUTSUI  
LT. GOVERNOR  
STATE OF HAWAII



JOBIE M. K. MASAGATANI  
CHAIRMAN  
HAWAIIAN HOMES COMMISSION

WILLIAM J. AILA, JR.  
DEPUTY TO THE CHAIRMAN

**STATE OF HAWAII  
DEPARTMENT OF HAWAIIAN HOME LANDS**

P. O. BOX 1879  
HONOLULU, HAWAII 96805

**TESTIMONY OF JOBIE M. K. MASAGATANI, CHAIRMAN  
HAWAIIAN HOMES COMMISSION  
BEFORE THE SENATE JOINT COMMITTEES ON JUDICIARY AND LABOR, AND  
GOVERNMENTAL OPERATIONS**

**EXPRESSING STRONG CONCERNS RELATING TO**

**HB 2477 HD 2, RELATING TO PUBLIC EMPLOYMENT**

March 17, 2016

Aloha Chairs Keith-Agaran, Kim, and Members of the Committee:

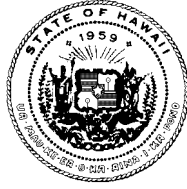
Thank you for the opportunity to submit testimony regarding HB 2477 HD 2. The Department of Hawaiian Home Lands (DHHL) respectfully requests serious consideration of the following:

Section 202 (b) of the Hawaiian Homes Commission Act contemplates the need for the contracting of individuals that are needed to provide critical/specialized services for the efficient functioning of the department. It authorizes that, "The department may hire temporary staff on a contractual basis not subject to chapters 76 and 78, Hawaii Revised Statutes, when the services to be performed will assist in carrying out the purposes of the Act. These positions may be funded through appropriations for capital improvement program projects and by the administration account, operating fund, or native Hawaiian rehabilitation fund. No contract shall be for a period longer than two years, but individuals hired under contract may be employed for a maximum of six years; provided that the six year limitation shall not apply if the department, with the approval of the governor, determines that such contract individuals are needed to provide critical services for the efficient functioning of the department".

In the past, the department has experienced inconsistent levels of funding which makes it difficult to plan for appropriate hiring levels. The ability to hire temporary staff on a contractual basis has allowed the department to provide critical services for the efficient functioning of the department. It is critical for the department to maintain the ability outlined in Section 202 (b) of the Hawaiian Homes Commission Act.

Thank you, again, for the opportunity to submit testimony regarding HB 2447 HD2.





STATE OF HAWAII  
DEPARTMENT OF HUMAN SERVICES  
P. O. Box 339  
Honolulu, Hawaii 96809-0339

March 17, 2016

TO: The Honorable Donna Mercado Kim, Chair  
Senate Committee on Government Operations

The Honorable Gilbert Keith-Agaran, Chair  
Senate Committee on Judiciary & Labor

FROM: Rachael Wong, DrPH, Director

SUBJECT: **HB 2477 HD2 – RELATING TO STATE EMPLOYEES**

Hearing: Thursday, March 17, 2016, 1:30 p.m.  
Conference Room 414, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services (DHS) has concerns about this bill as it may impact federally funded exempt positions in DHS that serve unique populations. The Department respectfully requests that the exempt positions provided in accordance with sections 76-16(16) and 76-16(21) (HRS) be specifically excluded from any cap placed on the Department.

**PURPOSE:** HB 2477 HD2 requires that the number of civil service exempt employees not exceed an unspecified percent in the Executive Branch, excluding the Department of the Attorney General. The bill also requires departments to reduce the number of exempt employees if the total exceeds five percent.

The legislature establishes exemptions from the civil service law per section 76-16, Hawaii Revised Statutes (HRS), and other programmatic related statutes. Departments apply these exemptions to create positions to implement state funded programs and other federally funded program initiatives. Currently, in DHS there are approximately 195 positions exempt from the civil service law in comparison to a total position count of approximately

2400. Of those 195 exempt positions, 97, or approximately half, are exempted under two programs unique to the Department.

Specifically, 57 of these positions are exempted per section 76-16(18), HRS, which allows for the temporary employment of senior citizens in occupations in which there is a severe personnel shortage within the Social Services Division. The respite companion program is a part-time employment and training program that employs eligible low-income seniors to serve frail homebound elders on Oahu. Services include limited in-home personal care, other support services, and respite to caregivers. To be a respite companion, an individual must be at least 55 years of age, physically able to work 19 hours per week, and meet income and other program requirements. To receive respite companion services, an individual or family must meet program related requirements. Depending upon the amount of federal funding available, approximately 24 positions of these 57 authorized positions, are filled each fiscal year. These positions are 100% federally funded.

An additional 40 positions are exempted per section 76-16(21), HRS, which allows the Hawaii Public Housing Authority (HPHA) to hire tenants of public housing on a temporary, part time basis. The hiring of public housing tenants also allows the HPHA to comply with Section 3 of the HUD Act of 1968 which states that wherever HUD financial assistance is expended for housing or community development, to the greatest extent feasible, economic opportunities (e.g., job training, employment) will be given to public housing residents or low and very-low income persons who live in the area where the development is located. Similarly, these positions are 100% federally funded.

The objective of both of these programs is to support the two populations by providing job opportunity, training and skill development. In the case of the respite companion program, these exempt positions increase services to elderly on Oahu, and for tenants in public housing, the program improves participating tenants' ability to compete for work in the regular labor market and maintain the housing facilities where they reside. In addition, being employed in the community where they live helps to instill pride and ownership in the community at large.

The individuals hired under these two programs do not perform traditional civil service work nor do they displace civil service employees. In addition, in as much as the eligible requirements for appointment to these exempt positions limit the applicant pool to

senior citizens and public housing tenants, respectively, competitive recruitment through normal civil service means is not appropriate. Furthermore, since the positions are to be filled on a part-time, temporary basis, bestowing civil service membership or tenure and the associated rights and benefits would not be appropriate.

For the reasons stated above, the Department respectfully requests that the exempt positions provided in accordance with sections 76-16(16) and 76-16(21) (HRS) be specifically excluded from any cap placed on the Department.

Thank you for the opportunity to testify on this bill.



STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES

POST OFFICE BOX 621  
HONOLULU, HAWAII 96809

Testimony of  
SUZANNE D. CASE  
Chairperson

Before the Senate Committees on  
JUDICIARY AND LABOR  
and  
GOVERNMENT OPERATIONS

Thursday, March 17, 2016  
1:30 PM  
State Capitol, Conference Room 414

In consideration of  
HOUSE BILL 2477, HOUSE DRAFT 2  
RELATING TO STATE EMPLOYEES

House Bill 2477, House Draft 2 proposes to limit the number of executive branch employees exempt from civil service laws to no more than an unspecified percentage of the total number of executive branch employees. **The Department of Land and Natural Resources (Department) respectfully opposes this measure.**

The Department understands the intent of Act 253, Session Laws of Hawaii 2000, was to increase the number of positions included in the civil service system, where appointments and promotions were made under a system of merit determined by competitive examination, and to decrease the use of exempt appointments, which are positions outside the civil service. This Department has acted in accordance with previous legislation and has converted a number of its exempt positions to civil service. The Legislature has also previously recognized the need for temporary positions and had awarded a number of such exempt positions to various state departments. This measure will require departments to add tenured positions to the current state work force or convert exempt positions to tenured civil service positions, thereby increasing the cost of supporting state government and placing a potential long-term burden on state taxpayers.

The majority of employees in the exempt positions are selected and employed because they have unique and specialized qualifications; i.e., the Department's Commission on Water Resources Management (Commission). The Commission had been granted statutory authority to appoint employees without regard to Chapter 76, Hawaii Revised Statutes (HRS). The Commission believes that this authority was originally granted in recognition of the unique and specialized qualifications that are needed to carry out the mandates of the State Water Code (Chapter 174C,

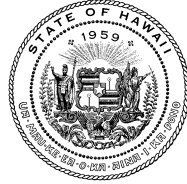
HRS). There is no comparable agency in the State tasked with the protection, planning and regulation of water resources. The Commission requires geological, hydrological, engineering, legal and regulatory knowledge as it relates to water resources and must offer salaries commensurate with such education and experience and comparable to current employment market conditions. To fill such difficult to recruit positions, flexibility is needed to attract and retain such employees. The use of such positions oftentimes is a win-win situation for employee and employer.

As these positions are so specialized and difficult to recruit, the pool of applicants with such unique qualifications and experience is extremely limited. To limit the number of exempt positions performing such specialized duties would unnecessarily place strain on remaining staff to fulfill its responsibilities. This would cause an agency to lose a trained employee and cause disruption of projects or services. This would also hamper agencies ability to fill such difficult to recruit positions, as flexibility is needed to attract and retain such employees.

Thank you for the opportunity to provide testimony on this measure.

**DAVID Y. IGE**  
GOVERNOR

**SHAN TSUTSUI**  
LT. GOVERNOR



STATE OF HAWAII  
**DEPARTMENT OF TAXATION**  
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**MARIA E. ZIELINSKI**  
DIRECTOR OF TAXATION

**JOSEPH K. KIM**  
DEPUTY DIRECTOR

To: The Honorable Gilbert S.C. Keith-Agaran, Chair  
and Members of the Senate Committee on Judiciary and Labor

The Honorable Donna Mercado Kim, Chair  
and Members of the Senate Committee on Government Operations

Date: March 17, 2016  
Time: 1:30 P.M.  
Place: Conference Room 414, State Capitol

From: Maria E. Zielinski, Director  
Department of Taxation

Re: H.B. 2477, H.D. 2, Relating to State Employees

The Department of Taxation (Department) has concerns about H.B. 2477, H.D. 2 and provides the following comments for your consideration.

H.B. 2477, H.D. 2 limits the number of employees within the executive branch that may be exempt from civil service by an unspecified percent. The bill further provides that if the limit is exceeded in three consecutive years, each director of a principal department with more than 10 exempt employees shall take action to remove the civil service exemptions of an unspecified percent of the employees in the department. The bill has a defective effective date of July 1, 2091.

The Department notes that it currently employs 31 employees who are exempt from civil service. The Department is concerned that if a cap is imposed on the number of exempt employees the Department may employ, certain operations will be significantly impacted.

First, we note that four of the Department's exempt positions are appointed positions, including the Tax Director and Deputy Director, and their assistants. Another four positions are temporary full-time positions occupied by persons working on the Tax Systems Modernization project. These positions should not be subject to any caps.

Further, six of the Department's exempt positions belong to the Special Enforcement Section (SES), exempt pursuant to section 231-83, Hawaii Revised Statutes (HRS), which investigates reported or suspected violations of tax laws, including cash-based businesses and transient accommodations, and is self-funded. It could be problematic if these positions were converted to civil service and there was insufficient funding to pay for their operations.

The Department notes that more than ten of its exempt positions are occupied by the Administrative Rules Officer and Administrative Rules Specialists, who are exempt pursuant to section 231-4.5, HRS. The Rules Officer and Rules Specialists may be legal or accounting professionals by statute and are currently comprised primarily of attorneys, who generally are not able to unionize.

The remainder of the Department's exempt positions are occupied by the Criminal Investigation Section pursuant to section 231-4.3, HRS. The Department notes that it has requested eight additional exempt positions in the FY16-17 supplemental budget as part of the Department's effort to establish an Investigation Branch, which will include the Special Enforcement Section, Criminal Investigation Section, and a new Tax Fraud Section. The purpose of the Investigation Branch will be to provide a coordinated effort to promote voluntary compliance of Hawaii tax laws and regulations. The new exempt positions will include a branch chief, fraud investigators, and criminal investigators.

Thank you for the opportunity to provide comments.

DAVID Y. IGE  
Governor

SHAN S. TSUTSUI  
Lt. Governor



SCOTT E. ENRIGHT  
Chairperson, Board of Agriculture

PHYLLIS SHIMABUKURO-GEISER  
Deputy to the Chairperson

State of Hawaii  
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**TESTIMONY OF SCOTT E. ENRIGHT  
CHAIRPERSON, BOARD OF AGRICULTURE**

**BEFORE THE SENATE COMMITTEES ON GOVERNMENT OPERATIONS  
AND JUDICIARY AND LABOR**

March 17, 2016  
1:30 P.M.  
CONFERENCE ROOM 414

**HOUSE BILL NO. 2477 HD2  
RELATING TO PUBLIC EMPLOYMENT**

Chairpersons Kim and Keith-Agaran and Members of the Committees:

Thank you for the opportunity to testify on House Bill No. 2477 HD2. This bill proposes to require that the number of civil service exempt employees not exceed a certain percentage in the Executive Branch, excluding the Department of the Attorney General; require that the Department of Human Resources Development report on the number of exempt executive employees; and require that Departments reduce the number of exempt employees if the total exceeds a certain percentage. The Department of Agriculture respectfully opposes this bill.

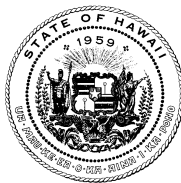
The Department currently has 23 exempt positions which represents 8.2% of our civil service staff. All but one of these exempt positions is specifically exempted by agency specific statutes. Should this 8.2% exceed the established percentage threshold, forced conversion of these long-standing exempt positions would create operational disruptions for the Agribusiness Development Corporation and Quality Assurance Division and diminished levels of production and services from these programs. Identification of affected positions and the process of conversion can be extremely unsettling to current incumbents. Additionally, loss of staff is expected as some employees will be unwilling to accept the civil service employment conditions or unable to be successfully converted with the position.

Furthermore, conversion of filled exempt positions to civil service and related transition activities would significantly detract from the Department's recruitment activities which is the primary focus of our Human Resources staff.

Thank you for the opportunity to submit our testimony.







DAVID Y. IGE  
GOVERNOR

STACIE A. ALDRICH  
STATE LIBRARIAN

STATE OF HAWAII  
HAWAII STATE PUBLIC LIBRARY SYSTEM  
OFFICE OF THE STATE LIBRARIAN  
44 MERCHANT STREET  
HONOLULU, HAWAII 96813

**Committee on Judiciary and Labor  
Committee on Government Operations  
Thursday, March 17, 2016  
1:30 p.m.  
Conference Room 414  
State Capitol**

**HB 2477, HD2 – Relating to State Employees**

TO: Chairperson Mercado Kim and Keith-Agaran and members of the Committees of the Joint Committees

House Bill 2477, HD 2 requires that the number of civil service exempt employees not exceed \_\_\_\_ percent of the total number of executive branch employees and if this percentage is exceeded, then each director of a principal department with more than ten employees exempt from civil service laws shall take action, including submission of proposed legislation if necessary, to remove the civil service exemptions of at least that percent of the employees in that department, excluding the department of the attorney general.

The Hawaii State Public Library System (HSPLS) has concerns with this measure. Currently HSPLS has only 5 exempt employees (with one vacancy) staffing the Office of the State Librarian (OSL) but 146 student helper positions that are also considered exempt employees under Chapter 76-16 in the list provided by the Dept. of Human Resources and Training. While we are under 1% of our total number of employees for the exempt positions in OSL, we would exceed that percentage if the student helper positions were included. We have student helpers in each of our 50 public libraries statewide. For many of these full-time students the public library system provides essential training in how to enter into and function in a workplace environment successfully. In return, the public libraries have an inexpensive (most earn minimum wage or near minimum wage) but eager workforce devoted to the shelving and re-shelving of the millions of materials checked out by community users each year. In FY 2015, HSPLS had nearly six million items checked out and returned across the state. These essential young workers ensure that all books, DVDs and CDs are returned to their proper place on the shelves for the next user to discover. If these student helpers were eliminated, there would not be enough permanent staff to ensure that materials were available to the public.

# H.B. NO. 2477

They would be quickly overrun with returns and unable to manage the volume. Having our permanent staff perform all the shelving would also force them away from helping the patrons coming into our libraries looking for assistance. Therefore we are requesting an exemption from this measure similar to that for the Department of the Attorney General for our Student Helpers.

Thank you for allowing us the opportunity of testifying on this measure.



## HAWAII GOVERNMENT EMPLOYEES ASSOCIATION

AFSCME Local 152, AFL-CIO

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

The Twenty-Eighth Legislature, State of Hawaii  
Hawaii State Senate  
Committee on Judiciary and Labor  
Committee on Government Operations

Testimony by  
Hawaii Government Employees Association  
March 17, 2016

### H.B. 2477, H.D. 2 – RELATING TO STATE EMPLOYEES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B. 2477, H.D. 2, which in its original form was to limit the number of positions exempt from civil service within the executive branch to 5%. The current version leaves that percentage undefined, but we believe the original 5% limit is appropriate to preserve the state's civil service system.

The use of exempt employees, which are considered "at will" by DHRD, is completely contrary to the principles of a merit-based civil service system free from coercive political influences as established through Article XVI, Section 1 of the Hawaii State Constitution and Chapter 76, HRS. Exempt employees do not have the same rights and benefits of civil service employees and that is inherently unfair. The HGEA has consistently opposed the creation of more exempt positions in state government for more than a decade, while advocating for sensible civil service reform.

According to the most recent report submitted to the Legislature by DHRD, there are 2,796 exempt positions in state departments reporting to DHRD. We estimate that approximately 18% of all positions in the personnel system administered by DHRD are exempt. That is almost one out of every five positions, and that ratio is even higher in Bargaining Unit 13 which probably closer to 30%. The proliferation of exempt positions threatens the very existence of a merit-based civil service system.

In contrast, California, which has more than 200,000 state employees in 21 bargaining units, limits by statute the number of exempt employees to one-half of one percent. There are only 1,000 exempt employees in California State government. Instead of establishing more exempt positions, the civil service system must become more flexible and competitive. The answer to the challenges faced by state departments is not the creation of more exempt employees, but substantive reform of the state's civil service system.

A statutory limit on the number of exempt employees in state government is essential to preserve a merit-based civil service system. Thank you for the opportunity to testify in strong support of H.B. 2477, H.D. 2.

Respectfully submitted,

Randy Perreira  
Executive Director