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February 4, 2016

**TESTIMONY TO THE
HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT**

For Hearing on Friday, February 5, 2016
9:30 a.m., Conference Room 309

BY

JAMES K. NISHIMOTO
DIRECTOR

House Bill No. 2477
Relating to State Employees

WRITTEN TESTIMONY ONLY

TO CHAIRPERSON NAKASHIMA, VICE CHAIRPERSON KEOHOKALOLE AND
MEMBERS OF THE COMMITTEE:

House Bill No. 2477 provides that the number of Executive Branch employees exempt from the civil service laws of Chapter 76, Hawaii Revised Statutes (HRS) shall not exceed five per cent 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.

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 6,885 positions exempt from the civil service in the Executive Branch, in comparison to a total position count of 23,814.

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 House Bill No. 2477 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 House Bill No. 2477

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 House Bill No. 2477 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, long-standing 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. House Bill No. 2477 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.



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
House of Representatives
Committee on Labor and Public Employment

Testimony by
Hawaii Government Employees Association

February 5, 2016

H.B. 2477 – RELATING TO STATE EMPLOYEES

The Hawaii Government Employees Association, AFSCME Local 152, AFL-CIO strongly supports the purpose and intent of H.B.2477, which limits the number of positions exempt from civil service in the executive branch to five percent. The expansion of exempt positions in state government is in direct conflict with Article XVI, Section 1 of the Hawaii State Constitution and Chapter 76, Hawaii Revised Statutes, which establish a merit-based civil service system free from coercion and political influences.

The use of exempt employees, which are considered “at will” by the state, is completely contrary to the principles of civil service. Exempt employees do not have the same rights and benefits of civil service employees and that is inherently unfair. We have consistently opposed the creation of more exempt positions in state government for more than a decade and have advocated for sensible civil service reform.

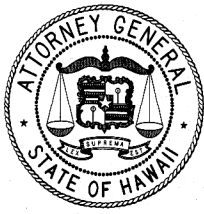
According to the most recent report submitted to the Legislature by the Department of Human Resources Development (DHRD), there are 2,796 exempt positions in state government. We estimate that approximately 18%-19% of all positions in the personnel system administered by DHRD are exempt positions. That equates to almost one out of every five employees, and that ratio is even higher in Bargaining Unit 13. California, which has more than 200,000 state employees in 21 bargaining units, limits their exempt employees to one-half of one percent (.5%) of its workforce, which equates to approximately 1,000 exempt employees in California State government.

Instead of creating more exempt positions, the civil service system must become more flexible and competitive. For example, we are willing to negotiate a separate salary schedule in Unit 13 for psychologists, physicians, dentists and other health care professionals. Doing so is not difficult and other states have successfully incorporated these classes within civil service. Surely, Hawaii can do the same. The answer to the challenges faced by these state departments is not the creation of more exempt employees, but substantive reform of the state's civil service system.

Thank you for the opportunity to testify in strong support of H.B. 2477.

Respectfully submitted,

Randy Perreira
Executive Director



TESTIMONY OF THE DEPARTMENT OF THE ATTORNEY GENERAL TWENTY-EIGHTH LEGISLATURE, 2016

ON THE FOLLOWING MEASURE:

H.B. NO. 2477, RELATING TO STATE EMPLOYEES.

BEFORE THE:

HOUSE COMMITTEE ON LABOR AND PUBLIC EMPLOYMENT

LATE

DATE: Friday, February 5, 2016

TIME: 9:30 a.m.

LOCATION: State Capitol, Room 309

TESTIFIER(S): Douglas S. Chin, Attorney General, or
James E. Halvorson, Deputy Attorney General, or
Claire W.S. Chinn, Deputy Attorney General

Chair Nakashima and Members of the Committee:

The Department of the Attorney General opposes this bill as currently drafted for legal and practical reasons as set forth below.

The primary purpose of this bill amends chapter 76, Hawaii Revised Statutes (HRS), by adding a new section entitled: "Maximum percentage of civil service exempt positions; executive branch." The stated purpose of this bill requires that not more than five percent of the employees of the executive branch be exempt from civil service. This bill also requires departments to reduce the number of civil service exempt employees if the percentage of civil service exempt employees exceeds the specified percentage. This bill directly affects the Department of the Attorney General because it has a disproportionate amount of employees that are exempt from civil service, specifically its deputy attorneys general.

First, as to the legal reasons, the provision in subsections (a) and (b) of the new section set forth in section 1 of this bill conflicts with existing law as set forth in section 76-16(b)(10), HRS. Subsection (a), on page 1 (lines 5-8), mandates that no more than five percent of executive branch employees be exempt from the civil service laws of chapter 76 while subsection (b) on pages 1 (lines 9-17) and 2 (lines 1-4), mandates that, if the number of civil service exempt employees "exceeds the percentage established in subsection (a), each director of a principal department with more than ten employees exempt from civil service laws, shall take action, including submitting proposed legislation, if necessary, to remove the civil service exemptions of employees [blank percent] in that department." Section 76-16(b)(10), HRS, specifically provides

an exception that certain positions within the Department of the Attorney General be exempt from civil service. As stated in section 76-16(b)(10), “[t]he 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 . . . [f]irst 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.” Pursuant to current law, specific positions within the Department of the Attorney General remain exempt.

Second, the Department of the Attorney General opposes this bill for practical reasons. The department has 739 budgeted positions and 202 of those positions belong to deputy attorneys general. Because of the high number of employees exempt from civil service laws (i.e., deputy attorneys general), subsection (b) requires the Attorney General to take action to remove those civil service exemptions. Again, this conflicts with existing law in section 76-16(b)(10), HRS.

Thank you for the opportunity to testify on this matter.

From: mailinglist@capitol.hawaii.gov
Sent: Thursday, February 04, 2016 11:26 PM
To: LABtestimony
Cc: hawaiiifishingfanatic@gmail.com
Subject: Submitted testimony for HB2477 on Feb 5, 2016 09:30AM

LATE

HB2477

Submitted on: 2/4/2016

Testimony for LAB on Feb 5, 2016 09:30AM in Conference Room 309

Submitted By	Organization	Testifier Position	Present at Hearing
Don Aweau	Individual	Oppose	No

Comments: In full opposition of bill as the Executive Branch has sufficient positions to fulfill its duties and responsibilities. If needed, Executive Branch should provide for positions in next budgetary cycle and clearly define position purpose and job description. Mahalo.

Please note that testimony submitted less than 24 hours prior to the hearing, improperly identified, or directed to the incorrect office, may not be posted online or distributed to the committee prior to the convening of the public hearing.

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DEPARTMENT OF BUSINESS, ECONOMIC DEVELOPMENT & TOURISM

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DAVID Y. IGE
GOVERNOR

LUIS P. SALAVERIA
DIRECTOR

MARY ALICE EVANS
DEPUTY DIRECTOR

LATE

Written Statement of
LUIS P. SALAVERIA

Director

Department of Business, Economic Development and Tourism
before the

HOUSE COMMITTEE ON LABOR & PUBLIC EMPLOYMENT

Friday, February 5, 2016
9:30 AM

State Capitol, Conference Room 309

In consideration of
HB 2477
RELATING TO STATE EMPLOYEES.

Chair Nakashima, Vice Chair Keohokalole and Members of the Committee:

The Department of Business, Economic Development and Tourism (DBEDT) offers comments on House Bill No. 2477. 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 five percent 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 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.