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# 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 However, Act 90, Part II, was repealed on June 30,  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.

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1       After Act 90 was repealed, the United Public Workers filed  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, the  
6   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 598 permanent positions and

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1 approximately \$75,571,516 (for positions and associated  
2 equipment) in general and non-general funds in order to provide  
3 necessary services to the public through civil service employees  
4 rather than through contractors.

5 SECTION 3. In an effort to facilitate the provision of  
6 refuse collection for the Hawaii Public Housing Authority, and  
7 in order to fulfill operational needs with regard to work  
8 historically and customarily performed by civil service  
9 personnel, a total of 27 permanent positions are requested for  
10 the Hawaii Public Housing Authority for refuse collection  
11 workers, as follows:

- 12 (1) Fifteen (15) Heavy Truck Driver positions;  
13 (2) Four (4) Refuse Collector positions;  
14 (3) Seven (7) Truck Driver/Laborer positions;  
15 (4) One (1) welder position;

16 Only partial funding will be required based on use of  
17 existing special funds. Position funding is requested at a cost  
18 of \$472,783.

19 Eight Hundred and Fifteen (815) Refuse collection bins are  
20 requested at a cost of \$2,900 each totaling \$1,764,475.

21 Nineteen (19) Refuse collection front loader trucks are  
22 requested at a cost of \$168,000 each totaling \$3,180,000.

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1        Eight (8) Scout Trucks are requested at a cost of \$90,000  
2 each totaling \$720,000.

3        Welding equipment is requested at a cost of \$42,000.

4        SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



7

BY REQUEST

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JAN 22 2018

# H.B. NO. 2368

**Report Title:**

Civil Service; Establish Positions

**Description:**

Authorizes establishment of permanent civil service positions for the Hawaii Public Housing Authority to provide services historically and customarily performed by civil service employees in connection with refuse collection.

*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 (UPW)-type positions needed to perform services that are currently being contracted out by the Executive Branch departments. Specifically, the bill seeks authorization for the Hawaii Public Housing Authority (HPHA) to establish civil service positions needed to perform services that will facilitate refuse collection for the Hawaii Public Housing Authority. For these particular positions and related equipment and an appropriation of funds is being requested in the amount of \$6,651,509.

MEANS: Legislative authorization to establish positions for HPHA. 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 estimates regarding the overall positions and/or resources needed by the State Executive Branch departments, the bill specifically seeks authorization for the establishment of a total of 27 permanent civil service positions for the HPHA to establish and facilitate refuse collection for the Hawaii Public Housing Authority.

Impact on the public: It is anticipated that increased personnel and equipment for HPHA will enable the agency to more effectively

provide refuse collection services for HPHA  
and eliminate the need to privately contract  
for work historically and customarily  
performed by civil service employees.

Impact on the department and other agencies:  
None expected.

GENERAL FUND:	\$6,651,509.
OTHER FUNDS:	None requested.
PPBS PROGRAM DESIGNATION:	None.
OTHER AFFECTED AGENCIES:	DAGS.
EFFECTIVE DATE:	Upon approval.